

The Customs Facilitation and Trade Enforcement Reauthorization Act of 2009

Section-by-Section Analysis of S. 1631

SECTION 1: SHORT TITLE.

Section 1 entitles the bill the “Customs Facilitation and Trade Enforcement Reauthorization Act of 2009” (Act).

SECTION 2: DEFINITIONS

Section 2 defines key terms in the Act.

TITLE I – CUSTOMS FACILITATION

Subtitle A – Functions Other Than Investigative Functions

SECTION 101: ESTABLISHMENT OF AGENCY; COMMISSIONER

Section 101(a) amends section 1 of the Act of March 3, 1927 to include the following provisions:

Section 1(a) establishes within the Department of Homeland Security (DHS) the U.S. Customs and Border Protection Agency (CBP).

Section 1(b) provides that CBP shall be led by a Commissioner of U.S. Customs and Border Protection (Commissioner), who shall be appointed by the President and confirmed by the Senate. The Commissioner is required to carry out the duties prescribed in the Act and will report directly to the Secretary of Homeland Security (Secretary).

Section 1(c) requires the Commissioner to carry out certain duties, including: (1) carrying out the duties prescribed by law or assigned by the Secretary; (2) directing the administration of CBP’s commercial and noncommercial operations; and (3) safeguarding U.S. economic and security interests. CBP’s commercial operations include: (1) administering customs revenue functions delegated by the Secretary of Treasury to the Secretary; (2) undertaking CBP’s efforts to facilitate legitimate trade and enforce U.S. customs and trade laws; (3) coordinating all DHS efforts, including cooperative efforts with other Federal agencies and foreign customs authorities, to facilitate trade and enforce U.S. customs and trade laws; (4) collecting, assessing, and disseminating information regarding U.S. imports to ensure compliance with U.S. laws; and (5) considering the views of the private sector on CBP’s trade facilitation and enforcement efforts.

Section 1(d) sets the compensation level for the Commissioner.

Section 1(e) provides that the Principal Deputy Commissioner shall act as Commissioner if a Commissioner is absent or disabled.

Section 101(b) amends section 3 of the Act of March 3, 1927 to include the following provisions:

Section 3(a) transfers the functions, assets, personnel, and liabilities of the U.S. Customs Service to CBP and repeals section 411 of the Homeland Security Act of 2002 (HSA), which establishes the U.S. Customs Service.

Section 3(b) provides that the person serving as Commissioner of Customs on the day before the enactment of this Act may continue to serve as the Commissioner until the person is no longer eligible to do so or the Senate confirms a new Commissioner.

Sections 3(c) and 3(d) set forth conforming amendments to title 5 of the U.S. Code and the HSA.

SECTION 102: OFFICERS AND EMPLOYEES

Section 102(a) strikes section 2 of the Act of March 3, 1927 and inserts the following provisions:

Section 2(a) establishes a Principal Deputy Commissioner in CBP who is appointed by the President and confirmed by the Senate. The nomination of the Principal Deputy Commissioner shall be referred to the Senate Finance Committee as an exercise of the rulemaking power of the Senate. The duties of the Principal Deputy Commissioner include: (1) overseeing CBP's commercial operations, including the Office of Trade; (2) coordinating customs facilitation and trade enforcement training programs for CBP personnel; (3) overseeing development and implementation of CBP's information technology; (4) overseeing CBP's customs revenue functions; (5) overseeing CBP's public communication efforts; and (6) overseeing CBP's human resource operations.

Section 2(b) establishes a CBP Deputy Commissioner, whose duties include overseeing: (1) CBP's security operations; (2) the non-commercial analysis and dissemination of information collected by CBP; and (3) CBP's enforcement of laws other than U.S. customs and trade laws.

Section 2(c) authorizes the Secretary to appoint personnel as necessary to manage CBP offices.

Section 102(b) amends Act of March 3, 1927 to insert the following provisions:

Section 4(a) establishes within CBP an Office of Trade that is headed by an Assistant Commissioner.

Section 4(b) requires the Secretary to transfer within thirty days the assets, functions, personnel, and liabilities of the Office of International Trade, and to transfer within ninety days the assets, functions, personnel, and liabilities of the Office of International Affairs to the Office of Trade. The Act eliminates the Office of International Trade established pursuant to section 402 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) and the Office of International Affairs. Neither CBP nor DHS may use appropriated funds to transfer the Offices of International Trade or International Affairs to an office other than the Office of Trade.

Section 4(c) requires the Commissioner to appoint an Assistant Commissioner to be the head of the Office of Trade. The Assistant Commissioner reports directly to the Principal Deputy Commissioner and must have at least ten years of professional experience in the operation of U.S. customs and trade laws, with at least five years in non-Federal service. The Assistant Commissioner must carry out duties including: (1) directing CBP's development and implementation of rules and regulations relating to customs and trade laws administered by CBP; (2) advising the Commissioner on the trade impact of proposed CBP programs or regulations; (3) defining priority trade issues as required under the Joint Strategic Report and advising the Commissioner on the development and implementation of the Joint Strategic Plan; (4) directing CBP's commercial targeting and compliance activities; (5) overseeing CBP's trade modernization activities; (6) advising the Commissioner on matters arising from the World Customs Organization; and (7) preparing an annual report on changes to CBP's customs regulations, practices, and procedures.

Section 4(d) requires the Commissioner to appoint a Trade Advocate who reports directly to the Assistant Commissioner for the Office of Trade. The Trade Advocate's duties include: (1) serving as the primary liaison between CBP, the private sector, the Office of Trade, and the Office of Field Operations regarding CBP's customs facilitation and trade enforcement efforts; (2) consulting with the private sector on CBP's customs facilitation and trade enforcement efforts; and (3) advising the Commissioner on the Trade Advocate's consultations with the private sector. Within thirty days of enactment of this Act, the Secretary must transfer the assets, personnel, functions, and liabilities of the Office of Trade Relations to the Office of Trade, and at that time the Office of Trade Relations will be abolished. Neither CBP nor DHS may use appropriated funds to transfer the Office of Trade Relations to an office other than the Office of Trade.

