117TH CONGRESS
2D SESSION

S. _____

To provide for the expedited and duty-free importation of infant formula that may be lawfully marketed in the European Union, Canada, Japan, or the United Kingdom, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide for the expedited and duty-free importation of infant formula that may be lawfully marketed in the European Union, Canada, Japan, or the United Kingdom, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Emergency Infant Formula Act''.

SEC. 2. EXPEDITED IMPORTATION OF INFANT FORMULA.

(a) AUTHORIZATION FOR IMPORTATION AND SALE.—

(1) DECLARATION OF SHORTAGE.—The President may declare, in consultation with the Commissioner of Food and Drugs and by issuing an Executive order, that a shortage exists in the United States of infant formula during any period specified in that Executive order.

(2) AUTHORIZATION FOR IMPORTATION AND SALE.—

(A) IN GENERAL.—The President may authorize, in consultation with the Commissioner of Food and Drugs, the importation, distribution, and sale of any covered infant formula, notwithstanding the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.), if the applicable brand, manufacturer, or manufacturing plant, or the specific infant formula product, is included in the Executive order issued pursuant to paragraph (1).

(B) ADDITIONAL REQUIREMENTS.—The Executive order issued pursuant to paragraph (1) may specify, with respect to any covered infant formula, specific requirements with respect to labeling or usage guidance to be eligible for importation, distribution, and sale pursuant subparagraph (A).

(3) LABELING REQUIREMENTS.—The Commissioner of Food and Drugs shall require any retailer of covered infant formula imported pursuant to paragraph (2), including an online retailer, to include in an appropriate and conspicuous place next to the product or description of the product, as applicable, a label that—

(A) indicates that the covered infant formula may not meet the standards under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) for importation, distribution, or sale and is authorized for sale only subject to the provisions of this section; and

(B) may additionally indicate the foreign country or countries in which the covered infant formula may be lawfully marketed.

(4) TERMINATION OF SHORTAGE.—The President may, upon determining that a shortage no longer exists in the United States of infant formula, terminate a declaration issued under paragraph (1).

(b) DUTY-FREE TREATMENT.—Notwithstanding any other provision of law, the President may, during any period in which an infant formula shortage is declared pursuant to subsection (a)(1), reduce or suspend any duties imposed—

(1) with respect to the importation of covered infant formula; or

(2) with respect to any other article used in the production of infant formula that the importer certifies is being imported for such production.

(c) PRIORITY HANDLING OF ENTRIES.—During any period in which an infant formula shortage is declared pursuant to subsection (a)(1), the Commissioner of U.S. Customs and Border Patrol shall give the highest priority and take such steps as may be necessary to expedite the processing of all entries of covered infant formula and articles used in the production of infant formula (as described in subsection (b)(2)).

(d) USE OF DEFENSE PRODUCTION ACT AUTHORITIES.—During any period in which an infant formula shortage is declared pursuant to subsection (a)(1)—

(1) the President may use authorities provided by the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) with respect to the production of infant formula; and

(2) infant formula shall be deemed to meet the criteria specified in section 101(b) of such Act (50 U.S.C. 4511(b)).

(e) DEFINITIONS.—In this section:

(1) COVERED INFANT FORMULA.—The term ''covered infant formula'' means any infant formula that is lawfully marketed, as of the date of the enactment of this Act, in the European Union, Canada, Japan, or the United Kingdom.

(2) INFANT FORMULA.—The term ''infant formula'' has the meaning given that term in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)).