

Senators Brown And Tillis Introduce the Fighting Trade Cheats Act

On March 15, 2023, U.S. Senators Sherrod Brown (D-OH) and Thom Tillis (R-NC) introduced a bipartisan bill entitled the [Fighting Trade Cheats Act of 2023](#) (“the Act”), which targets foreign companies that attempt to bring goods into the United States via fraudulent or grossly negligent practices. A [joint statement](#) accompanying the release of the proposed legislation explained that the measure will “strengthen U.S. trade law enforcement and give American manufacturers the opportunity to take action against bad actors that engage in customs fraud” by creating a new private right of action in federal court. The joint statement indicated that the proposed legislation is intended to strengthen border enforcement against unfairly traded imports from the People’s Republic of China.

Increased Civil Penalties and Denial of Import Privileges for Fraudulent and Grossly Negligent Import-Related Violations of 19 U.S.C. § 1592

Section 2 of the Act would amend Section 592 of the Tariff Act of 1930 ([19 U.S.C. § 1592](#)) by significantly increasing the amount and nature of the penalties for fraudulent and grossly negligent violations.

Fraud

Under current law, 19 U.S.C. § 1592 imposes a civil penalty “in an amount not to exceed the domestic value of the merchandise” for violations involving fraud. The Act would increase this penalty amount to up to **three times** the domestic value of the merchandise and would include a new provision to prohibit violators “from importing merchandise into the United States during a period of **five years** beginning on the date of entry of a final judgment with respect to such violation[.]”

Gross Negligence

For grossly negligent violations, the current statute includes a civil penalty not to exceed “the lesser of the domestic value of the merchandise or four times the lawful duties, taxes, and fees of which the United States is or may be owned.” The Act would increase the penalty threshold to **three times** the domestic value and **10 times** the duties owed. If the violation did not affect the assessment of duties, the Act would increase the penalty to **three times** the “dutiable value of the merchandise” instead of the current 40 percent. A new provision also would prohibit violators from importing merchandise into the United States for “two years beginning on the date of entry of a final judgment with respect to such violation[.]”

New “Private Enforcement Action”

Section 3 of the Act seeks to allow an “interested party” to bring civil suits in federal district court for injuries relating to violation(s) of U.S. customs laws involving fraud or gross negligence. The Act defines an “interested party” to include 1) “a manufacturer, producer, or wholesaler in the United States of like merchandise or competing merchandise; 2) a certified union or recognized union or group of workers that is representative of an industry engaged in

the manufacture, production, or wholesale in the United States of like merchandise or competing merchandise; or 3) a trade or business association a majority of the members of which manufacture, produce, or wholesale like merchandise or competing merchandise in the United States.” Interested parties that successfully bring suits are entitled to 1) compensatory damages “plus an additional penalty equal to three times the amount of compensatory damages,” 2) equitable relief, such as an injunction, against future imports, and 3) costs of bringing the suits, such as attorney fees.

Removal From Importer of Record Program for Violating Persons and Affiliated Entities

Section 4 of the Act would make violators that committed “a fraudulent or grossly negligent violation of” 19 U.S.C. § 1592(a) “ineligible to participate in the importer of record (“IOR”) program[.]” The proposed legislation also would target persons “deemed to be” affiliated with violators “[i]n order to prevent commercial fraud, protect the revenue, and [to] help prevent the use of shell companies by importers that seek to evade the customs and trade laws of the United States[.]” This aspect of the proposal is important because entities who are involved in nefarious import schemes frequently shuffle import activity between different IORs in order to avoid the payment of duties and/or other import duties and tariffs.

In sum, the Fighting Trade Cheats Act of 2023 would significantly strengthen CBP’s enforcement “tool kit” against fraudulent and/or grossly negligent import-related activities by importers and other persons that may be involved in such importations into the United States (including purchasers in the United States). The proposed legislation also would create a new private right of action for U.S. manufacturers, labor unions, trade associations, and other domestic interests to obtain relief in the form of compensatory damages, attorneys’ fees, and equitable relief (*e.g.*, “an injunction against further importation into the United States” of the violative products).