

103D CONGRESS  
1ST SESSION

# S. 445

To amend the Food, Agriculture, Conservation, and Trade Act of 1990 to improve monitoring of the domestic uses made of certain foreign commodities in order to ensure that agricultural commodities exported under agricultural trade programs are entirely produced in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, JANUARY 5), 1993

Mr. CONRAD (for himself Mr. DORGAN, Mr. WELLSTONE, Mr. CRAIG, Mr. FEINGOLD, Mr. BURNS, Mr. PRESSLER, Mr. GRASSLEY, Mrs. MURRAY, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Food, Agriculture, Conservation, and Trade Act of 1990 to improve monitoring of the domestic uses made of certain foreign commodities in order to ensure that agricultural commodities exported under agricultural trade programs are entirely produced in the United States, 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 “Agricultural Export  
5 Program Protection Act of 1993”.

1 **SEC. 2. AGRICULTURAL EXPORT PROGRAM PROTECTION.**

2 Title XV of the Food, Agriculture, Conservation, and  
3 Trade Act of 1990 (Public Law 101–624) is amended by  
4 adding at the end the following new subtitle:

5 **“Subtitle G—Agricultural Export**  
6 **Program Protection**

7 **“SEC. 1581. DEFINITIONS.**

8 “As used in this subtitle:

9 “(1) AGRICULTURAL TRADE PROGRAM.—The  
10 term ‘agricultural trade program’ means an export  
11 promotion, export credit, export credit guarantee,  
12 export bonus, or other export or international food  
13 aid program carried out through, or administered  
14 by, the Commodity Credit Corporation, including  
15 such a program carried out under—

16 “(A) the Agricultural Trade Act of 1978  
17 (7 U.S.C. 5601 et seq.)—

18 “(i) including the export enhancement  
19 program established by section 301 of such  
20 Act (7 U.S.C. 5651); but

21 “(ii) excluding the market promotion  
22 program established by section 203 of such  
23 Act (7 U.S.C. 5623);

24 “(B) the Agricultural Trade Development  
25 and Assistance Act of 1954 (7 U.S.C. 1691 et  
26 seq.);

1           “(C) section 416 of the Agricultural Act of  
2           1949 (7 U.S.C. 1431); or

3           “(D) section 5 of the Commodity Credit  
4           Corporation Charter Act (15 U.S.C. 714c).

5           “(2) COVERED FOREIGN COMMODITY.—The  
6           term ‘covered foreign commodity’ means wheat, feed  
7           grains, or soybeans produced in a foreign country  
8           that is imported into the customs territory of the  
9           United States.

10          “(3) ENTRY.—The term ‘entry’ means the  
11          entry into, or the withdrawal from warehouse for  
12          consumption in, the customs territory of the United  
13          States.

14          “(4) PERSON.—The term ‘person’ includes an  
15          exporter, an assignee, and a participant in an agri-  
16          cultural trade program.

17          “(5) SECRETARY.—The term ‘Secretary’ means  
18          the Secretary of Agriculture.

19          “(6) UNITED STATES AGRICULTURAL COMMOD-  
20          ITY.—The term ‘United States agricultural commod-  
21          ity’ has the same meaning given the term in section  
22          102(7) of the Agricultural Trade Act of 1978 (7  
23          U.S.C. 5602(7)).

1 **“SEC. 1582. MONITORING OF DOMESTIC USES MADE OF**  
2 **CERTAIN FOREIGN COMMODITIES.**

3 “(a) IN GENERAL.—

4 “(1) END-USE CERTIFICATE.—An end-use cer-  
5 tificate that meets the requirements of subsection  
6 (b) shall be included in the documentation covering  
7 the entry of any covered foreign commodity.

8 “(2) QUARTERLY REPORTS.—A consignee of a  
9 covered foreign commodity (including a secondary  
10 consignee of a covered foreign commodity and a con-  
11 signee of a covered foreign commodity that has been  
12 commingled with a commodity produced in the Unit-  
13 ed States) shall submit to the Secretary a quarterly  
14 report that certifies—

15 “(A) what percentage of the covered for-  
16 eign commodity that is subject to an end-use  
17 certificate was used by the consignee during the  
18 quarter; and

19 “(B)(i) that the covered foreign commodity  
20 referred to in paragraph (1) was used by the  
21 consignee for the purpose stated in the end-use  
22 certificate; or

23 “(ii) if ownership of the covered foreign  
24 commodity is transferred, the name and ad-  
25 dress and other information, as determined by

1 the Secretary, of the entity (or consignee) to  
2 whom it is transferred.

