

21st Century Customs Framework – Trade Opportunities

Consolidated Legislative Discussion – Facilitation Provisions
October 2022

21CCF Trade Opportunities:

CBP & 1USG Trade Facilitation - Driving Accountability, Security & Intelligent Enforcement

CURRENT TRADE ENVIRONMENT

Operational Challenges: Current laws do not provide for modern day, practical facilitation that adequately streamlines legitimate import and export trade and incentivizes trusted partners.



1 - Unnecessary & redundant data hinders cross-border clearance, publicly available manifest data creates vulnerabilities & partnership benefits are limited.



2 - Trade has yet to realize a true, uniform 1USG release and consistent trusted partner status across agencies.



3 - The trade modernization framework must encompass export modernization that supports economic security.



4 - Laws must encourage practical, responsible transparent duty collection and enforcement particularly with AD/CVD and forced labor.

PROPOSED LEGISLATIVE CHANGES

Summary: Expand facilitative opportunities through streamlined, practical processes that incentivize and reward good actors.

Amend 19 USC § 1321, § 1484 and § 1498 to:

- Provide for expedited release and streamlined data filing, provide for the release of merchandise unless recalled and require accountable parties for entry

Amend 19 USC § 58c to:

- Provide a MPF reduction for CTPAT partners

Amend 19 USC § 1431 to:

- Require confidentiality of all manifest data

Amend 19 USC § 1321 to provide CBP authority to:

- Permit merchandise shipped from U.S. based FTZs to qualify for de minimis

Amend 19 USC § 1415 to:

- Require CBP to report data breach

Amend 19 USC § 1629 to:

- Recognize pre-departure cargo clearance

Amend 19 USC § 4317 to:

- Encourage the Centers to streamline admissibility & forced labor decisions

Amend 19 USC § 1411 to:

- Codify the BIEC and establish a true, uniform 1USG at the border

Amend 19 USC § 4311 to:

- Codify a CTPAT-PGA program with admissibility benefits for trusted partners

Amend 19 USC § 4316 to:

- Codify BIEC engagement with trade and ensure PGA governance structure

Amend 13 USC § 304 to:

- Provide for streamlined export data filing

Amend 13 USC § 305 to:

- Recognize clerical error or mistake of fact as negating export penalties

Amend 19 USC § 1307 to:

- Provide for the exchange of information and advance notice of forced labor

Amend 19 USC § 1671 and 1673 to:

- Impose AD/CVD on a prospective basis only

Trade Opportunity 1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC § 1321, 1484, 1498, 1629 & XXXX

Challenge: Because CBP has indicated it lacks a complete data picture until goods arrive or are close to arriving at the border, which poses security risks, it has proposed that parties upstream in the supply chain provide advance documentation or information. However, delays and costs will continue if unnecessary, duplicative and even expanded data requirements persist. To reflect a modernized clearance process, CBP must recognize pre-departure and pre-arrival clearance and in doing so cargo release should be presumptive except in cases of where goods previously released pose imminent health, safety or security threats.

To enhance accountability and security, CBP should allow merchandise shipped from U.S. foreign trade zones to qualify for section 321 de minimis duty free treatment instead of encouraging fulfillment abroad outside of customs control and custody.

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 U.S.C. §1401 – Definitions – Add a new definitions to encompass facilitative data transmissions

The term “facilitative transmission” means data and information relating to an importation that is electronically transmitted to CBP prior to entry by a designated entity, including parties other than the importer of record, a customs broker, or a carrier. The facilitative transmission may be used for any lawful purpose by CBP and other U.S. government agencies directly involved in determining the admissibility of the importation. A facilitative transmission shall not constitute customs business and shall include data and information that is reasonably reliable.

Where a facilitative transmission is adopted and authorized by an importer of record and results in an entry, that entry shall be considered a “certified facilitated entry.”

