

113TH CONGRESS  
1ST SESSION

# S. 1801

To amend the Tariff Act of 1930 to include in the calculation of normal value the cost of paying adequate wages and maintaining sustainable production methods, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2013

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

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## A BILL

To amend the Tariff Act of 1930 to include in the calculation of normal value the cost of paying adequate wages and maintaining sustainable production methods, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Level the Playing Field  
5 in Global Trade Act of 2013”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-  
8 ings:

1           (1) Working families in the United States and  
2 around the world have not enjoyed many of the ben-  
3 efits of increased global trade.

4           (2) While the global economy grew at an aver-  
5 age rate of 3.3 percent per year between 1995 and  
6 2007, annual wage growth remained at less than 3  
7 percent.

8           (3) Between 1989 and 2010, hourly produc-  
9 tivity in the United States grew more than 3 times  
10 as fast as wages, and nearly 4,000,000 manufac-  
11 turing jobs disappeared in the United States be-  
12 tween 1998 and 2013.

13           (4) The lowest 20 percent of wage earners in  
14 the United States have seen average hourly wages  
15 decline by 3.9 percent, and the next lowest 20 per-  
16 cent saw their earnings fall by 4.3 percent, while  
17 earnings for those in the top 20 percent increased by  
18 nearly 30 percent.

19           (5) In 2010, there were approximately  
20 942,000,000 working poor living with their families  
21 on less than \$2.00 per person per day.

22           (6) Global biodiversity health declined 28 per-  
23 cent from 1970 to 2008.

1           (7) The World Health Organization attributes  
2 more than 500,000 premature deaths annually to  
3 urban air pollution in Asia alone.

4           (8) An estimated 160,000,000 people suffer  
5 from work-related diseases, and there are an esti-  
6 mated 270,000,000 fatal and non-fatal work-related  
7 accidents each year.

8           (b) SENSE OF CONGRESS.—It is the sense of Con-  
9 gress that—

10           (1) the antidumping and countervailing duty  
11 laws of the United States under title VII of the Tar-  
12 iff Act of 1930 (19 U.S.C. 1671 et seq.) have pro-  
13 vided targeted, effective relief against unfair trade  
14 practices and must be protected and enhanced; and

15           (2) the failure to include within antidumping  
16 duty calculations the real costs of inadequate wages,  
17 insufficient workplace safety conditions, and insuffi-  
18 cient environmental controls—

19                   (A) has a substantial negative effect on  
20 United States manufacturing and the United  
21 States economy; and

22                   (B) fails to support efforts to improve con-  
23 ditions for working families and the environ-  
24 ment in the United States and around the  
25 world.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to ensure that goods imported into the  
 4 United States fully reflect the real costs of paying  
 5 an adequate living wage, upholding workplace safety  
 6 standards, and maintaining basic environmental pro-  
 7 tections; and

8 (2) to provide a streamlined method for entities  
 9 that meet those standards to satisfy the require-  
 10 ments of the amendments made by this Act.

11 **SEC. 4. ADJUSTMENT OF NORMAL VALUE TO INCLUDE THE**  
 12 **COST OF PAYING ADEQUATE WAGES AND**  
 13 **MAINTAINING SUSTAINABLE PRODUCTION**  
 14 **METHODS.**

15 (a) IN GENERAL.—Section 773(a) of the Tariff Act  
 16 of 1930 (19 U.S.C. 1677b(a)) is amended—

17 (1) by redesignating paragraph (8) as para-  
 18 graph (9); and

19 (2) by inserting after paragraph (7) the fol-  
 20 lowing:

21 “(8) ADJUSTMENTS FOR COSTS OF PROVIDING  
 22 ADEQUATE WAGES AND USING SUSTAINABLE PRO-  
 23 Duction METHODS.—

24 “(A) INCREASE.—Except as otherwise pro-  
 25 vided in this paragraph, the price described in

1 paragraph (1)(B) shall also be increased by the  
2 difference, if any, between—

3 “(i) the actual cost of producing the  
4 subject merchandise; and

5 “(ii) the estimated cost of producing  
6 the subject merchandise if the producer  
7 paid its employees adequate wages and  
8 maintained sustainable production meth-  
9 ods.

10 “(B) CREDITS FOR COMPLIANCE.—At the  
11 request of an exporter or producer, the admin-  
12 istering authority shall reduce the amount of  
13 the increase under subparagraph (A) with re-  
14 spect to subject merchandise of that exporter or  
15 producer by an amount the administering au-  
16 thority determines reflects the extent to which  
17 the subject merchandise was produced under  
18 conditions under which all employees receive  
19 adequate wages and sustainable production  
20 methods are maintained. The amount by which  
21 the increase under subparagraph (A) to the  
22 price under paragraph (1)(B) is reduced under  
23 this subparagraph shall be referred to as a  
24 ‘credit’.