3 “(b) END-USE CERTIFICATE AND QUARTERLY RE-  
4 PORT CONTENT.—The end-use certificates and quarterly  
5 reports required under subsection (a) shall be in such  
6 form, and require such information, as the Secretary con-  
7 siders necessary or appropriate to carry out this section.  
8 At a minimum, the Secretary shall require that end-use  
9 certificates and quarterly reports indicate—

10 “(1) in the case of the end-use certificate—

11 “(A) the name and address of the importer  
12 of record of the covered foreign commodity that  
13 is subject to the certificate;

14 “(B) the name and address of the con-  
15 signee of the covered foreign commodity;

16 “(C) the identification of the country of or-  
17 igin of the covered foreign commodity;

18 “(D) a description by class and quantity of  
19 the covered foreign commodity;

20 “(E) the specification of the purpose for  
21 which the consignee will use the covered foreign  
22 commodity; and

23 “(F) the identification of the transporter  
24 of the covered foreign commodity from the port

1 of entry to the processing facility of the con-  
2 signee; and

3 “(2) in the case of the quarterly report—

4 “(A) the information referred to in sub-  
5 paragraphs (A) and (B) of paragraph (1);

6 “(B) the identification of the end-use cer-  
7 tificates currently held by the consignee;

8 “(C) a statement of the quantity of the  
9 covered foreign commodity that is the subject of  
10 each of the end-use certificates identified under  
11 subparagraph (B) that was used during the  
12 quarter;

13 “(D) a statement of the use made during  
14 the quarter by the consignee of each quantity  
15 referred to in subparagraph (C);

16 “(E) a statement of the quantity of the  
17 covered foreign commodity that was exported by  
18 the consignee during the quarter;

19 “(F) a statement of the quantity of the  
20 covered foreign commodity that was commin-  
21 gled with commodities produced in the United  
22 States and the disposition of the commingled  
23 commodities; and

24 “(G) a statement of the quantity of any  
25 covered foreign commodity that is transferred

1 to a subsequent consignee, the name and ad-  
2 dress of the consignee, and the change in end-  
3 use.

4 “(c) SALES PRICE.—The Secretary may require the  
5 importer or the first consignee of a covered foreign com-  
6 modity to report to the Secretary the sales price of a cov-  
7 ered foreign commodity that is subject to an end-use cer-  
8 tificate issued under this section if the Secretary considers  
9 the sales price necessary to facilitate enforcement of Unit-  
10 ed States trade laws and international agreements.

11 “(d) CONFIDENTIALITY.—In carrying out this sec-  
12 tion, the Secretary shall take such actions as are necessary  
13 to ensure the confidentiality and privacy of purchasers of  
14 covered foreign commodities.

15 “(e) ENTRY PROHIBITED UNLESS END-USE CER-  
16 TIFICATE PRESENTED.—The Commissioner of Customs  
17 may not permit the entry of a covered foreign commodity  
18 unless the importer of record presents at the time of entry  
19 of the covered foreign commodity an end-use certificate  
20 that complies with the applicable requirements of this  
21 section.

22 “(f) PENALTIES.—

23 “(1) CUSTOMS PENALTIES.—End-use certifi-  
24 cates required under this section shall be treated as  
25 any other customs documentation for purposes of

1 applying the customs laws that prohibit the entry, or  
2 the attempt to enter, merchandise by fraud, gross  
3 negligence, or negligence.

4 “(2) CIVIL PENALTIES.—Any person who know-  
5 ingly violates any requirement prescribed by the Sec-  
6 retary to carry out this section is punishable by a  
7 civil penalty in an amount not to exceed \$10,000.

8 “(g) REGULATIONS.—The Secretary shall prescribe  
9 such regulations as are necessary to carry out this section,  
10 including regulations regarding the preparation and sub-  
11 mission of the quarterly reports required under subsection  
12 (a)(2).

13 **“SEC. 1583. COMPLIANCE PROVISIONS.**

14 “Subsections (b) and (c) of section 402 of the Agri-  
15 cultural Trade Act of 1978 (7 U.S.C. 5662) shall apply  
16 to the programs authorized under this subtitle.

17 **“SEC. 1584. SUSPENSION OR DEBARMENT FOR USE OF FOR-**

18 **EIGN AGRICULTURAL COMMODITIES IN CER-**

19 **TAIN AGRICULTURAL TRADE PROGRAMS.**

20 “(a) HEARING.—The Commodity Credit Corporation  
21 shall provide a person with an opportunity for a hearing  
22 before suspending or debarring the person from participa-  
23 tion in an agricultural trade program for using a foreign  
24 agricultural commodity in violation of the terms and con-  
25 ditions of the program.

1 “(b) WAIVER.—

2 “(1) IN GENERAL.—The Commodity Credit  
3 Corporation may waive the suspension or debarment  
4 of a person from participation in an agricultural  
5 trade program for using a foreign agricultural com-  
6 modity in violation of the terms and conditions of  
7 the program if the person demonstrates, to the satis-  
8 faction of the Corporation, that—

9 “(A) the use of the foreign agricultural  
10 commodity was unintentional; and

11 “(B) the quantity of the foreign agricul-  
12 tural commodity used was less than 1 percent  
13 of the total quantity of the commodity involved  
14 in the transaction.

15 “(2) OTHER PENALTIES.—Any waiver by the  
16 Commodity Credit Corporation of a suspension or  
17 debarment of a person under paragraph (1) shall  
18 not affect the liability of the person for any other  
19 penalty imposed under an agricultural trade pro-  
20 gram for the quantity of the foreign agricultural  
21 commodity involved.”.

22 **SEC. 3. EFFECTIVE DATE.**

23 This Act and the amendment made by this Act shall  
24 become effective 120 days after the date of enactment of  
25 this Act.

