

## **Stabenow Amendment #1 to the ENFORCE Act.**

**Short Title:** This amendment may be cited as the “Protect American Innovation Act.”

**Description of Amendment:** The purpose of this amendment is to improve enforcement of intellectual property rights by incorporating the legislative text (also attached) of the Protect American Innovation Act (S.1830), introduced as a standalone bill and referred to the Senate Committee on Finance on November 8, 2011.

- Create a Director of Intellectual Property Rights (IPR) Enforcement and an IPR Enforcement advisory committee;
- Create a “watch list”, creating extra scrutiny for shipments from bad actors;
- Create a “three strikes and you’re out” policy that prohibits companies who repeatedly violate U.S. law from bringing goods into this country;
- Force Custom and Border Protection (CBP) to collect fines on all illegal imports;
- Create a voluntary government-private sector import safety program;
- Establish new sanctions for repeated non-compliance with U.S. health and safety laws;
- Authorize support, resources, and training for Customs and ICE to carry out their import safety and IPR enforcement responsibilities;
- Gives CBP authority to seize clearly infringing recordings that have not yet been recorded;
- Gives CBP authority to seize products that are registered, but not yet recorded trademarks;
- Gives CBP authority to seize pirated goods produced for export;
- Requires CBP inspectors to provide rights holders with specific information when asking them to authenticate goods;
- Implements a procedure for CBP to follow when counterfeit or pirated goods are seized and bond requirements need to be met;
- Directs CBP to work with state and local law enforcement officials in selected ports to develop IPR task forces; and
- Allows Chief Counsel at CBP to represent the interests of the U.S. upon the refusal of the U.S. Attorney to do so in a hearing to perfect a forfeiture.

112th CONGRESS

1st Session

**S. 1830**

To improve enforcement of intellectual property rights, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**November 8, 2011**

Ms. STABENOW introduced the following bill; which was read twice and referred to the Committee on Finance

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**A BILL**

To improve enforcement of intellectual property rights, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title- This Act may be cited as the `Protect American Innovation Act of 2011'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I--STRENGTHENING ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**Subtitle A--Definitions**

Sec. 101. Definitions.

**Subtitle B--Coordination of Enforcement of Intellectual Property Rights**

Sec. 111. Director of Intellectual Property Rights Enforcement.

Sec. 112. U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement intellectual property rights coordinators.

### **Subtitle C--Regulatory and Policy Improvements With Respect to Combating Counterfeiting and Piracy**

Sec. 121. Identification of certain unlawful goods.

Sec. 122. Training in new technologies.

Sec. 123. Disclosure of information and samples of shipments to intellectual property owners.

Sec. 124. Improvements to recordation process.

Sec. 125. Identification of low-risk importers.

Sec. 126. `Watch List' database.

Sec. 127. Civil fines for importation of pirated or counterfeit goods.

Sec. 128. Report on effective collection techniques.

### **Subtitle D--Training Enhancements**

Sec. 131. International training and technical assistance enhancements.

### **Subtitle E--New Legal Tools for Border Enforcement**

Sec. 141. Expanded prohibitions on importation, exportation, and transshipment of counterfeit or pirated goods.

Sec. 142. Declarations regarding counterfeit and infringing merchandise.

Sec. 143. Seizure and forfeiture of devices designed to circumvent intellectual property rights protections.

Sec. 144. Authority of Chief Counsel of U.S. Customs and Border Protection to represent the United States in certain forfeiture proceedings.

### **Subtitle F--Administrative Provisions**

Sec. 151. Advisory Committee on Import Safety and Intellectual Property Enforcement.

Sec. 152. Staffing enhancements at U.S. Customs and Border Protection.

Sec. 153. Staffing enhancements at U.S. Immigration and Customs Enforcement.

Sec. 154. Regulatory authority.

## **TITLE II--INCREASED PENALTIES FOR CERTAIN UNFAIR TRADE PRACTICES**

Sec. 201. Increased penalties for certain unfair trade practices.

## **TITLE I--STRENGTHENING ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **Subtitle A--Definitions**

#### **SEC. 101. DEFINITIONS.**

In this title:

(1) **ADVISORY COMMITTEE**- The term `Advisory Committee' means the Advisory Committee on Import Safety and Intellectual Property Rights Enforcement established pursuant to section 151.

(2) **COMMISSIONER**- The term `Commissioner' means the Commissioner responsible for U.S. Customs and Border Protection.

(3) **COUNTERFEITING; COUNTERFEIT GOODS**-

(A) **COUNTERFEITING**- The term `counterfeiting' means activities related to production of or trafficking in goods, including packaging, that bear a spurious mark or designation that is identical to or substantially indistinguishable from a mark or designation protected under the trademark laws or related laws.

(B) **COUNTERFEIT GOODS**- The term `counterfeit goods' means goods described in subparagraph (A).

(4) DIRECTOR- The term `Director' means the Director of Intellectual Property Rights Enforcement of the Department of the Treasury established under section 111.

(5) ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS- The term `enforcement of intellectual property rights' means activities to enforce--

(A) copyrights, patents, trademarks, and other forms of intellectual property, including activities to control counterfeiting and piracy; and

(B) exclusion orders issued by the United States International Trade Commission by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(a)(1) (B) through (E)).

(6) EXCLUSION ORDER- The term `exclusion order' means an order of the United States International Trade Commission issued under section 337 (d) or (e) of the Tariff Act of 1930 (19 U.S.C. 1337 (d) and (e)) to exclude goods from entry into the United States.

(7) PIRACY; PIRATED GOODS-

(A) PIRACY- The term `piracy' means activities related to production of or trafficking in unauthorized copies or phonorecords of works protected under title 17, United States Code, or related laws.

(B) PIRATED GOODS- The term `pirated goods' means copies or phonorecords described in subparagraph (A).

(8) SECRETARY- Except as otherwise provided, the term `Secretary' means the Secretary of the Treasury.

(9) TRANSSHIPMENT- The term `transshipment' means the shipment of goods through one country that is an intermediate destination to another country that is the final destination of the goods.

#### **Subtitle B--Coordination of Enforcement of Intellectual Property Rights**

### **SEC. 111. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.**

(a) Establishment- There is established within the Department of the Treasury the position of Director of Intellectual Property Rights Enforcement.

(b) Appointment- The Director shall be appointed by the Secretary, and shall be responsible to and shall report directly to the Deputy Secretary of the Treasury.

(c) Duties- The Director shall--

(1) coordinate all activities of the Department of the Treasury involving the enforcement of intellectual property rights and coordinate with U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement with respect to such enforcement;

(2) coordinate the policy and regulatory changes set forth in this title;

(3) serve as staff representative of the Department of the Treasury in interagency bodies with responsibility for coordination of activities involving the enforcement of intellectual property rights;

(4) conduct an evaluation of the effectiveness of the organizational structure of U.S. Customs and Border Protection for reducing the entry into the United States of counterfeit or pirated goods, goods in violation of exclusion orders, and other goods in violation of other intellectual property rights; and

(5) carry out other duties, as assigned by the Secretary or Deputy Secretary of the Treasury, to improve the effectiveness of the efforts of the Department of the Treasury under the laws within its jurisdiction with respect to the enforcement of intellectual property rights.

## **SEC. 112. U.S. CUSTOMS AND BORDER PROTECTION AND U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT INTELLECTUAL PROPERTY RIGHTS COORDINATORS.**

(a) U.S. Customs and Border Protection Intellectual Property Rights Coordinator-

(1) APPOINTMENT- The Commissioner shall appoint a U.S. Customs and Border Protection coordinator of intellectual property rights enforcement activities (in this subtitle referred to as the `U.S. Customs and Border Protection

Intellectual Property Rights Coordinator'), who shall report directly to the Commissioner.

(2) DUTIES- The U.S. Customs and Border Protection Intellectual Property Rights Coordinator shall--

(A) coordinate all efforts, at all ports of entry and elsewhere, carried out by U.S. Customs and Border Protection with respect to the enforcement of intellectual property rights, including training and staffing;

(B) supervise the implementation of those aspects of the regulatory and policy reforms set out in this title that involve U.S. Customs and Border Protection and submit a report on such activities to the Director annually; and

(C) carry out such other duties, as assigned by the Commissioner, the purpose of which are to improve the performance of U.S. Customs and Border Protection with respect to the enforcement of intellectual property rights.