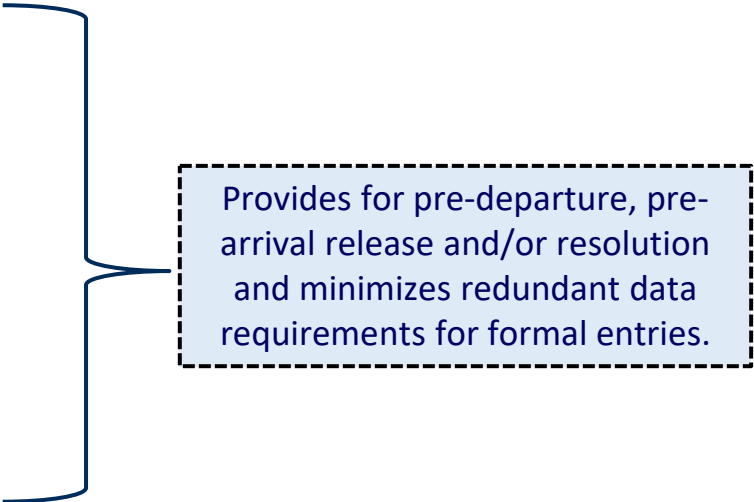
An entity other than an importer of record, a customs broker, or a carrier, that electronically transmits data and information relating to an importation to CBP prior to entry shall be referred to as a “Facilitative Party.”

Provides for progressive data submission concept in statute.

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC 1484 (a)(2)(C)

The Secretary shall promulgate regulations to account for advance documentation or information available in the pre-departure or pre-arrival environment, where practicable, providing earlier release indications for the merchandise and, if additional information is required, providing the opportunity for resolution prior to departure or arrival. Where shipment information provided pursuant to this section and transportation information provided pursuant to sections 1415 or 1431 is redundant with legal requirements, regulations shall, where practicable, provide for the dual use of such information to streamline data submissions.



1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 U.S.C. §1484(a)(2)(D):

Where a facilitative transmission of data or information relating to an importation is electronically transmitted to CBP prior to entry, that facilitative transmission may be used for any lawful purpose by CBP and other U.S. government agencies directly involved in determining the admissibility of the importation. Where a facilitative transmission is adopted and authorized by an importer of record and results in an entry, that entry shall be considered a “certified facilitated entry.” Importers of record authorizing certified facilitated entries shall be presumed to have exercised reasonable care.

Provides for progressive data submission concept in statute.

19 U.S.C. §1484(a)(2)(CE) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. [...]

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC 1321(c)

(3) The Secretary shall promulgate regulations to account for advance documentation or information available in the pre-departure or pre-arrival environment, where practicable, providing earlier release indications for the merchandise and, if additional information is required, providing the opportunity for resolution prior to departure or arrival. Where shipment information provided pursuant to this section and transportation information provided pursuant to sections 1415 or 1431 is redundant with legal requirements, regulations shall, where practicable, provide for the dual use of such information to streamline data submissions.

Provides for pre-departure, pre-arrival release and/or resolution and minimizes redundant data requirements for de minimis informal entries.

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC 1484(c) Release of merchandise

U.S. Customs and Border Protection (CBP) ~~Customs Service may~~ shall permit the entry and release of merchandise from customs custody ~~in accordance with~~ **unless such regulations as that the Secretary prescribes call for the recall of such merchandise due to an imminent health, safety, or security threat. The Government shall bear the burden of proof in reasonably demonstrating such imminent threat in assessing and sustaining liquidated damages claims, penalties, seizures or other enforcement claims for the failure of a party to comply with such recall.** No officer of **CBP ~~the Customs Service~~** shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

Provides for release of merchandise unless recalled due to imminent threat.

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC § 1629

(a) IN GENERAL

When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise, **including personal effects as well as commercial cargo**, prior to their arrival in, or subsequent to their exit from, the United States.

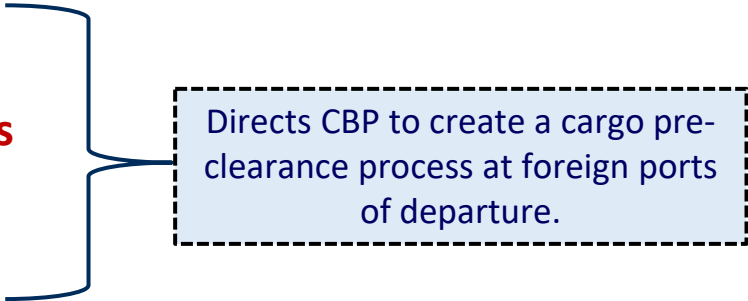
(b) Functions and duties ...

