

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3800

To amend the Foreign Assistance Act of 1961 to require recipients of United States foreign assistance to certify that the assistance will not be used to intentionally traffic in goods or services that contain counterfeit marks or for other purposes that promote the improper use of intellectual property, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2006

Mr. HAGEL introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To amend the Foreign Assistance Act of 1961 to require recipients of United States foreign assistance to certify that the assistance will not be used to intentionally traffic in goods or services that contain counterfeit marks or for other purposes that promote the improper use of intellectual property, 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 “Stop Assistance to  
5 Counterfeiters Act”.

1 **SEC. 2. CERTIFICATION REQUIREMENT RELATING TO**  
2 **TRAFFICKING IN GOODS OR SERVICES THAT**  
3 **CONTAIN COUNTERFEIT MARKS.**

4 (a) AMENDMENTS.—Chapter 1 of part III of the For-  
5 eign Assistance Act of 1961 (22 U.S.C. 2351 et seq.) is  
6 amended—

7 (1) by redesignating the second section 620G  
8 (as added by section 149 of Public Law 104–164  
9 (110 Stat. 1436)) as section 620J; and

10 (2) by adding at the end the following new sec-  
11 tion:

12 **“SEC. 620K. CERTIFICATION REQUIREMENT RELATING TO**  
13 **TRAFFICKING IN GOODS OR SERVICES THAT**  
14 **CONTAIN COUNTERFEIT MARKS.**

15 “(a) REQUIREMENT FOR CERTIFICATION.—

16 “(1) IN GENERAL.—Subject to paragraph (2),  
17 assistance may not be provided to a person seeking  
18 United States assistance for a fiscal year until such  
19 person submits to the President a certification de-  
20 scribed in subsection (c) for that fiscal year.

21 “(2) EXCEPTION FOR FOREIGN GOVERN-  
22 MENTS.—The certification requirement set out in  
23 paragraph (1) shall not be applied to assistance pro-  
24 vided under this Act or any other Act directly to the  
25 government of a foreign country or an entity of such  
26 government or to an international organization that

1 is an association of representatives of national gov-  
2 ernments, including the United Nations.

3 “(b) DEFINITIONS.—In this section:

4 “(1) COUNTERFEIT MARK.—The term ‘counter-  
5 feit mark’ has the meaning given that term in sec-  
6 tion 2320 of title 18, United States Code.

7 “(2) PERSON SEEKING UNITED STATES ASSIST-  
8 ANCE.—The term ‘person seeking United States as-  
9 sistance’ means a person, including an international  
10 or domestic organization that is not an association  
11 of national governments, that—

12 “(A) is seeking assistance under this Act  
13 or any other Act directly from the United  
14 States; or

15 “(B) subsequently receives such assistance  
16 pursuant to a contract, grant, cooperative  
17 agreement, or other agreement.

18 “(3) TRAFFIC.—The term ‘traffic’ has the  
19 meaning given that term in section 2320 of title 18,  
20 United States Code.

21 “(c) CERTIFICATION.—

22 “(1) IN GENERAL.—A certification described in  
23 this subsection is a certification made by a person  
24 seeking United States assistance that—

1           “(A) such assistance will not be used to in-  
2           tentionally traffic in goods or services that con-  
3           tain counterfeit marks;

4           “(B) such assistance will not be used by  
5           any person that has had an administrative or  
6           judicial determination issued against the person  
7           for infringement, counterfeiting, or piracy of in-  
8           tellectual property in the United States or a  
9           foreign country;

10          “(C) any material or product, including a  
11          material or product in electronic form, that was  
12          developed, in whole or in part, using such as-  
13          sistance will not be imported into the United  
14          States—

15                 “(i) in violation of section 2320 of  
16                 title 18, United States Code; or

17                 “(ii) in violation of section 526(a) of  
18                 the Tariff Act of 1930 (19 U.S.C.  
19                 1526(a)); and

20          “(D) if such assistance will be used for a  
21          contract, grant, cooperative agreement, or other  
22          agreement that includes use of any intellectual  
23          property, provides evidence of the right to use  
24          the intellectual property, including a written li-  
25          cense agreement for the use, the date of the

1 first commercial use of the intellectual property,  
2 and any registration for the use with an appro-  
3 priate government.

4 “(2) REQUIREMENTS FOR SUBMISSION OF CER-  
5 TIFICATION.—A certification described in paragraph  
6 (1) shall be submitted to the President by a person  
7 seeking United States assistance prior to the provi-  
8 sion of any assistance under this Act or any other  
9 Act and at the beginning of each subsequent fiscal  
10 year for which such person will receive the assist-  
11 ance.

12 “(d) SUSPENSION AND TERMINATION OF ASSIST-  
13 ANCE.—The President shall suspend or terminate the pro-  
14 vision of assistance under this Act or any other Act, in  
15 whole or in part, to a person seeking United States assist-  
16 ance if the President determines that such person has  
17 used the assistance to carry out an activity in violation  
18 of a certification made under subsection (c).

19 “(e) NATIONAL SECURITY WAIVER.—The President  
20 may waive a provision of this section if the President—

21 “(1) determines that such a waiver is necessary  
22 to the national security interests of the United  
23 States; and

1           “(2) promptly submits to Congress a notifica-  
2           tion of the waiver and of the reasons for the waiv-  
3           er.”.

4           (b) EFFECTIVE DATE.—The certification require-  
5           ments under section 620K of the Foreign Assistance Act  
6           of 1961, as added by subsection (a) of this section, apply  
7           with respect to the provision of assistance by the President  
8           for a fiscal year after fiscal year 2006.

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