Section 5(a) establishes within CBP's Office of Field Operations (OFO) a Customs Facilitation and Trade Enforcement Division.

Section 5(b) provides that the Commissioner shall appoint a Deputy Assistant Commissioner to head the Customs Facilitation and Trade Enforcement Division.

Section 5(c) requires the Deputy Assistant Commissioner to carry out duties including: (1) overseeing CBP's customs facilitation and trade enforcement activities at ports of entry, including by coordinating with the Office of Trade; (2) training OFO personnel at ports of entry to facilitate trade and enforce U.S. customs and trade laws, and evaluating their effectiveness at carrying out such duties; (3) consulting with the Trade Advocate; (5) implementing the Joint Strategic Plan at ports of entry; and (6) ensuring the collection of data regarding cargo that violates U.S. customs and trade laws.

Section 5(d) requires the Commissioner to assign (1) not less than five staff to operate OFO's Customs Facilitation and Trade Enforcement Division; and (2) not less than forty Commercial Enforcement Officers to supervise all trade enforcement activities at the forty busiest ports of entry, coordinate trade enforcement activities at such ports of entry with CBP's Office of Trade, and direct the trade enforcement training of personnel at such ports of entry.

Section 5(e) authorizes such sums as are necessary to carry out the provisions of section 5.

Section 6(a) establishes an interagency Customs Review Board.

Section 6(b) requires that the Customs Review Board be co-chaired by the Commissioner and Assistant Secretary of Treasury for Tax Policy. The Board shall also include officials from DHS, the Department of Commerce, and the Office of the U.S. Trade Representative.

Section 6(c) requires the Customs Review Board to review any proposed changes to a customs regulation, interpretation, or practice before CBP may publicly propose or adopt such change to ensure the change complies with U.S. international trade obligations.

Section 102(c) sets forth conforming amendments to title 5 of the U.S. Code.

SECTION 103: SEPARATE BUDGET FOR U.S. CUSTOMS AND BORDER PROTECTION AGENCY

Section 103(a) requires the President to submit separate budget requests for CBP's commercial and non-commercial operations.

Section 103(b) repeals section 414 of the HSA, which requires the President to submit a separate budget request for the U.S. Customs Service.

SECTION 104: REVOLVING FUND

Section 104 makes conforming amendments to the Treasury and Post Office Departments Appropriation Act of 1950.

SECTION 105: ADVANCES IN FOREIGN COUNTRIES

Section 105 makes a conforming amendment to section 1 of the Act of May 6, 1939 (19 U.S.C. 2076).

SECTION 106: ADVANCES FOR ENFORCEMENT OF CUSTOMS PROVISIONS

SECTION 107: CERTIFICATION OF REASON FOR ADVANCE

SECTION 108: PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR REIMBURSEMENT

Sections 106, 107, and 108 make conforming amendments to sections 2, 3, and 4, respectively, of the Act of August 7, 1939 (19 U.S.C. 2078).

SECTION 109: CUSTOMS ADMINISTRATION

Section 109 amends section 113 of the Customs and Trade Act of 1990 as follows:

Section 113(a) requires the Commissioner and Director of U.S. Immigration and Customs Enforcement (ICE) to develop and implement accounting systems and a periodic labor distribution survey to evaluate and report on the allocation and costs of personnel and other resources within CBP and ICE.

Section 113(b) requires the Commissioner and Director to submit to Congress a report on the first labor distribution survey required under this section.

SECTION 110: PERSONNEL

Section 110(a) amends Section 401(a) of the SAFE Port Act as follows:

Section 401(a) creates a Director of Trade Policy within DHS's Office of Policy and Planning. The Director of Trade Policy must coordinate with the Commissioner to ensure international trade interests are considered when DHS develops and implements policies and report to Congress how DHS considered such interests when developing or implementing its policies. The Director of Trade Policy must have significant U.S. trade policy experience.

Section 110(b) amends section 412 of the HSA as follows:

Section 412(c) requires the Secretary of Treasury, not later than ninety days after enactment of this Act, to dedicate not less than five staff to work with the Assistant Secretary of Treasury for Tax Policy to oversee customs revenue functions.

SECTION 111: AUTHORIZATION OF APPROPRIATIONS

Section 111(a) amends section 301 of the Customs Procedural Reform and Simplification Act of 1978 as follows:

Section 301(a) authorizes appropriations to DHS for CBP and provides that any future authorizations shall specify the amounts authorized for commercial and non-commercial operations.

Section 301(b) authorizes for CBP's commercial operations such sums as are necessary for the salaries and expenses of the Agency for fiscal years 2010, 2011, and 2012.

Section 301(c) provides that monies appropriated for CBP's commercial operations shall be appropriated from the Customs User Fee Account.

Section 301(d) provides that no funds may be used to provide importers less than ten days to pay estimated duties owed.

Section 301(e) caps overtime pay for CBP employees at \$35,000 per year unless the Secretary determines it is necessary to waive the cap for national security purposes, to prevent excessive costs, or to meet CBP's emergency requirements.

Section 301(f) authorizes to DHS appropriations to provide salary increases in accordance with the Federal Pay Comparability Act of 1970.

Section 301(g) requires the Commissioner to use any savings in salaries and expenses that result from consolidation of administrative functions to strengthen commercial operations by increasing the number of personnel dedicated to customs revenue functions.

Section 301(h) requires the Commissioner to notify the Senate Finance and House Ways and Means Committees at least 180 days before taking any action that would (1) significantly reduce the number of CBP employees, or the number of hours of operation or services provided at any CBP office or U.S. port; (2) eliminate or relocate any CBP office; or (3) eliminate any U.S. port of entry.

Section 111(b) renames the Resource Allocation Model in section 301 of the Customs Procedural Reform and Simplification Act of 1978 as the Resource Optimization Model.