(b) U.S. Immigration and Customs Enforcement Intellectual Property Rights Coordinator-

(1) APPOINTMENT- The Assistant Secretary for U.S. Immigration and Customs Enforcement shall appoint a U.S. Immigration and Customs Enforcement coordinator of intellectual property enforcement activities (in this subtitle referred to as the 'U.S. Immigration and Customs Enforcement Intellectual Property Rights Coordinator'), who shall report directly to the Assistant Secretary for U.S. Immigration and Customs Enforcement.

(2) DUTIES- The U.S. Immigration and Customs Enforcement Intellectual Property Rights Coordinator shall--

(A) coordinate all efforts carried out by U.S. Immigration and Customs Enforcement with respect to the enforcement of intellectual property rights, including training and staffing;

(B) supervise the implementation of those aspects of the regulatory and policy reforms set out in this title that involve U.S. Immigration and Customs Enforcement; and

(C) carry out such other duties, as assigned by the Assistant Secretary for U.S. Immigration and Customs Enforcement, the purpose which are to improve the performance of U.S. Immigration and Customs Enforcement with respect to the enforcement of intellectual property rights.

**Subtitle C--Regulatory and Policy Improvements With Respect to Combating Counterfeiting and Piracy**

**SEC. 121. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.**

Not later than 180 days after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall prescribe regulations to apply risk assessment modeling techniques to border enforcement activities with respect to combating counterfeiting and piracy. Such efforts shall include--

- (1) preparing a report on and evaluation of the pilot project of U.S. Customs and Border Protection with respect to shipments of counterfeit or pirated products;
- (2) expanding the pilot project to allow for the use of the Automated Targeting System in risk assessment modeling; and
- (3) developing a plan for the development, testing, evaluation, and continuous improvement of risk assessment modeling techniques to facilitate the enforcement of intellectual property rights.

**SEC. 122. TRAINING IN NEW TECHNOLOGIES.**

(a) Training of Personnel- The Commissioner shall consult with the Advisory Committee to determine the feasibility of training U.S. Customs and Border Protection personnel in the use of new technological means for detecting and identifying, at ports of entry, counterfeit and pirated goods, and goods that are subject to exclusion orders, whether for entry into the United States or for transshipment to other destinations.

(b) Identification of Technologies and Sources of Training- In consultation with the Advisory Committee, the Commissioner shall identify--

- (1) cost-effective technologies for detecting and identifying goods described in subsection (a) at ports of entry; and

(2) economical sources for training U.S. Customs and Border Protection personnel in the use of such technologies.

(c) Regulatory and Policy Changes- The Comptroller General of the United States shall submit to Congress a report analyzing the costs and benefits of making regulatory and policy changes to enable the receipt of donations of hardware, software, equipment, and similar technologies, and the acceptance of training and other support services, from the private sector, to facilitate the training of personnel of U.S. Customs and Border Protection under subsection (a).

## **SEC. 123. DISCLOSURE OF INFORMATION AND SAMPLES OF SHIPMENTS TO INTELLECTUAL PROPERTY OWNERS.**

The Commissioner shall prescribe regulations to--

(1) improve the process of making samples of shipments of goods suspected of violating intellectual property rights available to the owners of copyrights, trademarks, patents, and other forms of intellectual property, in an efficient and cost-effective manner, for the purpose of inspection or analysis, including by developing a process under which--

(A) a requirement that such an owner post a bond to receive such a sample may be waived if the value of the sample is less than \$100; or

(B) such an owner may elect to obtain a continuous bond with respect to such samples; and

(2) increase disclosure to owners of copyrights, trademarks, patents, and other forms of intellectual property of information about shipments of goods that have been detained at ports of entry on suspicion that the importation into, or transshipment through, the United States of those goods would violate the intellectual property rights of such owners, including--

(A) providing a detailed description of the goods, including information on the packaging of the goods such as expiration dates and model, lot, batch, part, or serial numbers or universal product codes (UPC);

(B) providing photographs of the goods that do not mask identifying information about the goods;

- (C) disclosing the identities and contact information of all parties involved in the shipments, including importers, exporters, declarants, consignees, freight forwarders, and warehouse owners;
- (D) identifying points of origin and destination of the shipments; and
- (E) providing any other documents relating to the shipments.

## **SEC. 124. IMPROVEMENTS TO RECORDATION PROCESS.**

(a) Improvements in Recordation Process- The Commissioner shall prescribe regulations to ensure that the system for recordation of copyrights, trademarks, patents, and other forms of intellectual property that may be subject to recordation, does not impede the rapid seizure of goods that violate the rights of the owners of such copyrights, trademarks, patents, and other forms of intellectual property.

(b) Simultaneous Recordation-

(1) IN GENERAL- In consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the Register of Copyrights, the Commissioner shall develop a system pursuant to which--

- (A) trademarks may be recorded with U.S. Customs and Border Protection simultaneously with the issuance of trademark registration; and
- (B) copyrights of audiovisual works and sound recordings may be recorded with U.S. Customs and Border Protection simultaneously with the filing of an application for a certificate of copyright registration or an application for registration of another intellectual property right under title 17, United States Code.

(2) DEFINITIONS- In this subsection, the terms `audiovisual works' and `sound recordings' have the meanings given those terms in section 101 of title 17, United States Code.

## **SEC. 125. IDENTIFICATION OF LOW-RISK IMPORTERS.**

(a) In General- The Commissioner shall develop a voluntary certification program for importers that have taken specific measures to strengthen and protect their supply chains to prevent the infiltration into the international supply chain of counterfeit and pirated goods, goods that are the subject to exclusion orders, and goods that violate other forms of intellectual property rights.

(b) Self-certification- The voluntary certification program developed under subsection (a) shall rely primarily on self-certification by importers in determining the eligibility of importers for the program.

(c) Third-Party Verifications- The Commissioner shall identify any circumstances, such as importation from any country with a history of being identified under section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as denying adequate and effective protection of intellectual property rights, under which third-party verifications shall be required to determine the eligibility of importers for the voluntary certification program.

(d) Benefits- An importer determined to be eligible for the voluntary certification program and to have taken the measures required under subsection (a) may receive benefits with respect to customs requirements, such as reduced inspections from U.S. Customs and Border Protection.

(e) Definition- In this section, the term `international supply chain' has the meaning given that term in section 2 of the Security and Accountability for Every Port Act of 2006 (6 U.S.C. 901).

## **SEC. 126. `WATCH LIST' DATABASE.**

(a) In General- The Secretary, acting through the Commissioner, shall develop and implement a database of importers, shippers, freight forwarders, and other participants in the import, export, and transshipment process, whose activities the Commissioner determines merit special scrutiny at ports of entry because of the risk of importation, exportation, or transshipment of goods that violate intellectual property rights or exclusion orders.

(b) Plan- Not later than 180 days after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall develop a plan to implement the database required under subsection (a). The plan shall--

- (1) identify legitimate information sources to be used in determining whether to place persons on the database from--
  - (A) within U.S. Customs and Border Protection;
  - (B) other law enforcement sources; and
  - (C) the private sector;
- (2) establish criteria under which the database should be made available--
  - (A) to qualified officers of U.S. Customs and Border Protection and other law enforcement agencies;
  - (B) for intelligence purposes; and
  - (C) for use in identifying shipments for enhanced inspection;
- (3) identify any regulatory or policy changes that are necessary to make the database operational;
- (4) contain any recommendations for statutory changes to improve the effectiveness of the database;
- (5) include an estimate of the resources necessary to implement and operate the database and to evaluate its effectiveness; and
- (6) include a timetable for implementation of the database.

(c) Consultations With Advisory Committee- The Commissioner shall consult with the Advisory Committee on the development of criteria for the database.