(c) Seizures ...

(d) Stationing of foreign customs and agriculture inspection officers in the United States...

(e) CARGO RELEASE

Where advance documentation or information is made available in the pre-departure environment in foreign countries, where practicable, CBP may provide release indications for the merchandise, regardless as to whether an authorized treaty or executive agreement exists, or CBP officers are stationed abroad.



Directs CBP to create a cargo pre-clearance process at foreign ports of departure.

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 USC 1321(a)(2)(C)

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed an amount specified by the Secretary by regulation, but not less than—

(C) \$800 in any other case. **For such merchandise, the Secretary shall promulgate regulations providing de minimis eligibility for products entered into the commerce of the United States from a U.S. based FTZ subject to a process to promote de minimis entry eligibility.**



1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 U.S.C. XXXX

In developing regulations pursuant to Sections 1484, 1498 and 1321, the Secretary shall adhere to the following:

1. Principles:

- (A) Regulations should be justified for the need CBP specifically identifies, and not simply data for the sake of having more data;
- (B) Adopted and/or applied with a view to a rapid release and clearance of goods;
- (C) Adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- (D) Obtaining any new data from the “right” party, i.e., the party most likely to obtain the data in the ordinary course of its business, in accordance with the Trade Act standard, at the “right” time;
- (E) The least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- (F) Regulations should not be maintained, including parts thereof, if no longer required; and

Creates framework to ensure proper justification of any incremental data

1.1 - Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security

19 U.S.C. XXXX continued...

2. Parameters:

- (A) The Secretary shall solicit comments from and consult with a broad range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties.
- (B) In general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. Where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true.
- (C) The Secretary shall take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed.
- (D) Where the regulations impose requirements on carriers of cargo, they shall take into account differences among different modes of transportation, including differences in commercial practices, operational characteristics, and technological capacity to collect and transmit information electronically.
- (E) The regulations shall take into account the extent to which the technology necessary for parties to transmit and U.S. Customs and Border Protection to receive and analyze data in a timely fashion is available. To the extent that the Secretary determines that the necessary technology will not be widely available to particular modes of transportation or other affected parties until after promulgation of the regulations, the regulations shall provide interim requirements appropriate for the technology that is available at the time of promulgation.
- (F) In determining the timing for transmittal of any information, the Secretary shall balance likely impact on flow of commerce with impact on targeting. With respect to requirements that may be imposed on carriers of cargo, the timing for transmittal of information shall take into account differences among different modes of transportation, as described in subparagraph (D).
- (G) Where practicable, the regulations shall avoid imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law.
- (H) The Secretary shall determine whether it is appropriate to provide transition periods between promulgation of the regulations and the effective date of the regulations and shall prescribe such transition periods in the regulations, as appropriate.
- (I) The Secretary shall prescribe regulations requiring the United States Postal Service to transmit the information described in this section to the Commissioner of U.S. Customs and Border Protection for international mail shipments by the Postal Service (including shipments to the Postal Service from foreign postal operators that are transported by private carrier).

Defines parameters and conditions to be met to support collection of incremental data

Trade Opportunity 1.2 – Protecting Confidential Business Information

19 USC § 1415, 1431

Challenge: Advance electronic information by way of Importer Security Filings and Air Cargo Advance Screening as well as cargo manifest data, continue to play a critical role in monitoring security as well as compliance risks. However, data breaches threatening these very objectives have become more commonplace, severe and consequential.


Meanwhile, vessel manifest data does not enjoy the same confidentiality as manifest data for air, truck or rail and the manifest confidentiality database is so particular that even the slightest variation in a party's name causes the release of data thought previously to have been fully protected.

Reporting of advance electronic information data breaches and confidentiality of vessel manifest data will remedy these mounting concerns.