Section 111(c) makes conforming amendments to section 5(c) of the Act of February 13, 1911 (19 U.S.C. 267(c)).

Subtitle B – Investigative Functions

SECTION 121: ESTABLISHMENT OF AGENCY

Section 121(a) amends section 442 of the HSA as follows:

Section 442(a) establishes the U.S. Immigration and Customs Enforcement Agency (ICE) within DHS.

Section 442(b) requires the President to appoint a Director as the head of ICE, who shall be confirmed by the Senate, report directly to the Deputy Secretary, carry out the duties prescribed by law and the Secretary, advise the Secretary with regard to any ICE policy that may affect U.S. Citizenship and Immigration Services, and have at least five years of professional law enforcement experience as well as at least five years of management experience. As an exercise of the rulemaking power of the Senate, the Director's nomination shall be referred to the Finance Committee. If the Finance Committee has not reported out the nomination within thirty days, the nomination shall be automatically discharged and referred to the Judiciary Committee.

Section 442(c) specifies the duties of the Director, which include: (1) performing the functions transferred to the Under Secretary for Border and Transportation Security by section 441 of the HSA, or otherwise vested in the Assistant Secretary of the Bureau of Border Security by law; (2) advising the Secretary regarding any ICE policies that may affect U.S. Citizenship and Immigration Services; (3) conducting investigations of violations of U.S. customs and trade laws; and (4) coordinating with the CBP Commissioner on the development and implementation of the Joint Strategic Plan required under section 131 of the Act.

Section 442(d) authorizes the Secretary to appoint a Deputy Director of ICE.

Section 442(e) authorizes the Secretary to designate an ICE officer as Director or Deputy Director during the absence or disability of the Director or Deputy Director.

Section 442(f) authorizes the Secretary to appoint personnel as necessary to manage the individual offices within ICE.

Section 442(g) requires ICE personnel to conduct investigations to enforce U.S. customs and trade laws, and to perform other duties prescribed by law or the Secretary.

Section 442(h) requires the Director to administer the program to collect exchange student information described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and to use such information to carry out ICE's enforcement functions.

Section 442(i) creates a Chief of Policy and Strategy within ICE, who shall be responsible for making policy recommendations and performing policy research and analysis on immigration enforcement issues, and coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

Section 442(j) creates a principal legal advisor to the Director, who shall represent ICE in all proceedings before the Executive Office for Immigration Review.

Section 121(b) makes conforming amendments to title 5 of the U.S. Code and provides that the individual currently serving as the Assistant Secretary of Immigration and Customs Enforcement may serve as the Director of ICE until the individual is no longer eligible to serve or the Senate confirms a new ICE Director.

Section 121(c) makes conforming amendments to subtitle D of title IV of the HSA.

SECTION 122: SEPARATE BUDGET FOR U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY

Section 122 requires the President to submit separate budget requests for the customs and non-customs operations of ICE.

SECTION 123: UNDERCOVER INVESTIGATIVE OPERATIONS

Section 123 amends section 3131 of the Customs Enforcement Act of 1986 as follows:

Section 3131(a) authorizes necessary appropriations for ICE to do the following when conducting undercover investigations: (1) purchase or lease property within the United States; (2) establish, acquire, or operate corporations or business entities; (3) deposit appropriated funds in financial institutions; and (4) use the proceeds from undercover operations to offset expenses incurred in such operations.

Section 3131(b) requires the Director to report in advance to the Secretaries of Homeland Security and Treasury when corporations or business entities acquired as part of undercover operations are to be sold or liquidated, and to deposit proceeds from such sale or liquidation in the U.S. Treasury.

Section 3131(c) requires that proceeds from undercover operations be deposited in the U.S. Treasury as long as the proceeds are no longer necessary for the operation.

Section 3131(d) requires the Director to conduct financial audits of each undercover operation, and report to Congress and the Secretaries of Homeland Security and Treasury the results of such audits. The Director must also provide Congress with annual reports detailing the number, by program, of undercover operations begun, pending, or closed in the 1-year period preceding the report.

Section 3131(e) defines key terms used in section 3131(d).

SECTION 124: AUTHORIZATION OF APPROPRIATIONS

Section 124 amends the Customs Procedural Reform and Simplification Act of 1978 by inserting after section 301 the following provisions:

Section 302(a) requires that the authorization of appropriations for ICE shall specify the amount for salaries and expenses to be used in customs and non-customs operations.

Section 302(b) authorizes for the customs operations of ICE such sums as are necessary for fiscal years 2010, 2011, and 2012.

Subtitle C – Joint Strategic Plan

SECTION 131: JOINT STRATEGIC PLAN

Section 131 amends section 123 of the Customs and Trade Act of 1990 to insert the following provisions:

Section 123(a) requires the Commissioner and Director to create and submit to the Senate Finance and House Ways and Means Committees a biennial Joint Strategic Plan.

Section 123(b) requires the Joint Strategic Plan to contain a comprehensive plan for enforcing U.S. customs and trade laws that includes: (1) a summary of action taken to better enforce such laws; (2) a statement of the objectives and plans to further improve enforcement of such laws and trade facilitation; (3) an identification of priority trade issues that pose a specific risk to public health and safety or revenues; (4) a description of efforts to improve consultation and coordination among Federal agencies regarding trade facilitation and the enforcement of U.S. customs and trade laws; (5) a description of existing commercial training efforts and methods to improve such efforts; and (6) an identification of domestic or international best practices to improve trade facilitation or enforcement of U.S. customs and trade laws.

Section 123(c) requires the Commissioner and Director to consult with officials from other Federal agencies, the Commercial Customs Operations Advisory Committee (CCOAC), and the Trade Support Network (TSN) when developing the Joint Strategic Plan. The Commissioner and Director should also seek to consult with appropriate foreign law enforcement officials and international organizations, as well as other private sector entities.