## **SEC. 127. CIVIL FINES FOR IMPORTATION OF PIRATED OR COUNTERFEIT GOODS.**

(a) Limitation on Mitigation, Dismissal, and Vacation of Fines- Unless otherwise ordered by a court of competent jurisdiction, any civil fine imposed pursuant to section 526(f) of the Tariff Act of 1930 (19 U.S.C. 1526(f))--

- (1) may not be mitigated, except pursuant to regulations issued by the Commissioner; and
- (2) may not be dismissed or vacated, except pursuant to regulations issued by the Commissioner that require the specific approval of the Commissioner or the Commissioner's designee for such dismissal or vacation.

(b) Extraordinary Cases- In issuing regulations under subsection (a), the Commissioner shall ensure that the mitigation, dismissal, or vacation of civil fines for involvement in the importation, exportation, or transshipment of pirated or counterfeit goods is limited to extraordinary cases in which the interests of justice will clearly be served by such action.

## **SEC. 128. REPORT ON EFFECTIVE COLLECTION TECHNIQUES.**

(a) In General- The Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on--

- (1) the extent to which U.S. Customs and Border Protection uses effective collection techniques for collecting civil fines imposed on persons that import, export, or transship pirated or counterfeit goods;
- (2) any recommendations with respect to improving the use of such techniques by U.S. Customs and Border Protection;
- (3) any recommendations with respect to whether--
  - (A) owners of copyrights or trademarks should be authorized to pursue and collect fines imposed as a result of activities that violate such copyrights or trademarks; and
  - (B) such owners should be allowed to retain some or all of any funds so collected; and
- (4) any other recommendations for statutory, regulatory, or policy changes not under the control of U.S. Customs and Border Protection to improve the agency's ability--
  - (A) to impose civil fines on persons that import, export, or transship pirated or counterfeit goods, at levels that would deter such importation, exportation, and transshipment; and
  - (B) to collect such fines.

(b) Effective Collection Techniques- In this section, the term 'effective collection techniques' includes--

- (1) confiscation of the proceeds of actions for which civil fines can be imposed;
- (2) seizure of property acquired with such proceeds;

- (3) imposition of liens on the real or personal property of persons upon whom civil fines are imposed;
- (4) use of bonds to secure full payment of fines;
- (5) in any case in which an entity is liable and has no assets or is no longer in business, holding liable any person who--
  - (A) was an officer or director of the entity;
  - (B) in the case of a corporation, held at least 5 percent (by vote or value) of the capital structure of the corporation; or
  - (C) in the case of any other entity, held interests representing at least 5 percent of the capital structure of the entity; and
- (6) engaging private sector entities to collect civil fines imposed.

#### **Subtitle D--Training Enhancements**

### **SEC. 131. INTERNATIONAL TRAINING AND TECHNICAL ASSISTANCE ENHANCEMENTS.**

The Secretary shall take the necessary steps--

- (1) to increase staffing and resources of offices of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement engaged in providing training and technical assistance to the customs services and enforcement agencies of other countries in order to improve the effectiveness of such customs services and enforcement agencies with respect to--
  - (A) detecting and intercepting the exportation, importation, and transshipment of counterfeit or pirated goods, goods that are the subject to exclusion orders, and goods that violate other forms of intellectual property rights; and
  - (B) imposing penalties on persons that export, import, or transship counterfeit or pirated goods at levels that will deter such exportation, importation, and transshipment; and
- (2) to ensure that the Director, in order to make the most efficient and effective use of training and technical assistance resources--

- (A) coordinates the international training and technical assistance activities of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement as part of the Director's coordination responsibilities under section 111;
- (B) gives priority to international training and technical assistance activities in countries in which such activities can be carried out most effectively and with the greatest benefit to protecting the intellectual property rights of United States persons;
- (C) takes steps to minimize duplication, overlap, or inconsistency of international training and technical assistance efforts; and
- (D) coordinates such activities of the Department of the Treasury with international training and technical assistance activities against counterfeiting and piracy carried out by other agencies, and enhances the participation of Department of the Treasury personnel in interagency training and technical assistance activities in this field.

#### **Subtitle E--New Legal Tools for Border Enforcement**

### **SEC. 141. EXPANDED PROHIBITIONS ON IMPORTATION, EXPORTATION, AND TRANSSHIPMENT OF COUNTERFEIT OR PIRATED GOODS.**

- (a) In General- Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended--
  - (1) in the section heading, by inserting `or protected by copyright' after `trademark';
  - (2) in subsection (e), by striking `Any such merchandise' and all that follows through `15 U.S.C. 1124),' and inserting `Any merchandise bearing a counterfeit mark (as defined in section 2320(e) of title 18, United States Code) that is imported into the United States, exported out of the United States, or transshipped through the United States'; and
  - (3) in subsection (f)--
    - (A) by striking paragraph (1) and inserting the following:

(1) Any person who engages in, directs, assists financially or otherwise, or aids and abets the importation, exportation, or transshipment of merchandise that is seized under subsection (e) of this section, or under regulations issued pursuant to section 603(c) of title 17, United States Code, shall be subject to a civil fine.;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

(4) When the seizure of merchandise that results in the imposition of a civil fine is made under circumstances indicating that the importation, exportation, or transshipment of the merchandise was for the purpose of sale or public distribution of the merchandise, the maximum fine amounts set forth in paragraphs (2) and (3) shall be tripled.!

(b) Conforming Amendments- Title 17, United States Code, is amended--

(1) in section 501(a), by inserting `, exports copies or phonorecords from the United States, or transships copies or phonorecords through the United States' after `into the United States';

(2) in section 506(c), by inserting `, exports, or transships' after `imports';

(3) in section 511(a), by inserting `, exporting, or transshipping' after `importing';

(4) in section 602--

(A) in the section heading, by striking `**or exportation**' and inserting `**exportation, or transshipment**'; and

(B) in subsection (a)--

(i) in paragraph (2)--

(I) in the paragraph heading, by striking `OR EXPORTATION' and inserting `, EXPORTATION, OR TRANSSHIPMENT'; and

(II) by striking `or exportation from the United States' and inserting `, exportation from the United States, or transshipment through the United States'; and

(ii) in paragraph (3)--

(I) in subparagraph (A), by striking `or exportation' and inserting `, exportation, or transshipment'; and

(II) in subparagraph (B), by striking `or exportation, for the private use of the importer or exporter' and inserting `, exportation, or transshipment, for the private use of the importer, exporter, or person transshipping copies or phonorecords';

(5) in section 603--

(A) in the section heading, by striking `**Importation prohibitions**' and inserting `**Prohibitions on importation, exportation, and transshipment**';

(B) in subsection (a), by inserting `, exportation, and transshipment' after `importation';

(C) in subsection (b), by inserting `, exportation, or transshipment' after `importation' each place it appears; and

(D) in subsection (c)--

(i) by inserting `, exported, or transshipped' after `imported' each place it appears; and

(ii) by inserting `, exportation, or transshipped' after `importation';

(6) by amending the chapter heading for chapter 6 to read as follows:

**`CHAPTER 6--MANUFACTURING REQUIREMENTS, IMPORTATION, EXPORTATION, AND TRANSSHIPMENT';**

(7) in the table of sections for chapter 6, by amending the items relating to sections 602 and 603 to read as follows:

`602. Infringing importation, exportation, and transshipment of copies or phonorecords.

`603. Prohibitions on importation, exportation, and transshipment: Enforcement and disposition of excluded articles.;

and

(8) in the table of chapters, by amending the item relating to chapter 6 to read as follows:

601'.

**SEC. 142. DECLARATIONS REGARDING COUNTERFEIT AND INFRINGING MERCHANDISE.**

(a) Declarations- Section 485(a) of the Tariff Act of 1930 (19 U.S.C. 1485(a)) is amended--

(1) in paragraph (1), by striking `Whether' and inserting `whether';

(2) in paragraph (2), by striking `That' and inserting `that';

(3) in paragraph (3)--

(A) by striking `That' and inserting `that'; and

(B) by striking `and' after the semicolon;

(4) in paragraph (4)--

(A) by striking `That' and inserting `that'; and

(B) by striking the period and inserting a semicolon; and

(5) by adding at the end the following:

`(5) that the merchandise being imported does not bear a counterfeit mark (as defined in section 2320(e) of title 18, United States Code);

`(6) that the merchandise is not an infringing copy or phonorecord or one whose making would have constituted an infringement of copyright if title 17, United States Code, had applied; and

`(7) that the merchandise does not--

`(A) violate an exclusion order of the United States International Trade Commission under section 337 (d) or (e) by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337; or

`(B) infringe any other intellectual property right not covered by subparagraph (A) or by paragraph (5) or (6).'