1.2 - Protecting Confidential Business Information

19 USC 1415(a)(3)(G)

The regulations shall protect the privacy of business proprietary and any other confidential cargo information provided to the Customs **& Border Protection Service** pursuant to such regulations, except for the manifest information collected pursuant to section 431 of the Tariff Act of 1930 [19 U.S.C. 1431] and required to be available for public disclosure pursuant to section 431(c) of such Act. **In order to maintain confidentiality, regulations shall provide for notification to the party providing such data when Customs & Border Protection has knowledge that such data has been breached.**



Provides that CBP, with knowledge, will provide notification of data breaches.

1.2 - Protecting Confidential Business Information

19 USC § 1431

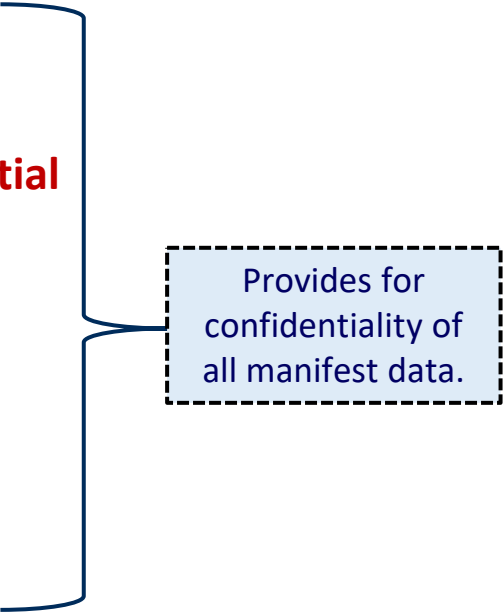
(c) ~~Public disclosure of certain~~ Confidentiality of manifest information

(1) ~~Except as provided in subparagraph (2), All the following~~ information, when contained in a vessel, ~~or~~ aircraft manifest, ~~or vehicle~~ shall be **considered confidential and not** available for public disclosure

(1)(A) – (H) Delete

(2) Delete

(3) Delete



Trade Opportunity 1.3 – Enhancing Trusted Trader Program Benefits and Funding

19 USC § 58c, 4317(a)

Challenge: Over the years, the CTPAT program has grappled with identifying sufficient benefits to incentivize trusted partners, especially importers that are validated under both the CTPAT security and trade compliance (formerly ISA) programs.

It follows that CBP should expend less resources in processing such accounts. Accordingly, CBP should provide such trusted partners with a quantifiable, financial benefit through MPF reductions.

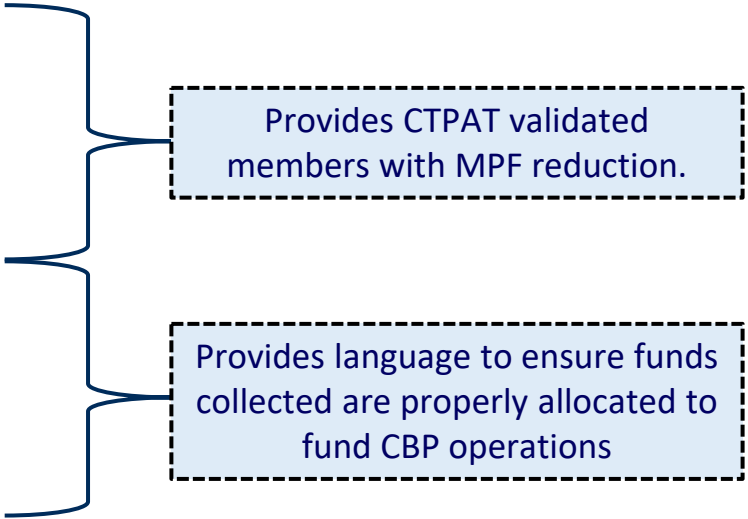
Additionally, CBP Centers of Excellence increasingly play a critical role in post entry processing and adjudication; however, they have not yet realized their full potential. While the Centers have enhanced post entry and, in some cases, pre-entry, communication particularly in cases of cargo holds or delays, costly admissibility issues persist and have grown due to forced labor. This warrants enhanced Center intervention, particularly in the case of trusted partners.