TITLE II –CUSTOMS FACILITATION, TRADE ENFORCEMENT, AND TRANSPARENCY

Subtitle A – Customs Facilitation And Transparency

SECTION 201: TRADE BENEFITS UNDER THE CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM

Section 201(a) requires the Secretary to work with the private sector to develop and implement additional trade benefits for Tier 1, Tier 2, and Tier 3 participants in the Customs-Trade Partnership Against Terrorism (C-TPAT) program.

Section 201(b) specifies that the Secretary must work with the CCOAC, TSN, and Senate Finance and House Ways and Means Committees when developing trade benefits for C-TPAT participants.

Section 201(c) requires the Secretary to submit a report to the Committees no later than December 31, 2010 describing the C-TPAT trade benefits developed and/or implemented, and to submit progress reports on December 31, 2011 and December 31, 2012.

SECTION 202: CUSTOMS FACILITATION PARTNERSHIP PROGRAM

Section 202 amends title IV of the Tariff Act of 1039 by inserting the following provisions:

Section 499A(a) requires the Commissioner to establish a voluntary Customs Facilitation Partnership Program (Partnership Program) that provides benefits to qualifying persons involved in the entry of merchandise into the United States. The benefits are those the Commissioner considers appropriate to facilitate the entry of merchandise into the United States.

Section 499A(b) requires the Commissioner to establish procedures for persons to apply to participate in the Program. The Commissioner must set minimum qualifications for participation in the Program and must consider the person's history of entering merchandise into the United States and the person's history of compliance with U.S. customs and trade laws. The Commissioner must certify that a person qualifies with the Program requirements and verify the information contained in a person's application. The Commissioner must establish procedures for verifying applications, and to the extent practicable, verify the information contained in applications no later than ninety days after receipt.

Section 499A(c) requires the Commissioner to establish a process to (1) reverify participants to ensure the participants continue to meet Program requirements; and (2) select participants for reverification based on risk or random sampling. If, during a reverification, the Commissioner finds that a person does not meet, or is unable to determine whether a person meets, the Program criteria, the Commissioner may suspend any portion of that person's Program benefits.

Section 499A(d) provides that, if the Commissioner finds that a person intentionally provided false or misleading information, the Commissioner must deny trade benefits to that person and prohibit the person from further participation in the Program.

Section 499A(e) provides that a Program applicant or participant may appeal a decision of the Commissioner that denies participation in, or denies, suspends, or limits benefits of, the Program. Appeals must be filed within ninety days of the decision triggering the appeal, and the Commissioner must make a final determination not later than 180 days after the appeal is filed.

Section 499A(f) requires the Commissioner to assign and train at least seven personnel in the Office of Trade to administer the Program. The Commissioner must establish procedures to safeguard data received from applicants or participants during the verification or reverification process.

Section 499A(g) authorizes appropriations of such sums as are necessary to carry out the section.

SECTION 203: CONSULTATIONS WITH RESPECT TO MUTUAL RECOGNITION AGREEMENTS

Section 203 requires the Secretary to consult with the Senate Finance and House Ways and Means Committees at least thirty days before entering into a Mutual Recognition Arrangement or similar agreement with a foreign government regarding supply chain security.

SECTION 204: COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE

Section 204(a) requires the Secretaries of Treasury and Homeland Security to jointly establish the CCOAC by June 30, 2010.

Section 204(b) requires that the CCOAC be comprised of (1) 20 appointed individuals from the private sector; (2) the Assistant Secretary of Treasury for Tax Policy and the Assistant Secretary of Homeland Security for Policy and Planning, who shall co-chair meetings; and (3) the Commissioner and Director of ICE, who shall serve as deputy co-chairs of meetings. Private sector individuals must be appointed by June 30, 2010, must be broadly representative of those sectors of the economy affected by the commercial operations of ICE and CBP, and may be appointed to multiple terms but serve not more than two terms sequentially. The Secretaries of Treasury and Homeland Security may transfer members to the CCOAC who are currently serving on the Advisory Committee on Commercial Operations of the United States Customs Service.

Section 204(c) requires the CCOAC to (1) advise the Secretaries of Treasury and Homeland Security on all matters involving the commercial operations of CBP and ICE; (2) provide recommendations to the Secretaries on improvements that CBP and ICE should make to their commercial operations; and (3) perform other functions relating to the commercial operations of CBP and ICE as prescribed by law or as directed by the Secretaries.

Section 204(d) requires the CCOAC to meet at the call of the Secretaries of Treasury and Homeland Security or at the call or at least two-thirds of the CCOAC membership. The CCOAC must meet at least four times each year, and the meetings must be open unless the Secretaries determine that a meeting will include matters that cannot be disclosed without seriously damaging policies or other matters affecting the commercial operations of CBP and ICE.

Section 204(e) requires the CCOAC to submit annual reports to the Senate Finance and House Ways and Means Committee that describe the CCOAC's activities and provide recommendations regarding the commercial operations of CBP and ICE. The CCOAC also has the discretion to provide the Committees with additional reports regarding the commercial operations of CBP and ICE.

Section 204(f) subjects the CCOAC to the provisions of the Federal Advisory Committee Act, except section 1, which relates to open meetings and availability of information, and section 11, which relates to the availability of meeting transcripts.

Section 204(g) makes a conforming amendment to repeal section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 effective June 10, 2010 and makes additional conforming amendments.

SECTION 205: AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM

Section 205(a) amends section 13031(f)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 by directing authorized appropriations of \$300,000,000 for each of fiscal years 2010, 2011, and 2012 to complete the development of the Automated Commercial Environment (ACE).

Section 205(b) amends section 311(b)(3) of the Customs Border Security Act of 2002 to require the Commissioner to submit to the Senate Finance and Appropriations Committees, and House Ways and Means and Appropriations Committees, a report by December 31, 2009 that specifies the plans and deadlines to fully implement ACE by September 30, 2012. The Commissioner must also provide progress reports in 2010 and 2011.