(b) Regulations- The Secretary shall issue regulations requiring that the declarations required by paragraphs (5), (6), and (7) of section 485(a) of the Tariff Act of 1930, as added by subsection (a) of this section, be made by all persons arriving in the United States with respect to articles carried on their person or contained in their baggage.

**SEC. 143. SEIZURE AND FORFEITURE OF DEVICES DESIGNED TO CIRCUMVENT INTELLECTUAL PROPERTY RIGHTS PROTECTIONS.**

Section 596(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)(2)) is amended--

(1) in subparagraph (E), by striking `or';

(2) in subparagraph (F), by striking the period and inserting `; or'; and

(3) by adding at the end the following:

`(G) it is a technology, product, service, device, component, or part thereof the importation of which is prohibited under section 1201(a)(2) of title 17, United States Code.'

**SEC. 144. AUTHORITY OF CHIEF COUNSEL OF U.S. CUSTOMS AND BORDER PROTECTION TO REPRESENT THE UNITED STATES IN CERTAIN FORFEITURE PROCEEDINGS.**

Title V of the Tariff Act of 1930 (19 U.S.C. 1500 et seq.) is amended by inserting after section 529 the following:

**SEC. 530. AUTHORITY OF CHIEF COUNSEL OF U.S. CUSTOMS AND BORDER PROTECTION TO REPRESENT THE UNITED STATES IN CERTAIN FORFEITURE PROCEEDINGS.**

`(a) In General- Subject to subsection (b), the Chief Counsel of U.S. Customs and Border Protection may commence, defend, or intervene in, and supervise the litigation of, any civil forfeiture proceeding under section 2320(b) of title 18, United States Code, or section 526(e) of this Act.

`(b) Procedure for Exercise of Authority To Litigate or Appeal-

`(1) IN GENERAL- Prior to commencing, defending, or intervening in any civil forfeiture proceeding referred to in subsection (a), the Chief Counsel shall submit a written notification to the Attorney General with respect to the proposed proceeding.

`(2) FAILURE TO RESPOND- If, not later than 120 days after the date on which the Chief Counsel submits the notification to the Attorney General under paragraph (1), the Attorney General has failed to commence, defend, or intervene in the proposed proceeding, the Chief Counsel may commence, defend, or intervene in, and supervise the litigation of, the proceeding and any appeal of the proceeding in the name of the Chief Counsel.

`(3) AUTHORITY OF ATTORNEY GENERAL TO INTERVENE- Nothing in this subsection precludes the Attorney General from intervening on behalf of the United States in any civil forfeiture proceeding under section 2320(b) of title 18, United States Code, or in any appeal of such a proceeding, as may be otherwise provided by law.'

#### **Subtitle F--Administrative Provisions**

### **SEC. 151. ADVISORY COMMITTEE ON IMPORT SAFETY AND INTELLECTUAL PROPERTY ENFORCEMENT.**

#### **(a) Establishment-**

(1) IN GENERAL- The Secretary, acting through the Commissioner and the Assistant Secretary for U.S. Immigration and Customs Enforcement, shall establish an advisory committee which shall be known as the Advisory Committee on Import Safety and Intellectual Property Rights Enforcement.

(2) MEMBERSHIP- The Advisory Committee shall consist of 20 members appointed by the Secretary. In making appointments to the Advisory Committee, the Secretary shall ensure that--

(A) the membership of the Advisory Committee is representative of the individuals and organizations affected by the enforcement of import safety standards and intellectual property rights by U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement;

(B) at least one member of the Advisory Committee is a representative of organized labor;

(C) at least one member of the Advisory Committee is a representative of consumer groups; and

(D) not more than 10 members of the Advisory Committee belong to the same political party.

(b) Duties- The Advisory Committee shall--

(1) provide advice to the Secretary, the Commissioner, and the Assistant Secretary for U.S. Immigration and Customs Enforcement on all matters involving the enforcement of import safety standards and intellectual property rights by U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement; and

(2) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall--

(A) describe the operations of the Advisory Committee during the preceding year; and

(B) set forth any recommendations of the Advisory Committee with respect the enforcement of import safety standards and intellectual property rights by U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

(c) Presiding Officers- The Commissioner and the Assistant Secretary for U.S. Immigration and Customs Enforcement shall jointly preside over meetings of the Advisory Committee.

## **SEC. 152. STAFFING ENHANCEMENTS AT U.S. CUSTOMS AND BORDER PROTECTION.**

There are authorized to be appropriated to U.S. Customs and Border Protection such funds as may be necessary for additional personnel (as determined in accordance with the Resource Allocation Model established pursuant to section 301(h) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(h)) to carry out the additional responsibilities of U.S. Customs and Border Protection under this title regarding the importation, transshipment, and exportation of counterfeit or pirated goods,

goods that are the subject to exclusion orders, and goods that violate other forms of intellectual property rights.

## **SEC. 153. STAFFING ENHANCEMENTS AT U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT.**

There are authorized to be appropriated to U.S. Immigration and Customs Enforcement such funds as may be necessary for additional personnel to carry out the additional responsibilities of U.S. Immigration and Customs Enforcement under this title regarding the enforcement of intellectual property rights, including for developing and implementing a training program with respect to the enforcement of intellectual property rights for each U.S. Immigration and Customs Enforcement attache office outside the United States.

## **SEC. 154. REGULATORY AUTHORITY.**

The Secretary may issue such regulations as are necessary to carry out this title.

## **TITLE II--INCREASED PENALTIES FOR CERTAIN UNFAIR TRADE PRACTICES**

### **SEC. 201. INCREASED PENALTIES FOR CERTAIN UNFAIR TRADE PRACTICES.**

(a) Expanded Exclusion Orders- Section 337(d) of the Tariff Act of 1930 (19 U.S.C. 1337(d)) is amended to read as follows:

“(d) Exclusion of Articles From Entry-

“(1) FIRST EXCLUSION ORDER- Except as provided in paragraph (6), if the Commission determines, as a result of an investigation under this section, that a person has violated this section, the Commission shall direct that the articles that were the subject of the investigation and are imported by that person be excluded from entry into the United States.

“(2) SECOND EXCLUSION ORDER; VIOLATION OF EXCLUSION ORDER- Except as provided in paragraph (6), if the Commission determines that a person

with respect to which the Commission issued an exclusion order under paragraph (1) engages in a second violation of this section or violates that exclusion order, the measures described in paragraph (4) shall apply for a period of 1 year after the date of the Commission's determination under this subparagraph.

`(3) THIRD EXCLUSION ORDER; SUBSEQUENT VIOLATIONS OF EXCLUSION ORDERS- Except as provided in paragraph (6), if the Commission determines that a person with respect to which the Commission issued an exclusion order under paragraph (1) or (2) engages in a third violation of this section, a second violation of an exclusion order issued under paragraph (1), or violates an exclusion order issued under paragraph (2), the measures described in paragraph (4) shall apply on and after the date of the Commission's determination under this subparagraph.

`(4) MEASURES DESCRIBED- The measures described in this paragraph are the following:

`(A) EXPANDED EXCLUSION ORDER- The Commission shall direct that articles excluded pursuant to an exclusion order under this subsection, or that were the subject of an investigation relating to a second or third violation of this section, be excluded from entry into the United States if the articles are imported by--

`(i) the person that violated this section or an exclusion order issued under this subsection;

`(ii) any officer or member of the board of directors of a person described in clause (i); or

`(iii) any person that owns or controls, or is owned or controlled by, a person described in clause (i).

`(B) VISA BAN- The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that is any officer or member of the board of directors of the person that violated this section or an exclusion order issued under this subsection.