1.3 – Enhancing Trusted Trader Program Benefits and Funding

19 USC 58c(b)(9)(B)

(iii) The Secretary of Treasury shall reduce the ad valorem rate for validated members of the Customs Trade Partnership Against Terrorism (CTPAT) program(s) and other related security and/or trusted trader certified operator programs as determined by U.S. Customs & Border Protection (CBP).

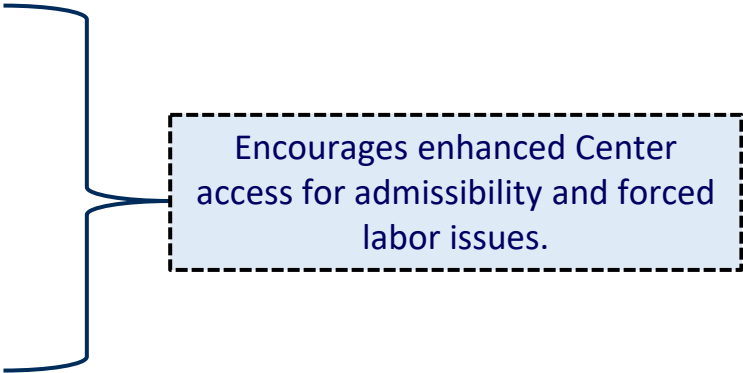
iv) Such fees shall be allocated to U.S. Customs & Border Protection (CBP) for the purpose of maintaining and enhancing operations, including automation, necessary to ensure trade facilitation and enforcement.



1.3 – Enhancing Trusted Trader Program Benefits and Funding

19 USC 4317(a)

(10) whenever feasible, provide an importer of record, validated under the Customs-Trade Partnership Against Terrorism (CTPAT) program(s) and other trusted trader certified operator programs as determined by U.S. Customs & Border Protection (CBP), access to import and entry specialists on an industry-specific basis to support streamlining post entry and clearance procedures impacted by admissibility issues including forced labor.



Trade Opportunity 2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC § 1411, 4311

Challenge: In its current form, the vision articulated in the Customs Modernization Act and Trade Facilitation and Trade Enforcement Act to coalesce the cross-border administration of the nearly fifty (50) partner government agencies (PGAs) through a true 1USG at the Border has not been realized. While some PGAs have enhanced connectivity to the import and export process withing the ACE system for others it is limited or even non-existent.

Traders remain confounded by inconsistent and non-uniform “hold” and “release” messaging only to find disparities between how the PGAs interpret such terms. Further, critical definitions for parties to, and actions within, the supply chain are incongruent.

While the TFTEA mandated PGA benefits through partnership programs this, too, has yet to be realized. While PGAs should be encouraged to implement their independent programs, CTPAT provides the optimal platform for the PGAs to solicit and vet supply chain security and compliance information from importers and exporters and grant them appropriate facilitative benefits.

The Border Interagency Executive Council (“BIEC”) established by Executive Order 13659 is a step in the right direction but must have a statutory mandate to be poised to successfully enhance 1USG clearance and admissibility process.

2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC 1411(e)