Section 205(c) requires the Government Accountability Office to provide to the Senate Finance and Appropriations Committees, and House Ways and Means and Appropriations Committees, a report by December 31, 2012 evaluating CBP's effectiveness in developing and implementing ACE, and assessing any additional cost-effective functionality that may be added to ACE.

SECTION 206: INTERNATIONAL TRADE DATA SYSTEM

Section 206(a) amends section 411(d) of the Tariff Act of 1930 by inserting a new paragraph that requires the Secretary to work with the heads of Federal agencies participating in the International Trade Data System (ITDS) to ensure the agencies (1) maintain the necessary information technology to support ITDS; (2) take action to ensure information sharing between each agency and CBP; and (3) identify and transmit to the Commissioner the information necessary to operationalize ITDS.

Section 206(b) directs authorized appropriations of \$25,000,000 to the Secretary of the Treasury in fiscal years 2010, 2011, and 2012 to operationalize ITDS.

SECTION 207: ELECTRONIC SUBMISSION OF PUBLIC COMMENTS

Section 207 requires the Commissioner to provide (1) for the electronic submission and posting of all public comments solicited by CBP on CBP's website; and (2) for the posting of public comments associated with any CBP rulemaking on the official government website for federal regulations.

Subtitle B – Trade Enforcement

Chapter 1 – Commercial Risk Assessment Targeting; Oversight

SECTION 211: COMMERCIAL TARGETING DIVISION AND NATIONAL TARGETING AND ANALYSIS GROUPS

Section 211(a) requires the Secretary to establish and maintain a Commercial Targeting Division (CTD) within CBP's Office of Trade. The CTD shall be comprised of headquarters staff led by an Executive Director, and individual National Targeting and Analysis Groups (NTAGs) led by Directors reporting to the Executive Director.

Section 211(b) requires NTAGs to target imports that may violate U.S. customs and trade laws, with particular focus on laws and regulations related to: (1) intellectual property rights; (2) health and safety; (3) agriculture; (4) textile and apparel; (5) general revenue; and (6) non-general revenue such as anti-dumping and countervailing duties.

Section 211(c) requires the CTD to establish methodologies for evaluating the risk that imports may violate U.S. customs and trade laws and for issuing Trade Alerts when the CTD determines cargo may violate such laws. The CTD should assess the risk of cargo based on all information available to CBP through the Automated Targeting System, ACE, the Automated Commercial System, the Automated Entry System, ITDS, and the Treasury Enforcement Communications System, or any successor systems.

Section 211(d) authorizes the Executive Director of the CTD and NTAG Directors to issue Trade Alerts to port directors within OFO when such person determines cargo may violate U.S. customs and trade laws. The Trade Alert may direct further inspection or physical examination or testing of merchandise by the port personnel. A port director may determine not to carry out the direction of the Trade Alerts if the port director finds such determination is justified by port security interests and the port director notifies the Deputy Assistant Commissioner of OFO's Customs Facilitation and Trade Enforcement Division of such determination. The Deputy Assistant Commissioner must compile an annual report of all determinations by port directors to override Trade Alerts, and that report must be submitted to the Senate Finance and House Ways and Means Committees.

Section 211(e) repeals section 343(a)(3) of the Trade Act of 2002, which prohibits the use of mandatory advance information collected by CBP for commercial enforcement purposes.

SECTION 212: ANNUAL ILLEGAL DRUG CONTROL LAW ENFORCEMENT STRATEGY

Section 212 amends section 123 of the Customs and Trade Act of 1990 as follows:

Section 123(a) requires the Commissioner and Director of ICE to jointly develop and submit to the Chair and Ranking Member of the Senate Finance and House Ways and Means Committees a report that estimates the number and extent of violations of drug control laws that are likely to occur in the following year and the relative incidence of such violations among U.S. ports of entry.

Section 123(b) specifies that the Commissioner and Director must, after consultation with the Committees, prepare a list of those provisions of drug control laws over which CBP and ICE have enforcement authority. The Commissioner and Director may periodically update the list.

Section 123(c) requires the Commissioner and Director to, within ninety days of submitting the report, develop or update a strategy to enforce the drug control laws identified and address the violations estimated and to provide a confidential report to the Chair and Ranking Member of the Committees that outlines such strategy.

Section 123(d) provides that the contents of any report submitted under this section are confidential and may be disclosed only to (1) officers and employees of the United States, as designated by the Commissioner or Director; (2) the Chair and Ranking Members of the Committees; and (3) such Members of Congress and staff of such Members as the Chair or Ranking Member authorize.

SECTION 213: REPORT ON OVERSIGHT OF REVENUE PROTECTION AND ENFORCEMENT MEASURES BY THE INSPECTOR GENERAL

Section 213 requires the Inspector General of DHS to submit a report to the Senate Finance and House Ways and Means Committees that assesses CBP's effectiveness with respect to (1) revenue protection; (2) measuring accountability and performance related to revenue protection; (3) investigations conducted by CBP on underpayment of duties owed; and (4) the adequacy of CBP's training efforts with respect to duty collection.

SECTION 214: REPORT ON SECURITY MEASURES FOR MERCHANDISE TRANSPORTED IN BOND

Section 214(a) requires the Secretaries of Treasury and Homeland Security to submit to the Senate Finance and House Ways and Means Committees joint annual reports in 2009, 2010, and 2011 that detail efforts taken to ensure the secure transportation of merchandise in bond through the United States.

Section 214(b) requires the report to include information on the number of entries, entry location, average transportation time, total duties owed, and number of carrier notifications of destination changes of in bond merchandise. The report must also provide the average time taken to reconcile records created at the time the merchandise arrives with final clearance records, and the number of records that remain unreconciled.

SECTION 215: IMPORTER OF RECORD PROGRAM

Section 215(a) requires the Commissioner to establish an importer of record program within 180 days of enactment of this Act.

Section 215(b) requires CBP to develop criteria and a process for assigning importer of record numbers, ensuring that duplicate importer of record numbers are not assigned, and maintaining and evaluating the accuracy of a database of importer of record numbers.