`(5) LIMITATIONS- The authority of the Commission to order an exclusion from entry of articles under paragraph (1), (2), or (3) shall be limited to articles imported by persons specified in paragraph (1), (2), or (3), as the case may be, unless the Commission determines that--

`(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to articles of named persons;  
or

`(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing articles.

`(6) EXCEPTION- If the Commission determines that articles should not be excluded from entry into the United States under paragraph (1), (2), or (3), after considering the effect of the exclusion of such articles on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers--

`(A) the Commission shall not be required to direct that such articles be excluded from entry; and

`(B) in case of a determination that articles should not be excluded from entry under paragraph (2) or (3), the Secretary of State shall not be required to deny a visa to, and the Secretary of Homeland Security shall not be required to exclude from the United States, an alien pursuant to paragraph (2) or (3), as the case may be.

`(7) NOTIFICATION TO OTHER AGENCIES-

`(A) EXCLUSION OF ARTICLES- The Commission shall promptly notify the Commissioner responsible for U.S. Customs and Border Protection of a determination of the Commission under paragraph (1), (2), or (3) to direct articles to be excluded from the United States and, upon receipt of such notice, the Commissioner shall refuse the entry of the articles.

`(B) VISA BANS- The Commission shall promptly notify the Secretary of State and the Secretary of Homeland Security of a determination under

paragraph (2) or (3) and, upon receipt of such notice, the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien excluded from entry into the United States pursuant to paragraph (2) or (3), as the case may be.'

(b) Penalties for Violating Cease and Desist Orders- Section 337(f) of the Tariff Act of 1930 (19 U.S.C. 1337(f)) is amended--

(1) in paragraph (1), by striking `, or in lieu of,'; and

(2) in paragraph (2), by striking `\$100,000, twice' and inserting `\$500,000 or three times'.

(c) Conforming Amendment- Section 337(k) of the Tariff Act of 1930 (19 U.S.C. 1337(k)) is amended by inserting `paragraphs (2) and (3) of subsection (e) and' after `Except as provided in'.

*END*

## Hatch Amendment #1 to Enforcing Orders and Reducing Customs Evasion (ENFORCE) Act

Short Description: U.S. Customs and Border Protection Reimbursement Pilot Program for User fees for Customs Services at Airports, Seaports and Land Ports

### Description of Amendment:

The Commissioner of U.S. Customs and Border Protection (Commissioner) shall establish a Ports Reimbursement Pilot Program (Pilot Program) under which the Commissioner may enter into a reimbursable fee agreement with any public entity upon the request of such a public entity for the provision of U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services at up to three airports, up to three seaports and up to three land ports for a total of no more than nine pilots during the period of this Pilot Program.

*Criteria* – Not later than 90 days after the date of the enactment of this Act, the Commissioner shall establish criteria for the selection of an entity to participate in the Pilot Program established under subsection (a) through public comment and in consultation with the appropriate congressional committees. The Commissioner shall publish the final eligibility criteria in the Federal Register and provide instruction on how public entities can apply to participate in the Pilot Program. Once the criteria in the Federal Register notice have been issued, U.S. Customs and Border Protection may operate the Pilot Program for five years, and any agreements negotiated pursuant to the Pilot Program may not extend beyond those five years in the absence of a statutory extension by Congress.

*Designation* – Following the Federal Register Notice of the criteria to participate in the Pilot Program the Commissioner may designate up to 9 entities that meet those criteria to participate in the Pilot Program.

*Preliminary Report* – Not later than 60 days before the Commissioner makes a designation of a specific port and public entity to participate in the Pilot Program under section (c) the Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means in the House a report regarding the benefits of the proposed pilot

*Pilot Program Agreement* – Not later than 30 days before the Commissioner enters into an agreement with a public entity designated to participate in the Pilot Program at a specific port, the Commissioner shall brief the appropriate congressional committees on the content of the agreement and a summary of how the agreement would advance the objectives of the Pilot Program.

The Commissioner shall not enter into such agreements under this Pilot Program if it would unduly affect services authorized or mandated under current law or funded in any other appropriations acts, or provided from any accounts in the Treasury of the United States derived by the collection of fees.

*Annual Report* – Not later than one year after each agreement under the Pilot Program has commenced and annually thereafter through the term of the Pilot Program, the Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that describes the development, participants, scope, and assessments of the Pilot Program:

*Definitions* – For purposes of this Amendment the terms:

- 1) U.S. Customs and Border Protection services means any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs and immigration inspection-related matters.
- 2) Public entity means any governmental entity at the state, regional and local level, including any port authority.

## Crapo Amendment #1

To the ENFORCE Act

### **Short Title:**

To improve consultations between the United States Trade Representative and Members of Congress and their staff regarding trade negotiations

### **Description of Amendment:**

The United States Trade Representative shall provide timely and full access to documents, including classified materials, relating to trade negotiations to any Member of Congress requesting such documents and staff of such a Member with proper security clearances.

## Crapo Amendment #2

To the ENFORCE Act

### **Short Title:**

To improve consultations between the United States Trade Representative and Members of Congress and their staff regarding the Trans-Pacific Partnership negotiations

### **Description of Amendment:**

The United States Trade Representative shall provide timely and full access to documents, including classified materials, relating to Trans-Pacific Partnership negotiations to any Member of Congress requesting such documents and staff of such a Member with proper security clearances.

## Crapo Amendment #3

To the ENFORCE Act

### **Short Title:**

To ensure Mexico's compliance with existing treaty obligations to the United States

### **Description of Amendment:**

Prior to enforcement of a Trans-Pacific Partnership agreement that includes Mexico, the United States Trade Representative shall certify to Congress that Mexico is in full compliance with commitments to permit fresh potato imports to all areas of Mexico with urban areas in excess of 100,000 persons

### **Background:**

Mexico currently prohibits fresh U.S. potatoes beyond a 26-kilometer zone from the U.S.-Mexico border due to claims of a pest risk. However, a Pest Risk Assessment conducted by Mexico in 2011 found that potatoes grown in Mexico have a similar pest profile to those grown in the U.S. Under current treaty agreements, Mexico is required by 2005 to treat U.S. potatoes the same as potatoes grown domestically.

## Crapo-Snowe Amendment #1

To the ENFORCE Act

### **Short Title:**

To improve trade dispute resolutions with Canada concerning cross-border trade in timber products

### **Description of Amendment:**

Requires the United States Trade Representative to make it a priority of negotiations with Canada in the Trans-Pacific Partnership to eliminate market-distorting subsidies and practices in the lumber market of Canada at the national and provincial levels

### **Background:**

Canada subsidizes and dumps its softwood lumber products in the United States market to the detriment of U.S. workers and companies, and those actions have been found to violate U.S. trade laws and the Softwood Lumber Agreement. The U.S. has already been forced to bring three actions against Canada regarding below-market pricing and illegal harvesting practices.

## **Roberts Amendment #1 to S. 1133, The ENFORCE Act**

**Short Title:** CBP Reimbursement Flexibility

**Description of Amendment:** Extends U.S. Customs and Border Protection the flexibility to enter into reimbursement agreements with private entities to perform services for a private aircraft with a seating configuration of up to fifty passengers at an airport that is an established port of entry serviced by the Agency and that is fully equipped to handle and process such a number of passengers.

Wyden Amendment #1 to a bill to establish, modify, and renew the citrus, wool, and cotton trust funds

**Short Title:** Transparency and Consultations with Congress on Trade Negotiations

**Description:** Effective on the Date of Enactment of the underlying bill:

The Office of the United States Trade Representative shall implement procedures to ensure that every Members of Congress, and their staff that have the necessary security credentials, receive no less access to trade negotiation documents, including those that are classified, than that which is provided to corporations, labor unions, and non-government organizations that are considered “cleared industry advisors” by the U.S. Trade Representative.

Wyden Amendment #2 to a bill to establish, modify, and renew the citrus, wool, and cotton trust funds

**Short Title:** The Outdoor Act

**Description:**

This amendment would generally add the language of S. 704, along with an offset to be determined.