(e) Border Interagency Executive Council

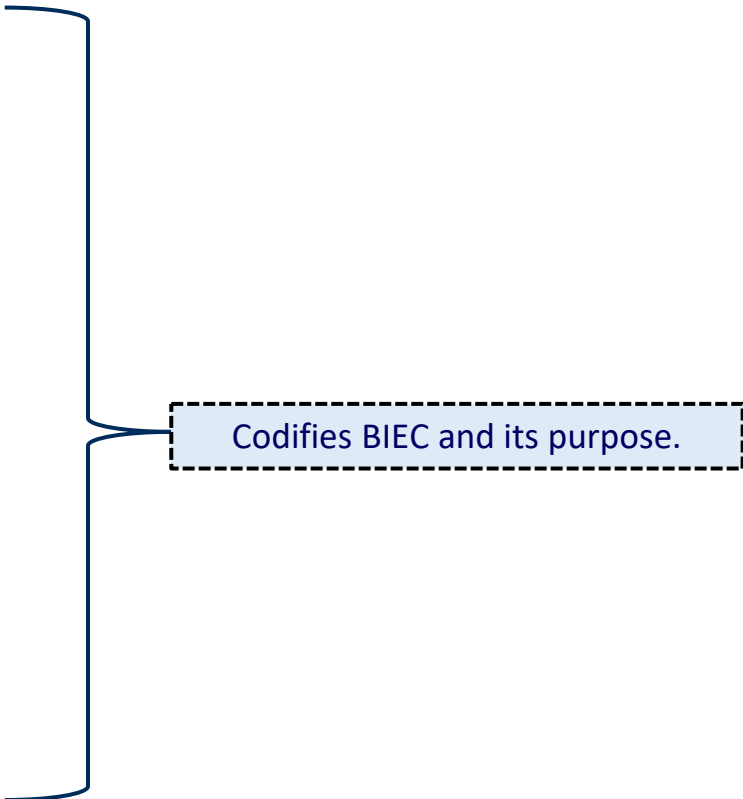
(1) Establishment

(A) In general

The Secretary of Homeland Security (in this subsection, referred to as the “Secretary” shall oversee the “Border Interagency Executive Council” (BIEC) to protect our national security, public health and safety, the environment, and natural resources.

(B) Purpose

The purpose of the BIEC is to develop policies and processes to enhance coordination across customs, transport security, health and safety, sanitary, conservation, trade, and phytosanitary agencies with border management authorities and responsibilities to measurably improve supply chain processes and improve identification of illicit shipments.



2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC 1411(e) *continued...*

(C) Participation

(i) In general

In addition to the Chair and Vice Chair, the BIEC shall include designated senior-level representatives from agencies that provide approval before goods can be imported and/or exported, including the Departments of State, the Treasury, Defense, the Interior, Agriculture, Commerce, Health and Human Services, Transportation, and Homeland Security, the Environmental Protection Agency, and other agencies with border management interests or authorities, as determined by the Chair and Vice Chair. The BIEC shall also include appropriate representatives from the Executive Office of the President.

ii) Waiver

The Secretary of Homeland Security may waive, in whole or in part, the requirement for participation for any Federal agency based on the vital national interest of the United States.

(i) Leadership

The BIEC shall be chaired by the Secretary of Homeland Security or a senior-level designee from the Department. The BIEC shall also have a Vice Chair, selected every two (2) years from among the members of the BIEC by a process determined by the members.

Codifies BIEC participation and leadership.

2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC 1411(e) *continued...*

(2) Functions

The BIEC shall:

- (A) develop common risk management principles and methods to inform agency operations associated with the review and release of cargo at the border and encourage compliance with applicable law;
- (B) develop policies and processes to orchestrate, improve, and accelerate agency review of electronic trade data transmitted through relevant systems and provide coordinated and streamlined responses back to users to facilitate trade and support and advance compliance with applicable laws and international agreements, including (in coordination with, and as recommendations to, the Board) policies and processes designed to assist the Secretary of the Treasury, as appropriate, with activities related to the ITDS;
- (C) identify opportunities to streamline Federal Government systems and reduce costs through the elimination of redundant capabilities or through enhanced utilization of the Automated Commercial Environment capabilities as a means of improving supply chain management processes;
- (D) incorporate whole of Government trade processing capabilities, including cargo manifest, collection of advance import and export data, uniform 1USG cargo admissibility and release, entry summary, and cargo financial data, into the Automated Commercial Environment (“ACE”) to conform with the admissibility criteria of all participating agencies;
- (E) enhance uniformity, consistency and transparency, by developing a standard identifier and nomenclature, across and within the participating agencies for: a) parties (i.e., manufacturer, supplier, shipper, seller, exporter, buyer, purchaser, importer, consignee) and b) events (i.e., date of export, import, arrival, clearance, release, entry);

Codifies BIEC functions per Executive Order and expands upon them.