Section 215(c) requires the Commissioner to provide the Senate Finance and House Ways and Means Committees with a report on the importer of record program within one year of the date of enactment of this Act.

Section 215(d) defines key terms used in this section.

Chapter 2 – Import Health and Safety

SECTION 221: INTERAGENCY IMPORT SAFETY WORKING GROUP

Section 221(a) establishes an interagency Import Safety Working Group.

Section 221(b) sets forth the membership of the Working Group and designates the Secretary of Homeland Security as the Chair and the Secretary of Health and Human Services as the Vice-Chair. The membership of the Working Group also shall include the Secretaries of Treasury and Agriculture, the United States Trade Representative, the Director of the Office of Management and Budget, the Commissioners of CBP and the Food and Drug Administration, and the Chair of the Consumer Product Safety Commission.

Section 221(c) requires the Working Group to (1) consult on the development of the Joint Import Safety Rapid Response Plan required under section 222; (2) evaluate federal government and agency resources, plans, and practices to ensure the safety of U.S. imports; (3) identify best practices to assist U.S. importers in ensuring import health and safety; (4) identify best practices to improve Federal, state, and local coordination in responding to import health and safety threats; and (5) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

SECTION 222: JOINT IMPORT SAFETY RAPID RESPONSE PLAN

Section 222(a) requires the Secretary, in consultation with the Working Group, to develop and review a Joint Import Safety Rapid Response Plan (Plan) that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers.

Section 222(b) sets forth the contents of the report, which must define (1) the responsibilities of CBP and other Federal agencies in responding to an import health and safety threat; (2) the protocols and practices used in responding to such threats; (3) the mitigation measures CBP must take when responding to such threats; and (4) exercises CBP should take to simulate responses to such threats.

Section 222(c) requires the Commissioner, in conjunction with Federal, state, and local agencies, to conduct exercises to test the Plan. When conducting exercises, the Commissioner must make allowances for the specific needs of the port where the exercise is occurring, base evaluations on current import risk assessments, and ensure that the exercises are conducted consistent with other national preparedness plans. The Secretary and Commissioner must ensure that the testing and evaluations use performance measures in order to identify best practices and recommendations in responding to import health and safety threats. Best practices and recommendations should then be shared among relevant stakeholders and incorporated into the Plan.

SECTION 223: TRAINING

Section 223 requires the Commissioner to ensure that CBP port personnel are trained to effectively enforce U.S. import health and safety laws.

Chapter 3 – Import-Related Protection of Intellectual Property Rights

Section 231 describes the term intellectual property rights as used in this chapter of the Act.

Section 232(a) establishes within ICE the National Intellectual Property Rights Coordination Center (Coordination Center), which shall be headed by an Assistant Director.

Section 232(b) assigns the Assistant Director certain duties, including (1) coordinating the investigation of sources of imported goods that infringe intellectual property rights (IPR); (2) coordinating training for domestic and international law enforcement agencies to improve IPR enforcement; (3) coordinating U.S. activities to prevent the importation or exportation of IPR infringing goods; (4) supporting the interdiction of U.S. imports that infringe IPR; and (5) collecting, integrating, and disseminating information regarding infringements.

Section 232(c) requires the Assistant Director to coordinate with federal, state, and local and international law enforcement agencies, as appropriate, in carrying out the Coordination Center's duties.

SECTION 233: JOINT STRATEGIC PLAN FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 233 requires the Commissioner and Director to include in the Joint Strategic Plan required under section 131 the following: (1) a description of DHS's IPR enforcement efforts; (2) a list of the top ten ports, by volume, where CBP seized IPR infringing goods in the preceding two years; and (3) a recommendation of the optimal allocation of personal to ensure CBP and ICE are effectively enforcing IPR.

SECTION 234: REPEATED IMPORT-RELATED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 234(a) requires the Assistant Commissioner of Trade to identify and maintain a confidential list of persons that have a history of attempting to import goods that infringe IPR.

Section 234(b) describes "persons" as used in this section.

Section 234(c) requires the Commercial Targeting Division to use the list described in section 234(a) when conducting IPR-related risk assessment targeting.

Section 234(d) requires the Assistant Commissioner to periodically review this list and to remove persons who have demonstrated a history of complying with IPR.

SECTION 235: PERSONNEL DEDICATED TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 235(a) requires the Commissioner to ensure sufficient personnel are assigned throughout CBP to enforce IPR with respect to U.S. imports.

Section 235(b) requires the Commissioner to assign at least one full-time employee to each of the ten ports identified under section 233 with principal responsibility for preventing the importation of goods that infringe IPR.

Section 235(c) requires the Commissioner to assign at least three full-time employees at the Coordination Center established under section 232.

Section 235(d) requires the Commissioner to submit a report to the Committees estimating the average time required to render a determination of IPR infringement with respect to imported goods.

SECTION 236: TRAINING WITH RESPECT TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 236(a) requires the Commissioner to effectively train CBP port personnel to detect and identify IPR infringing imported goods.

Section 236(b) requires the Commissioner to work with the private sector to identify (1) cost-effective technologies to detect and identify IPR infringing imported goods; and (2) cost-effective programs for training CBP personnel.

Section 236(c) permits CBP to receive donations of technology to improve IPR enforcement.

SECTION 237: RECORDATION OF WORKS FOR WHICH A COPYRIGHT IS PENDING

Section 237(a) amends section 526 of the Tariff Act of 1930 to insert a new section that permits persons who submit a copyright application for recordings, motion pictures, or similar works to the Copyright Office to record such application with CBP and to request CBP to enforce the copyright before the copyright is registered. Persons who record such applications with CBP must provide CBP with proof of copyright registration thirty days after the Copyright Office registers the copyright. If a person fails to provide such proof, or if the application is denied, the Commissioner may cancel recordation of the copyright application.

Section 237(b) requires an applicant to annually update the Commissioner regarding the status of the copyright application pending before the Copyright Office.

Section 237(c) makes conforming amendments to section 526 of the Tariff Act of 1930.