Wyden Amendment #3 to a bill to establish, modify, and renew the citrus, wool, and cotton trust funds

**Short Title:** Combating Counterfeits at the Border

**Description:**

For purposes of helping Customs and Border Protection (CBP) identify counterfeit merchandise, this amendment would make it clear that CBP may not condition disclosure to the rights holder of information on detained merchandise and their packaging and labels on providing importers the opportunity to authenticate suspect detained counterfeit merchandise

**CANTWELL & ROBERTS AMENDMENT #1**

**Amendment to the Chairman's Mark to create citrus trust fund, to renew and modify the cotton trust fund and to modify and extend the wool trust fund**

Cantwell Amendment #1 to provide temporary duty suspensions of non-controversial footwear items for 3 years.

Cosponsor: Senator Roberts

Short Title: Affordable Footwear Act (S.1069)  
\_\_\_\_\_

Description of Amendment: \_\_\_\_\_ The amendment language is that contained in S. 1069, the Affordable Footwear Act of 2011, except that the temporary duty suspensions of the non-controversial footwear items would be for 3 years (versus the 5 years outlined in the bill). The amendment adjusts the Harmonized Tariff Schedule to provide for temporary duty-free treatment of certain footwear (including children's shoes and low-cost shoes with high duty rate) made of rubber or plastics that are imported into the United States.

Shoes have some of the highest tariff rates of any imported good. Established in the 1930s through the Smoot-Hawley Tariff Act, these shoe tariffs can be as high as 37.5%, 48%, and in some extreme cases 67% upon import, with the average U.S. tariff for all products is around 2%.

The cost of this provision is offset by through the use of Customs User Fees.

## Hatch Amendment #1 to Citrus, Cotton and Wool Trust Funds

Short Description: U.S. Customs and Border Protection Reimbursement Pilot Program for User

fees for Customs Services at Airports, Seaports and Land Ports

Description of Amendment:

The Commissioner of U.S. Customs and Border Protection (Commissioner) shall establish a Ports Reimbursement Pilot Program (Pilot Program) under which the Commissioner may enter into a reimbursable fee agreement with any public entity upon the request of such a public entity for the provision of U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services at up to three airports, up to three seaports and up to three land ports for a total of no more than nine pilots during the period of this Pilot Program.

*Criteria* – Not later than 90 days after the date of the enactment of this Act, the Commissioner shall establish criteria for the selection of an entity to participate in the Pilot Program established under subsection (a) through public comment and in consultation with the appropriate congressional committees. The Commissioner shall publish the final eligibility criteria in the Federal Register and provide instruction on how public entities can apply to participate in the Pilot Program. Once the criteria in the Federal Register notice have been issued, U.S. Customs and Border Protection may operate the Pilot Program for five years, and any agreements negotiated pursuant to the Pilot Program may not extend beyond those five years in the absence of a statutory extension by Congress.

*Designation* – Following the Federal Register Notice of the criteria to participate in the Pilot Program the Commissioner may designate up to 9 entities that meet those criteria to participate in the Pilot Program.

*Preliminary Report* – Not later than 60 days before the Commissioner makes a designation of a specific port and public entity to participate in the Pilot Program under section (c) the Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means in the House a report regarding the benefits of the proposed pilot

*Pilot Program Agreement* – Not later than 30 days before the Commissioner enters into an agreement with a public entity designated to participate in the Pilot Program at a specific port, the Commissioner shall brief the appropriate congressional committees on the content of the agreement and a summary of how the agreement would advance the objectives of the Pilot Program.

The Commissioner shall not enter into such agreements under this Pilot Program if it would unduly affect services authorized or mandated under current law or funded in any other appropriations acts, or provided from any accounts in the Treasury of the United States derived by the collection of fees.

*Annual Report* – Not later than one year after each agreement under the Pilot Program has commenced and annually thereafter through the term of the Pilot Program, the Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that describes the development, participants, scope, and assessments of the Pilot Program:

*Definitions* – For purposes of this Amendment the terms:

- 3) U.S. Customs and Border Protection services means any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs and immigration inspection-related matters.
- 4) Public entity means any governmental entity at the state, regional and local level, including any port authority.

## **Kyl Amendment #1 – Citrus, Cotton, and Wool Trust Funds**

**Kyl Amendment #1** to the Chairman’s Mark of a proposal to create a Citrus Trust Fund, renew and modify the Cotton Trust Fund, and modify and extend the Wool Apparel Manufacturers Trust Fund-

**Short Title:** To reform the process for considering miscellaneous tariff bills.

**Description of Amendment:** The amendment would add the text of S. 3292, the “Temporary Duty Suspension Process Act of 2012,” which is bipartisan legislation introduced by Senators McCaskill and Portman.

## Crapo Amendment #4

To the Trust Fund Bill

### **Short Title:**

To improve consultations between the United States Trade Representative and Members of Congress and their staff regarding trade negotiations

### **Description of Amendment:**

The United States Trade Representative shall provide timely and full access to documents, including classified materials, relating to trade negotiations to any Member of Congress requesting such documents and staff of such a Member with proper security clearances.

## Crapo Amendment #5

To the Trust Fund Bill

### **Short Title:**

To improve consultations between the United States Trade Representative and Members of Congress and their staff regarding the Trans-Pacific Partnership negotiations

### **Description of Amendment:**

The United States Trade Representative shall provide timely and full access to documents, including classified materials, relating to Trans-Pacific Partnership negotiations to any Member of Congress requesting such documents and staff of such a Member with proper security clearances.

## Crapo Amendment #6

To the Trust Fund Bill

### **Short Title:**

To ensure Mexico's compliance with existing treaty obligations to the United States

### **Description of Amendment:**

Prior to enforcement of a Trans-Pacific Partnership agreement that includes Mexico, the United States Trade Representative shall certify to Congress that Mexico is in full compliance with commitments to permit fresh potato imports to all areas of Mexico with urban areas in excess of 100,000 persons

### **Background:**

Mexico currently prohibits fresh U.S. potatoes beyond a 26-kilometer zone from the U.S.-Mexico border due to claims of a pest risk. However, a Pest Risk Assessment conducted by Mexico in 2011 found that potatoes grown in Mexico have a similar pest profile to those grown in the U.S. Under current treaty agreements, Mexico is required by 2005 to treat U.S. potatoes the same as potatoes grown domestically.

## Crapo-Snowe Amendment #2

To the Trust Funds bill

### **Short Title:**

To improve trade dispute resolutions with Canada concerning cross-border trade in timber products

### **Description of Amendment:**

Requires the United States Trade Representative to make it a priority of negotiations with Canada in the Trans-Pacific Partnership to eliminate market-distorting subsidies and practices in the lumber market of Canada at the national and provincial levels

### **Background:**

Canada subsidizes and dumps its softwood lumber products in the United States market to the detriment of U.S. workers and companies, and those actions have been found to violate U.S. trade laws and the Softwood Lumber Agreement. The U.S. has already been forced to bring three actions against Canada regarding below-market pricing and illegal harvesting practices.

## **Coburn Amendment #1**

Coburn Amendment #1 to the CHAIRMAN'S MARK TO CREATE A CITRUS TRUST FUND, TO RENEW AND MODIFY THE COTTON TRUST FUND, AND TO MODIFY AND EXTEND THE WOOL TRUST FUND.

### Short Title:

An amendment to strike and replace the pay-for in the Chairman's mark.

### Description of Amendment:

This amendment would strike the pay-for in the Chairman's mark and replace it with elimination of the United States Department of Agriculture's (USDA) Market Access Program (MAP).

**Thune Amendment #1 to Cotton, Wool and Citrus Trust Fund Mark**

**Short Title:** An amendment to provide for temporary Trade Promotion Authority.

**Description of Amendment:** The amendment amends Section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803) to provide Trade Promotion Authority (TPA) for trade agreements signed between January 1, 2013 and December 31, 2013. The amendment expresses the sense of the Senate that TPA authority is critical to U.S. competitiveness in the global economy and that Congress should enact strengthened and modernized TPA legislation by no later than December 31, 2013.

