

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4216
OFFERED BY MR. POE OF TEXAS AND MS. ZOE
LOFGREN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Foreign Counterfeit
3 Merchandise Prevention Act”.

**4 SEC. 2. EXCHANGE OF INFORMATION RELATED TO TRADE
5 ENFORCEMENT.**

6 Section 1905 of title 18, United States Code, is
7 amended—

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

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

11 “(b) PROVISION OF INFORMATION RELATING TO
12 MERCHANDISE PRESENTED TO CUSTOMS.—It shall not be
13 a violation of this section for an officer or employee of
14 U.S. Customs and Border Protection, at the time that
15 merchandise is presented for examination and thereafter,
16 to provide to the owner of a copyright or a registered

1 mark, or to any person who may be injured by a violation
2 of section 1201 of title 17—

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

5 “(2) a sample of the merchandise and its retail
6 packaging, or

7 “(3) digital images of the merchandise and its
8 retail packaging,

9 as it was presented to U.S. Customs and Border Protec-
10 tion, without redaction, whether imported into or exported
11 from the United States, or attempted to be exported from
12 the United States, for purposes of determining whether
13 the merchandise or its retail packaging infringes the copy-
14 right, bears or consists of a counterfeit mark of the reg-
15 istered mark, or is in violation of section 1201 of title 17,
16 as the case may be.

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

25 “(1) The date of importation.

1 “(2) The port of entry.

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

4 “(4) The quantity involved.

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

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

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

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

10 “(9) Photographic or digital images of the mer-
11 chandise.

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

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

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

18 “(3) the term ‘counterfeit mark’ has the mean-
19 ing given that term in section 2320(f) of this title;
20 and

21 “(4) the term ‘without redaction’ means, with
22 respect to merchandise, without removing, revising,
23 or otherwise obscuring any information, codes,
24 marks, numbers, or any other markings that appear
25 on the merchandise or its retail packaging.

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

5 **SEC. 3. PREVENTION OF IMPORTATION OF MANUFAC-**
6 **TURED GOODS BEARING INFRINGING MARKS.**

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

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

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

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

14 “(b) DETENTION OF CRITICAL MERCHANDISE.—
15 With respect to critical merchandise that bears a reg-
16 istered trademark recorded under subsection (a), if U.S.
17 Customs and Border Protection detains the merchandise
18 because the merchandise is suspected of bearing a coun-
19 terfeit mark, then, upon such detention, the Secretary—

20 “(1) shall provide to the owner of the registered
21 trademark any information on the critical merchan-
22 dise and its packaging and labels, including, without
23 redaction, photographs or digital images of the crit-
24 ical merchandise, packaging, and labels; and

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

5 “(c) DEFINITIONS.—In this section:

6 “(1) CRITICAL MERCHANDISE.—

7 “(A) IN GENERAL.—The term ‘critical
8 merchandise’ includes—

9 “(i) aircraft engines, appliances, pro-
10 pellers, and spare parts;

11 “(ii) children’s sleepwear;

12 “(iii) cosmetics;

13 “(iv) devices;

14 “(v) drugs;

15 “(vi) food;

16 “(vii) motor vehicle equipment;

17 “(viii) pesticide chemicals;

18 “(ix) semiconductors;

19 “(x) tobacco products;

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

24 “(xii) any other article of manufacture
25 that the Secretary determines could, if per-

1 mitted entry into the United States in vio-
2 lation of the laws of the United States pose
3 a danger to the health, safety, or welfare
4 of consumers, or to the national security of
5 the United States.

6 “(B) OTHER DEFINITIONS.—For purposes
7 of subparagraph (A)—

8 “(i) the terms ‘aircraft engine’, ‘appli-
9 ance’, ‘propeller’, and ‘spare part’ have the
10 meanings given those terms in section
11 40102(a) of title 49, United States Code;

12 “(ii) the term ‘children’s sleepwear’
13 has the meaning given that term in sec-
14 tions 1615.1 and 1616.2 of title 16, Code
15 of Federal Regulations, or successor regu-
16 lations;

17 “(iii) the terms ‘cosmetic’, ‘device’,
18 ‘drug’, ‘food’, ‘pesticide chemical’, and ‘to-
19 bacco product’ have the meanings given
20 those terms in section 201 of the Federal
21 Food, Drug, and Cosmetic Act (21 U.S.C.
22 321);

23 “(iv) the term ‘motor vehicle equip-
24 ment’ has the meaning given that term in

1 section 30102(a) of title 49, United States
2 Code; and

3 “(v) the term ‘semiconductor’ means
4 ‘semiconductor chip product’ as defined in
5 section 901 of title 17.

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

8 “(3) WITHOUT REDACTION.—The term ‘without
9 redaction’ means, with respect to merchandise, with-
10 out removing, revising, or otherwise obscuring any
11 information, codes, marks, numbers, or any other
12 markings that appear on the merchandise or its re-
13 tail packaging.

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

18 (b) DEFINITION.—In this section, the term “Lanham
19 Act” means the Act entitled “An Act to provide for the
20 registration and protection of trademarks used in com-
21 merce, to carry out the provisions of certain international
22 conventions, and for other purposes”, approved July 5,
23 1946 (15 U.S.C. 1051 et seq.).

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect upon the expiration of the

1 60-day period beginning on the date of the enactment of
2 this Act.