SECTION 238: SAMPLES AVAILABLE TO COPYRIGHT OWNERS AND INJURED PERSONS

Section 238(a) grants CBP the discretion to provide copyright or trademark owners with samples of merchandise detained or seized by CBP that may infringe a copyright or trademark.

Section 238(b) grants CBP the discretion to provide a person who may be injured by reason of the importation of merchandise that may be prohibited under sections 1201(a)(2) or (b)(1) of title 17 a sample of the merchandise detained or seized by CBP.

Section 238(c) requires copyright or trademark owners to furnish bonds for samples valued over \$100.

SECTION 239: SEIZURE OF CIRCUMVENTION DEVICES

Section 239(a) amends section 596(c)(2) of the Tariff Act of 1930 by adding a new subsection that gives CBP the authority to seize circumvention devices that violate section 1201(a)(2) or 1201(b)(1) of the Digital Millennium Copyright Act.

Section 239(b) requires the Commissioner to post details of such a seizure within fifteen days of making such seizure, in adequate detail to allow a person to identify the merchandise and determine whether it is an inadmissible circumvention device.

Section 239(c) requires a person who owns IPR that may be infringed by such seized devices to submit an application to CBP requesting disclosure of certain information regarding the seized devices. The person must submit the application within thirty days of the date CBP publishes information regarding the seizure on its website.

Section 239(d) permits CBP to disclose information to applicants regarding (1) the date of importation; (2) the port of entry; and (3) a description of the merchandise, the name and address of the foreign manufacturer, the country of origin, the name and address of the exporter, and the name and address of the importer, of the merchandise.

SECTION 240: INFORMATION FOR TRAVELERS REGARDING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS

Section 240 requires the Secretary to develop and implement an educational campaign for travelers entering or departing the United States on the legal, economic, and public health and safety implications of importing IPR infringing goods into the United States.

SECTION 241: INTERNATIONAL COOPERATION AND INFORMATION SHARING

Section 241 requires the Secretary to coordinate, to the extent practicable and appropriate, with competent foreign law enforcement agencies to enhance IPR enforcement, including by information sharing and technical assistance.

SECTION 242: SENSE OF CONGRESS REGARDING RECORDATION PROCESS

Section 242 expresses the sense of Congress that the Commissioner should work with the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office of the U.S. Department of Commerce and the Register of Copyrights of the Library of Congress to create a system under which a trademark or a copyright may be recorded with CBP upon the issuance of a trademark or registration of a copyright, respectively.

TITLE III – MISCELLANEOUS PROVISIONS

SECTION 301: CONSULTATION ON TRADE AND CUSTOMS REVENUE FUNCTIONS

Section 301 amends section 401(c) of the SAFE Port Act to require the Secretary to consult with the business community at least thirty days after proposing and thirty days before finalizing any policies, initiatives, or actions that will have an impact on CBP's trade and customs revenue functions. The Commissioner must also notify Congressional Committees at least sixty days before proposing and sixty days before finalizing any policies, initiatives, negotiating positions, or actions that will have an impact on CBP's trade and customs revenue functions or negotiating positions.

SECTION 302: DRAWBACK FOR EXPORTED MERCHANDISE

Section 302(a) amends section 313 of the Tariff Act of 1930 as follows:

Section 313(a) defines key terms used in the section.

Section 313(b) provides that 99 percent of any duties, taxes, or fees paid on imports that are subsequently exported shall be refunded, or subject to "drawback." Monies may be refunded if the merchandise imported is substituted for other merchandise exported, so long as the export is classified under the same eight-digit HTS subheading number, and the claim for drawback was filed within five years of the date of importation. In special cases, monies may be refunded for merchandise that was classified under the same eight-digit HTS subheading number before January 1, 2000, or in the case of wine, if it is classified under a closely related eight-digit HTS subheading number. Current law is maintained with respect to substitution drawback for imports of ethyl alcohol or a mixture of ethyl alcohol. Imported merchandise is subject to drawback even if it is incorporated into other merchandise multiple times.

Section 313(c) sets forth the eligibility requirements for claiming drawback and provides that a person may claim drawback if the person (1) imports the merchandise on which the drawback claim is based or obtains the importer's permission to claim drawback; and (2) exports the merchandise on which the drawback claim is based or obtains the exporter's permission to claim drawback. If drawback is claimed on imported merchandise incorporated into other merchandise, the person making the drawback claim shall submit a bill of materials or formula identifying the merchandise by the 8-digit HTS subheading number and the quantity of the merchandise. Drawback claims must be filed electronically within five years of the date the subject merchandise is imported. If subject merchandise is imported on more than one date, the claim must be filed within five years of the earliest date of importation.

Section 313(d) provides that the amount of drawback paid shall be equal to 99 percent of the number of export units claimed multiplied by the lesser of the average of duties, taxes, or fees (1) paid per unit of the designated import; or (2) that would apply to the designated export, if imported. The monies refunded should be reduced by any monies previously refunded to a person with respect to such merchandise.

Section 313(e) provides special rules for calculating drawback where such refunds are governed by U.S. trade agreements with Mexico, Canada, or Chile.

Section 313(f) requires a person claiming drawback to submit as proof of exportation (1) the record of exportation entered in the U.S. automated export system or information similar to that contained in such record; (2) in the case of exports to Canada or Mexico, entry records from such countries; and (3) in the case of a deemed export, a record that establishes such export.

Section 313(g) establishes special eligibility rules for destroyed merchandise, vessels built for residents of foreign countries, agricultural products, and merchandise not regularly entered.

Section 313(h) provides that merchandise that is exported or destroyed to claim drawback under this section shall not be eligible for other drawback claims, except for appropriate credits or deductions.

Section 313(i) provides that any person claiming or authorizing drawback shall be jointly and severally liable for the full amount of the drawback claim made or authorized by the importer.

Section 313(j) provides that drawback shall be paid from the customs receipts of Puerto Rico if the duties on which drawback are claimed were originally paid into the Treasury of Puerto Rico.