## **Coburn Amendment #2**

Coburn Amendment #2 to the CHAIRMAN’S MARK TO AMEND THE AFRICAN GROWTH AND OPPORTUNITY ACT TO EXTEND THE THIRD-COUNTRY FABRIC PROGRAM AND TO ADD SOUTH SUDAN TO THE LIST OF COUNTRIES ELIGIBLE FOR DESIGNATION UNDER THAT ACT, TO MAKE TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES RELATING TO THE TEXTILE AND APPAREL RULES OF ORIGIN FOR THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT, AND TO APPROVE THE RENEWAL OF IMPORT RESTRICTIONS CONTAINED IN THE BURMESE FREEDOM AND DEMOCRACY ACT OF 2003

### Short Title:

An amendment to strike and replace the pay-for in the Chairman’s mark.

### Description of Amendment:

This amendment would require the Office of Management and Budget (OMB) and the executive branch departments and agencies to reduce spending by at least \$200 million annually by eliminating, rescinding, consolidating, or streamlining government trade programs, tax benefits and agencies starting Fiscal Year 2013.

## Rockefeller-Cardin Amendment #1 to Russia PNTR

Rockefeller Amendment #1 to Russia Permanent Normal Trade Relations (PNTR)

**Short Title:** Increasing the health coverage tax credit subsidy amount from 72.5 percent to 95 percent, retroactive to the expiration of ARRA.

**Description of Amendment:** This amendment increases the current health coverage tax credit (HCTC) of 72.5 percent to 95 percent of the health insurance premium, retroactive to the expiration of ARRA, to enable more trade-displaced workers to join the program and receive health coverage for them and their families.

The HCTC is a tax credit created by the Trade Adjustment Assistance Reform Act of 2002 that pays a share of health plan premiums for eligible individuals. Eligible individuals are certain workers who lost their jobs due to foreign competition and are eligible for TAA benefits, and certain retirees age 55 and over whose pensions were taken over by the Pension Benefit Guaranty Corporation (PBGC).

When the HCTC was initially authorized in 2002, the subsidy rate was 65 percent and qualifying individuals received this refundable tax credit for the purchase of health insurance either through COBRA continuation coverage or an option established by the State. The American Recovery and Reinvestment Act of 2009 (ARRA) temporarily increased the subsidy rate to 80 percent, but the provision expired on February 13, 2011. The TAA Extension Act of 2011 changes include establishing a new subsidy rate of 72.5% that is retroactively effective on February 13, 2011, and termination of the tax credit on January 1, 2014.

Both the GAO and consumer groups cite affordability as the primary reason for significantly low participation in the HCTC program. With the original 65 percent credit, an eligible individual still has to pay an average of \$2,104 out-of-pocket annually for single coverage compared to the average worker who, while actively employed and earning a paycheck, paid just \$627 annually in 2006 for single employer-sponsored health insurance coverage. This change will encourage greater participation by lowering the cost.

SEC. IMPROVEMENT OF THE AFFORDABILITY OF THE HEALTH CARE TAX CREDIT.

(a) IMPROVEMENT OF AFFORDABILITY –

- 1) **IN GENERAL** – Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended by striking “72.5 percent” and inserting “95 percent”.
- 2) **EXTENSION OF ADVANCE PAYMENT PROVISIONS.**— Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by striking “72.5 percent” and inserting “95 percent”.
- 3) **EFFECTIVE DATE.**—The amendments made by this section shall apply to eligible coverage months (as defined in section 35(b) of the Internal Revenue Code of 1986) beginning after February 12, 2011.

## Rockefeller-Cardin Amendment #2 to Russia PNTR

Rockefeller Amendment #2 to Russia Permanent Normal Trade Relations (PNTR)

**Short Title:** Extending the TAA health coverage tax credit (HCTC) through January 1, 2020.

**Description of Amendment:** This amendment extends the TAA health coverage tax credit (HCTC) through January 1, 2020 to continue to enable trade-displaced workers to join the program and receive health coverage for them and their families. This tax credit has been a lifeline for families who simply cannot afford coverage on their own. The growing impacts of outsourcing are real, and those workers who have lost their jobs to trade and their families need assistance now and in the future.

The HCTC is a tax credit created by the Trade Adjustment Assistance Reform Act of 2002 that pays a share of health plan premiums for eligible individuals. Eligible individuals are certain workers who lost their jobs due to foreign competition and are eligible for TAA benefits, and certain retirees age 55 and over whose pensions were taken over by the Pension Benefit Guaranty Corporation (PBGC).

SEC. HEALTH CARE TAX CREDIT.

(a) TERMINATION OF CREDIT.—Subparagraph (B) of section 35(b)(1) of the Internal Revenue Code of 1986 is amended by inserting “, and before January 1, 2020” before the period.

**Rockefeller-Schumer-Stabenow #3 to Russia PNTR**

Rockefeller Amendment #3 to Russia PNTR Bill-

**Short Title:** S. 3327, The Russian World Trade Organization Commitments Verification Act of 2012

**Description of Amendment:** This amendment is the text of S. 3327, which requires the USTR to report on Russia's compliance with WTO obligations and gives the Finance and Ways and Means Committees the ability to request the USTR to take enforcement action if necessary.

**SEC. 3. REPORTS ON COMMITMENTS UNDER THE PROTOCOL ON THE ACCESSION OF THE RUSSIAN FEDERATION TO THE WTO AGREEMENT.**

(a) Initial Report- Not later than 90 days after the date on which an Act of Congress authorizing the extension of permanent normal trade relations treatment to products of the Russian Federation takes effect, the United States Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report that--

(1) describes the commitments of the Russian Federation under the protocol on the accession of the Russian Federation to the WTO Agreement; and

(2) sets forth the date by which that protocol requires each such commitment to be implemented.

(b) Annual Reports-

(1) IN GENERAL- Not later than December 31 of each calendar year that begins after the date on which an Act of Congress referred to in subsection (a) takes effect, the United States Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report covering the period described in paragraph (2) that--

(A) describes the actions taken by the Russian Federation to comply with each commitment of the Russian Federation under the protocol on the accession of

the Russian Federation to the WTO Agreement that the Trade Representative determines has a significant effect on United States commerce;

(B) identifies any commitment described in subparagraph (A) that the Trade Representative determines the Russian Federation is not implementing or is not making progress toward implementing in a timely or effective manner;

(C)(i) describes any actions taken by the Trade Representative under section 4(a) to obtain the full compliance of the Russian Federation with each commitment identified under subparagraph (B); or

(ii) if the Trade Representative has determined under section 4(b) that it is not in the national interests of the United States to obtain the full compliance of the Russian Federation with any such commitment, describes the reasons for that determination; and

(D) describes any actions the Trade Representative has taken pursuant to a request made by the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives under section 4(c).

(2) PERIOD DESCRIBED- The period described in this paragraph is--

(A) in the case of the first report submitted under paragraph (1), the period beginning on the date on which the report required by subsection (a) was submitted and ending on the date on which the report required by paragraph (1) is submitted; and

(B) in the case of any subsequent report submitted under paragraph (1), the one-year period preceding the submission of the report.

#### **SEC. 4. ACTION BY THE UNITED STATES TRADE REPRESENTATIVE.**

(a) In General- Except as provided in subsection (b), the United States Trade Representative shall, in consultation with appropriate Federal agencies, take appropriate action to obtain the full compliance of the Russian Federation with each commitment identified under section 3(b)(1)(B).

(b) Determination Not To Take Action- The United States Trade Representative may determine not to take action under subsection (a) to obtain the full compliance of the Russian Federation with a commitment identified under section 3(b)(1)(B) if the Trade Representative--

(1) determines that it is not in the national interests of the United States to obtain the full compliance of the Russian Federation with that commitment; and

(2) submits to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that describes in detail the reasons for that determination.

(c) Requests From Congress-

(1) IN GENERAL- The Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives may request the United States Trade Representative to take action to obtain the full compliance of the Russian Federation with--

(A) a commitment identified by the Trade Representative under section 3(b)(1)(B) and with respect to which the Trade Representative has made a determination under subsection (b) not to take action if the Committee determines that it is in the national interests of the United States to obtain the full compliance of the Russian Federation with that commitment; or

(B) a commitment of the Russian Federation under the protocol on the accession of the Russian Federation to the WTO Agreement not identified by the Trade Representative under section 3(b)(1)(B) if the Committee determines that the Russian Federation is not implementing the commitment or is not making progress toward implementing the commitment in a timely or effective manner.