2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC 1411(e)(2) *continued...*

- (F) assess, in collaboration with the Board, the business need, feasibility, and potential benefits of developing or encouraging the private-sector development of scalable, uniform web-based interfaces and platforms to electronic data systems, including the ITDS, for individuals and small businesses;
- (G) engage with and consider the advice of industry and other relevant stakeholders including the Commercial Operations Advisory Committee and Trade Support Network regarding opportunities to improve supply chain management processes, with the goal of promoting economic competitiveness through enhanced trade facilitation and enforcement;
- (H) encourage other countries to develop similar single window systems to facilitate the sharing of relevant data, as appropriate, across governmental systems and with trading partners;
- (I) assess, in consultation with the Department of the Treasury, opportunities to facilitate electronic payment of duties, taxes, fees, and charges due at importation; and
- (J) ensure that each agency (i) develops and maintains the necessary information technology infrastructure to support the operation of the ITDS/ACE and to submit all data to the ITDS/ ACE electronically and (ii) enters into a memorandum of understanding, or takes such other action as is necessary, to provide for the information sharing between the agency and U.S. Customs and Border Protection necessary for the operation and maintenance of the ITDS.

Codifies BIEC functions per Executive Order and expands upon them.

2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC 1411(e) *continued...*

(3) Delegated Authority

Agency operations associated with the review and release of cargo at the border shall maintain adequate resources to carry out risk management, inspection, and release activities. In the absence of adequate resources, the agency authority shall be delegated to CBP to execute on their behalf.



(4) Authorization of Appropriations

Appropriations are authorized to carry out improvements in a uniform 1USG single window cargo admissibility, release and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System \$xxx for each of fiscal years 2023 through 2027.



2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC § 4311 Improving partnership programs

(b) Elements

- (4) coordinate with the ~~Director of U.S. Immigration and Customs Enforcement~~ Secretary, Department of Homeland Security, and other Federal agencies with authority to detain and release merchandise entering the United States—
- (A) to ensure coordination in the release of such merchandise through the Automated Commercial Environment or its predecessor, and the International Trade Data System **and Border Interagency Executive Council** established under section 1411(d) **and (e)** of this title;
- (B) to ensure ~~that the partnership programs of those agencies are compatible with the partnership programs of U.S. Customs and Border Protection~~ each Federal agency with such authority develop CTPAT minimum security and compliance criteria with respect to their agency.
- (C) to ensure that **any additional** partnership programs of those agencies are compatible with the partnership programs of U.S. Customs and Border Protection;
- (D) to develop criteria for authorizing the release, on an expedited basis, of merchandise for which documentation is required from one or more of those agencies to clear or license the merchandise for entry into the United States; and
- (E) to create pathways, within and among the appropriate Federal agencies, for qualified persons that demonstrate the highest levels of compliance with the customs and trade laws of the United States to receive immediate clearance absent information that a transaction may pose a national security or compliance threat; and
- (5) ensure that trade benefits are provided to participants in partnership programs, **to include facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other benefits that CBP and the agencies develop in collaboration with the Commercial Customs Advisory Council (COAC) under section 4316 of this title.**

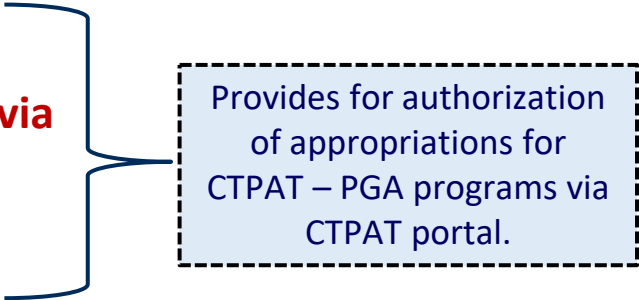
Provides for development of PGA CTPAT programs with benefits.

2 - Realizing a True 1USG through Uniform Processes & Partnership

19 USC § 4311

(d) Authorization of Appropriations

Appropriations are authorized to carry out a government-wide CTPAT – PGA program via the CBP CTPAT portal \$xxx for each of fiscal years 2023 through 2027.



Trade Opportunity 3 - Export Modernization that Supports Economic Security

13 USC § 304, 305

Challenge: A comprehensive trade framework must also encompass export modernization that supports economic security. As should be the case for imports, clearance delays and data redundancy that increase costs must be minimized. Shipment and transportation documentation and information available in the pre-departure environment should be leveraged to streamline such processes.