25 “(C) PRECERTIFICATION.—

1                   “(i) EXPORTER- OR PRODUCER-SPE-  
2                   CIFIC PRECERTIFICATION.—

3                   “(I) REQUESTS.—An exporter or  
4                   producer seeking to import merchan-  
5                   dise into the United States may re-  
6                   quest the administering authority to  
7                   issue a precertification that merchan-  
8                   dise of the exporter or producer im-  
9                   ported into the United States from a  
10                  specific country is eligible for credits  
11                  under subparagraph (B) before an in-  
12                  vestigation is initiated under subtitle  
13                  B with respect to the merchandise.

14                  “(II)           STANDARD           FOR  
15                  PRECERTIFICATION.—The        admin-  
16                  istering authority shall issue to an ex-  
17                  porter or producer that requests a  
18                  precertification under subclause (I) a  
19                  precertification that covers all mer-  
20                  chandise imported into the United  
21                  States by the exporter or producer  
22                  from a specific country if the exporter  
23                  or producer demonstrates to the satis-  
24                  faction of the administering authority  
25                  that all such merchandise, including

1 significant components or ingredients  
2 of the merchandise, was or will be  
3 produced under conditions under  
4 which all employees receive adequate  
5 wages and sustainable production  
6 methods are maintained.

7 “(III) EFFECTIVE PERIOD.—A  
8 precertification issued under this  
9 clause shall remain in effect for such  
10 period as the administering authority  
11 determines appropriate, but not longer  
12 than 5 years.

13 “(ii) COUNTRY-WIDE  
14 PRECERTIFICATION.—The administering  
15 authority may issue a precertification for  
16 all merchandise imported from a country if  
17 the government of that country maintains  
18 and enforces laws requiring all producers  
19 of such merchandise in that country to pay  
20 its employees adequate wages and to main-  
21 tain sustainable production methods.

22 “(iii) SAFE HARBOR.—

23 “(I) IN GENERAL.—If the admin-  
24 istering authority has issued a  
25 precertification under clause (i) or

1 (ii), merchandise to which the  
2 precertification applies shall not be  
3 subject to an antidumping duty solely  
4 because a petition filed under section  
5 732(b)(1) with respect to the mer-  
6 chandise alleges that the merchandise  
7 was not produced under conditions  
8 under which all employees receive ade-  
9 quate wages and sustainable produc-  
10 tion methods are maintained.

11 “(II) CHALLENGING  
12 PRECERTIFICATION.—An interested  
13 party described in subparagraph (C),  
14 (D), (E), (F), or (G) of section  
15 771(9) that files a petition under sec-  
16 tion 732(b)(1) with respect to the  
17 merchandise covered by a  
18 precertification issued under clause (i)  
19 for a producer or exporter or under  
20 clause (ii) for a country bears the bur-  
21 den of proving that the merchandise  
22 was not produced under conditions  
23 under which all employees receive ade-  
24 quate wages and sustainable produc-  
25 tion methods are maintained.



1 “(iv) DEMONSTRATION OF INJURY.—

2 “(I) PRESUMPTION.—Except as  
3 provided in subclause (II), an inter-  
4 ested party described in subparagraph  
5 (C), (D), (E), (F), or (G) of section  
6 771(9) that files a petition under sec-  
7 tion 732(b)(1) with respect to mer-  
8 chandise that relies on calculations of  
9 normal value made under this para-  
10 graph shall be presumed to dem-  
11 onstrate that the party is materially  
12 injured or threatened with material  
13 injury by reason of imports of the  
14 merchandise.

15 “(II) EXCEPTIONS.—An inter-  
16 ested party described in subparagraph  
17 (C), (D), (E), (F), or (G) of section  
18 771(9) that files a petition under sec-  
19 tion 732(b)(1) with respect to mer-  
20 chandise that relies on calculations of  
21 normal value made under this para-  
22 graph shall not be presumed to dem-  
23 onstrate that the party is materially  
24 injured or threatened with material

1 injury by reason of imports of the  
2 merchandise if—

3 “(aa) the country from  
4 which the merchandise is ex-  
5 ported is covered by a  
6 precertification issued under  
7 clause (ii); or

8 “(bb) the estimated cost of  
9 producing the merchandise under  
10 subparagraph (A)(ii) is equal to  
11 or greater than the cost of pro-  
12 ducing the merchandise in the  
13 country in which the interested  
14 party is located.

15 “(v) USE OF THIRD-PARTY STAND-  
16 ARDS.—

17 “(I) IN GENERAL.—The admin-  
18 istering authority, the Secretary of  
19 Labor, and the Administrator of the  
20 Environmental Protection Agency may  
21 jointly establish procedures pursuant  
22 to which obtaining certification from  
23 an organization described in subclause  
24 (II) may demonstrate the eligibility of  
25 an exporter or producer for a

1 precertification under clause (i) or the  
2 eligibility of a country for a  
3 precertification under clause (ii).