(2) REPORT REQUIRED- Not later than 15 days after receiving a request under paragraph (1) from the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives to take appropriate action to obtain the full compliance of the Russian Federation with a commitment described in subparagraph (A) or (B) of that paragraph, the Trade Representative shall submit to those committees and publish in the Federal Register a report that--

(A) describes the action the Trade Representative has taken or will take to obtain the full compliance of the Russian Federation with that commitment; or

(B) if the Trade Representative determines not to take action to obtain the full compliance of the Russian Federation with that commitment--

(i) describes in detail the reasons for that determination; and

(ii) identifies the economic interests in the United States that would be adversely affected if the Trade Representative took action to obtain the full compliance of the Russian Federation with that commitment.

## **SEC. 5. PUBLIC PARTICIPATION.**

The United States Trade Representative shall seek public participation in developing the reports required by section 3 and determining under section 4(a) what action, if any, it is appropriate to take with respect to a commitment identified under section 3(b)(1)(B), by, before submitting such a report or making a determination to take such action--

- (1) publishing a notice in the Federal Register with respect to the content of the report or the action the Trade Representative is considering taking, as the case may be; and
- (2) holding a public hearing with respect to the report or the action, as the case may be.

Wyden Amendment #1 to a bill to normalize trade relations with Russia

**Short Title:** Review of Russia's compliance with the Generalized System of Preferences

**Description:** In not longer than 180 days after the date of enactment of the underlying legislation, the president shall submit a report to the Senate Committee on Finance and the House Committee on Ways and Means that describes the following:

1. The findings of a comprehensive review conducted by the President of the Russia Federation's laws and practices and the degree to which they comport with the eligibility criteria that Congress established in the Generalized System of Preferences (GSP) of sections 501 and 502 of the Trade Act of 1974.
2. The degree to which Russia provides reciprocal treatment to U.S. exports compared to the treatment that the U.S. provides Russian exports under GSP.
3. The President's rationale as to why he believes Russia should or should not remain a beneficiary of GSP in light of the report's findings.

**Schumer Amendment #1 to Russia Permanent Normal Trade Relations (PNTR) and Moldova PNTR**

**Short Title:** Russian Compliance with Information Technology Agreement Accountability Act of 2012

**Description of Amendment:** This amendment will require that within 1 year after the entry of force of the Protocol of Accession of the Russian Federation to the World Trade Organization, and annually thereafter, the Trade Representative shall submit a report to Congress on compliance by the Russian Federation with commitments made in connection with joining the Information Technology Agreement upon accession to the WTO.

The report shall include identification and analysis of tariff barriers and implementation matters, along with recommendations for administrative or legislative actions to address such barriers or matters, if any.

In preparation the report, the Trade Representative shall seek public participation by publishing a notice in the Federal Register and holding a public hearing as part of the broader reporting requirements to Congress on Russia's WTO commitments.

## **Menendez Amendment #1 to Authorize the Extension of Nondiscriminatory Treatment to Products of the Russian Federation and Moldova**

### Short Title:

To ensure the enforcement and protection of intellectual property rights in Russia through enhanced reporting requirements.

### Short Description:

The annual report on intellectual property rights protection and enforcement should include the study and review of:

- (a) Whether Russia has enacted and implemented comprehensive intellectual property rights per its international treaty obligations, including obligations agreed to as part of its accession to the WTO and those in the WTO working party agreements, especially those concluded with the United States Government;
- (b) Whether Russia's existing laws properly recognize the rights associated with the performance of audio-visual works under its existing international treaty obligations; and
- (c) Whether Russia's application of a value added tax ("VAT") to certain types of IP products and services is being applied in a discriminatory fashion, and whether such discriminatory treatment violates any trade obligations.

The United States should also foster better understanding in Russia of intellectual property rights by supporting educational programs for Russian law enforcement officers, judges, and government and private lawyers and ensure that the U.S. Embassy and Consulates in Russia have staff members with training in intellectual property rights matters.

**Cardin-Kyl-Schumer-Snowe-Cantwell-Coburn-Menendez-Thune-Burr Amendment #1 to Russia  
Permanent Normal Trade Relations (PNTR) and Moldova PNTR**

**Short Title:** Sergei Magnitsky Rule of Law Accountability Act of 2011

**Description of Amendment:** This amendment will add S. 1039, the Sergei Magnitsky Rule of Law Accountability Act of 2011, as reported out of the Senate Committee on Foreign Relations on June 26, 2012, to the Russia PNTR and Moldova PNTR proposal.

## **SNOWE-ROCKEFELLER AMENDMENT**

Senator Snowe (with Senator Rockefeller) Amendment #1 to Russia Permanent Normal Trade Relations (PNTR) and Moldova PNTR

Short Title: Currency Exchange Rate Transparency Act, S. 1238

Description of Amendment: This legislation would subject any bill implementing a trade agreement between the United States and another country (or extending permanent normal trade relations) to a point of order unless the bill is accompanied by a Presidential certification, approved by Congress, stating that, in the 10 years prior to the certification, the government of the country has not engaged in the intervention or manipulation of the rate of exchange between its currency and the U.S. dollar in order to prevent effective balance of payments adjustments or gain unfair competitive advantage in international trade.

### **Kyl Amendment #1 – Russia and Moldova PNTR**

**Kyl Amendment #1** to the Chairman’s Mark to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to products of the Russian Federation and Moldova-

**Short Title:** To include reporting on outreach in the Commerce Secretary’s annual report about the anti-corruption hotline and website.

**Description of Amendment:** The Chairman’s Mark contains a requirement that the Secretary of Commerce establish and maintain a dedicated telephone hotline and secure website to enable U.S. entities to report instances of bribery, attempted bribery, and other corruption in the Russian Federation and request assistance from the U.S. government. The Chairman’s Mark also requires an annual report on the instances of alleged corruption and the assistance provided. The amendment would require the annual report to include a description of the efforts undertaken by the Secretary of Commerce to inform U.S. entities doing business or considering doing business in the Russian Federation of the availability of assistance through the hotline and website.

**Roberts Amendment #1 to S. 3285, A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to products of the Russian Federation.**

**Short Title:** Ractopamine

**Description of Amendment:**

The Codex Alimentarius Commission develops harmonized international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair trade practices in the food trade. In July, the Codex has adopted the proposed maximum residue level (MRL) for ractopamine, a livestock feed additive. Currently, Russia does not have an MRL for ractopamine. In its WTO accession package, Russia committed to adhere to the WTO SPS disciplines, specifically basing SPS measures on international standards or, when international standards do not exist, basing SPS measures on science and a risk assessment conducted in accordance with international standards.

As part of the six month report to Congress, USTR will report on Russia's progress in setting an MRL for ractopamine. The report will include what steps Russia has taken to date to adopt the MRL and what actions USTR has taken to engage its Russian counterparts to adopt the MRL.

**Cornyn Amendment #1 to Russia Permanent Normal Trade Relations (PNTR)**  
**and Moldova PNTR**

**Short Title:** Create Magnitsky Sanctions for Enablers of Mass Atrocities.

**Description of Amendment:** Within the “Magnitsky” provisions, this amendment will add a new category in the “Identification of Persons Responsible” section. This category will cover persons who either facilitate the transfer of lethal military equipment or the maintenance of existing lethal military equipment to any foreign government that is committing mass atrocities against its own population.

**Cornyn Amendment #2 to Russia Permanent Normal Trade Relations (PNTR)**  
**and Moldova PNTR**

**Short Title:** Delay Effective Date Until Certification on Cessation of Arms Transfers to State Sponsors of Terrorism.

**Description of Amendment:** This amendment will delay the effective date of the bill until the President certifies that the Government of the Russian Federation has ceased facilitating the transfer of lethal military equipment, and the maintenance of existing lethal military equipment, to all foreign governments that the Secretary of State has determined are state sponsors of terrorism (under the relevant sections of the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act).