Additionally, as was the case in the Customs Modernization Act for imports, export filing laws must recognize demonstrated clerical errors and mistakes of facts as a defense to penalties, unless part of a pattern of violative conduct. The trade and CBP unnecessarily expend resources adjudicating such cases because the export laws do not recognize such actions as non-violative as they do for imports.

3 - Export Modernization that Supports Economic Security

13 USC § 304

(d) The Secretary shall develop regulations to account for advance documentation or information available in the pre-departure environment. Where shipment and transportation information provided pursuant to this section and to 19 USC 1431 is redundant with legal requirements, regulations shall, where practicable, provide for the dual use of such information to streamline data submissions.




3 - Export Modernization that Supports Economic Security

13 USC § 305

(b) Civil Penalties

(1) PENALTY AMOUNT- The Secretary (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

(2) EXCEPTION - Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of violative conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of violative conduct.



Recognizes clerical errors or mistakes of facts may not constitute violations.

Trade Opportunity 4 - Exercise Practical, Responsible, Transparent Duty Collection & Enforcement

19 USC § 1307, 1671, 1673

Challenge: Today's laws do not provide for practical, responsible and transparent duty collection and enforcement particularly concerning AD/CVD collection and forced labor admissibility.

Regarding forced labor, a March 2021 GAO report provided that CBP should strengthen trade enforcement, particularly noting CBP's communication with other federal agencies and non-federal stakeholders lacks transparency. Providing traders, particularly trusted partners, with enhanced and, where practicable, advanced communication regarding forced labor will minimize response times to exclusions, detentions and seizures and consequently port costs and congestion. Many traders intending to fully comply with forced labor prohibitions continue remain challenged by the current lack of information flow.

Regarding AD/CVD, an August 2016 GAO report estimated that about \$2.3 billion in AD/CVD duties owed to the U.S. went uncollected between 2001-2014. This largely is due to the unique retrospective U.S. system where importers are expected to pay exorbitant increases to estimated AD/CVD deposits paid months if not years earlier. The result: companies simply dissolve and/or CBP issues collection actions that remain unresolved. If appropriately implemented, a prospective AD/CVD system can adequately protect domestic industry, while forcing importers to find alternative sources, allowing CBP to utilize its resources more productively and effectively.

4 - Exercise Practical, Responsible, Transparent Duty Collection & Enforcement

19 USC § 1307

- (a) **GENERAL** - All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.
- (b) **EXCHANGE OF INFORMATION** - The Secretary shall issue regulations providing for the sharing of information or data with the importer of record where it has reason to believe merchandise is made with forced labor to assist in eradicating such practices from supply chains.
- (c) **ADVANCE NOTIFICATION** – The Secretary shall issue regulations providing for advance notification to an importer of record, validated under the Customs-Trade Partnership Against Terrorism and other trusted trader certified operator programs as determined by U.S. Customs & Border Protection (CBP), of detentions, exclusions, seizures or other enforcement actions prior to arrival to assist importers to adequately respond with evidence required to support admissibility.
- (d) **DEFINTION** - “Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.

Directs CBP to share data with importers to help eradicate and address forced labor and provides for notice of detention to streamline review.

4 - Exercise Practical, Responsible, Transparent Duty Collection & Enforcement

19 USC 1671 Countervailing duties imposed

(a)GENERAL RULE

If—

- (1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and
- (2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that-
 - (A) an industry in the United States-
 - (i) is materially injured, or
 - (ii) is threatened with material injury, or
 - (B) the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed, **prospectively**, upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.




Directs CBP and Commerce to impose countervailing duties prospectively.

4 - Exercise Practical, Responsible, Transparent Duty Collection & Enforcement

19 USC 1673 Antidumping duties imposed

If-

- (1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and
- (2) the Commission determines that-
 - (A) an industry in the United States-
 - (i) is materially injured, or
 - (ii) is threatened with material injury, or
 - (B) the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed, **prospectively**, upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.



Directs CBP and Commerce to impose antidumping duties prospectively.

21st Century Customs Framework – Trade Opportunities

Consolidated Legislative Discussion – Facilitation Provisions
October 2022