4 “(II) ORGANIZATION DE-  
5 SCRIBED.—An organization described  
6 in this subclause is an independent  
7 third-party organization that sets  
8 standards with respect to adequate  
9 wages and sustainable production  
10 methods.

11 “(D) GUIDANCE ON COMPLIANCE.—Not  
12 later than one year after the date of the enact-  
13 ment of the Level the Playing Field in Global  
14 Trade Act of 2013, the administering authority  
15 shall publish in the Federal Register guidance  
16 with respect to how persons producing mer-  
17 chandise for exportation to the United States or  
18 seeking to import such merchandise into the  
19 United States may obtain credits and  
20 precertifications under subparagraphs (B) and  
21 (C).

22 “(E) DEFINITIONS.—In this paragraph:

23 “(i) ADEQUATE WAGE.—

24 “(I) IN GENERAL.—The term  
25 ‘adequate wage’—

1           “(aa) means compensation  
2 for a regular work week that is  
3 sufficient to meet the basic needs  
4 of the employee and to provide  
5 the employee with some discre-  
6 tionary income; and

7           “(bb) includes—

8           “(AA) at a minimum,  
9 the payment of the higher of  
10 the minimum wage or the  
11 appropriate prevailing wage,  
12 compliance with all legal re-  
13 quirements relating to wages  
14 (including freedom of asso-  
15 ciation relating to the bar-  
16 gaining relating to wages  
17 and related matters), and  
18 the provision of such bene-  
19 fits as are required by law  
20 or contract; and

21           “(BB) such other ele-  
22 ments as the administering  
23 authority considers appro-  
24 priate.

1 “(II) GUIDANCE ON INTERPRE-  
2 TATION.—

3 “(aa) IN GENERAL.—Not  
4 later than one year after the date  
5 of the enactment of the Level the  
6 Playing Field in Global Trade  
7 Act of 2013, the administering  
8 authority shall publish in the  
9 Federal Register guidance, devel-  
10 oped jointly with the Secretary of  
11 Labor, with respect to the inter-  
12 pretation of ‘adequate wage’.

13 “(bb) USE OF THIRD-PARTY  
14 STANDARDS.—In developing  
15 guidance under item (aa), the ad-  
16 ministering authority and the  
17 Secretary may consider inde-  
18 pendent third-party standards,  
19 including, as appropriate, stand-  
20 ards on an industry-by-industry  
21 or country-by-country basis.

22 “(ii) SUSTAINABLE PRODUCTION  
23 METHODS.—

24 “(I) IN GENERAL.—The term  
25 ‘sustainable production methods’

1 means the application of technologies  
2 and methods that are necessary to  
3 provide for—

4 “(aa) workplace safety, toxic  
5 waste control, and the conserva-  
6 tion of energy and natural re-  
7 sources, based on local standards  
8 and conditions; and

9 “(bb) such other relevant  
10 standards as the administering  
11 authority considers appropriate.

12 “(II) GUIDANCE ON INTERPRE-  
13 TATION.—

14 “(aa) IN GENERAL.—Not  
15 later than one year after the date  
16 of the enactment of the Level the  
17 Playing Field in Global Trade  
18 Act of 2013, the administering  
19 authority shall publish in the  
20 Federal Register guidance, devel-  
21 oped jointly with the Adminis-  
22 trator of the Environmental Pro-  
23 tection Agency and the Secretary  
24 of Labor, with respect to the in-

1 interpretation of ‘sustainable pro-  
2 duction methods’.

3 “(bb) USE OF THIRD-PARTY  
4 STANDARDS.—In developing  
5 guidance under item (aa), the ad-  
6 ministering authority and the  
7 Administrator may consider inde-  
8 pendent third-party standards,  
9 including, as appropriate, stand-  
10 ards on an industry-by-industry  
11 or country-by-country basis.”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 subsection (a) shall apply with respect to merchandise im-  
14 ported into the United States—

15 (1) on and after the date that is 2 years after  
16 the date of the enactment of this Act from—

17 (A) any country with which the United  
18 States has a free trade agreement in effect;

19 (B) any country that is a member of the  
20 World Trade Organization; or

21 (C) Canada or Mexico, pursuant to article  
22 1902 of the North American Free Trade Agree-  
23 ment and section 408 of the North American  
24 Free Trade Agreement Implementation Act (19  
25 U.S.C. 3438); and

1           (2) on or after the date that is one year after  
2           the date of the enactment of this Act from any coun-  
3           try other than a country described in paragraph (1).

○