Section 302(b) makes conforming amendments to sections 505(b), 508(b), and 515(a) of the Tariff Act of 1930.

Section 302(c) provides that amended section 313 shall take effect on the date the Commissioner publishes in the Federal Register a finding that ACE is the exclusive U.S. entry summary record system and applies to drawback claims filed on or after that date.

Section 302(d) requires the Government Accountability Office to provide the Senate Finance and House Ways and Means Committees with a report evaluating the costs to the Federal Government of administering the changes to drawback made by this section.

SECTION 303: PENALTIES FOR CUSTOMS BROKERS

Section 303(a) amends section 641 of the Tariff Act of 1930 to add a new section that allows the Secretary to impose fines, or revoke or suspend a customs broker license, if a broker has been convicted of committing or conspiring to commit an act of terrorism.

Section 303(b) makes technical and conforming amendments to section 641 of the Tariff Act of 1930.

SECTION 304: ARTICLES REPAIRED OR ALTERED

Section 304(a) amends subchapter I of chapter 98 of the U.S. Harmonized Tariff Schedule (HTS) by adding a new note 3 that authorizes goods that were exported under bailment agreements, or for warehousing, repackaging, or both, and reimported without having been advanced in value or improved in condition by any manufacturing process or other means abroad, to be reimported under chapter 98 of the HTS.

Section 304(b) amends subchapter II of chapter 98 of the HTS by adding at the end of U.S. note 3 a new subsection (f) that authorizes commercially identical goods that were exported and reimported after having been advanced in value or improved in condition by any manufacturing process or other means abroad, to be reimported under chapter 98 of the HTS.

SECTION 305: CHARTER FLIGHTS

Section 305 amends section 13031 (e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to permit CBP employees to provide customs services for passengers and baggage on charter flights that arrive at U.S. ports of entry after normal operating hours, if the air carrier specifically requests the services at least four hours before the flight arrives and pays any overtime fees.

SECTION 306: USE OF TRADE SYMPOSIUM FEES

Section 306 authorizes the Commissioner to collect fees from any private participant in a conference, symposium, or similar meeting conducted by DHS and permits those fees to be used to offset costs that DHS incurred with respect to the meeting. Any fees collected that exceed the actual cost of the meeting must be deposited into the general Treasury.

SECTION 307: PILOT PROGRAM FOR ESTABLISHING 24-HOUR COMMERCIAL LAND BORDER PORTS OF ENTRY

Section 307(a) requires the President to establish a two-year pilot program to designate certain land border crossings as commercial ports of entry that may accept merchandise entries, collect duties, and enforce U.S. customs and trade laws 24 hours a day.

Section 307(b) requires the President to designate one to three ports on each of the northern and southern borders as 24-hour commercial ports. In order to be designated as a 24-hour port, (1) it must be a land border crossing (a) in a state that has two or fewer 24-hour commercial ports of entry; (b) on U.S. Government-owned land; and (c) on land that has been subject to an environmental assessment; (2) the costs associated with the designation may not exceed \$30,000,000; (3) an economic study must demonstrate that the designation will have a positive impact on the local community; and (4) the appropriate Canadian or Mexican authorities must express an intention to commit the resources necessary to designate the corresponding port on the other side of the border as a 24-hour commercial port.

Section 307(c) requires the President to provide the Senate Finance and House Ways and Means Committees a report that compares vehicle traffic at the port before and after the 24-hour designation, provides an estimate of the total value of commercial goods that crossed the port after the designation, and provides an analysis of the effect of the designation on wait times at other ports of entry in the same state.

Section 307(d) requires the President to determine whether operating the port 24 hours a day provides a net economic benefit to the United States and to report the determination and reasons for the determination to the Senate Finance and House Ways and Means Committees. If the President determines that operating the port 24 hours a day does not provide a net economic benefit to the United States, the port shall cease to operate 24 hour a day on the date the President submits the report to the Senate Finance and House Ways and Means Committees.

SECTION 308: PROHIBITION ON IMPORTATION OF GOODS MADE WITH FORCED OR INDENTURED LABOR OR BY BENEFIT OF HUMAN TRAFFICKING

Section 308(a) of the Act amends section 307 of the Tariff Act of 1930 as follows:

Section 307(a) of the Tariff Act, as amended, prohibits the importation of goods produced (1) with convict labor, forced labor, or indentured labor under penal sanctions; (2) by means of coercion; or (3) by an individual being subjected to a severe form of trafficking in persons as defined in section 103 of the Trafficking Persons Protection Act of 2000.

Section 307(b) of the Tariff Act, as amended, permits the Secretary to impose civil penalties on persons who violate this section. The Secretary may also prohibit a person who repeatedly violates this section from importing any good into the United States or exporting any good from the United States.

Section 307(c) of the Tariff Act, as amended, defines key terms used in this section.

Section 308(b) of the Act establishes an Office for Labor Enforcement within ICE that coordinates enforcement of this section. The Office shall be headed by an Assistant Director of Labor Enforcement who is appointed by the Secretary of Homeland Security, in consultation with the Secretary of Treasury, and reports to the Director of ICE. The Assistant Director of Labor Enforcement must (1) oversee U.S. laws relating to enforcement of this section; (2) oversee ICE investigations relating to enforcement of this section; (3) coordinate Federal government efforts to enforce this section; (4) coordinate efforts with foreign governments to prohibit the exportation of goods to the United States that violate this section; (5) prepare and publish in the Federal Register a list of producers of goods prohibited under this section; and (6) submit a report to the Senate Finance and House Ways and Means Committees that contains information on matters such as the volume, value, and description of goods seized under this section.

SECTION 309: HONEY TRANSSHIPMENT

Section 309(a) requires the Commissioner to direct appropriate personnel and resources to address concerns that honey is being imported into the United States in violation of U.S. customs and trade laws.

Section 309(b) requires CBP to compile a database of the individual characteristics of foreign honey to facilitate the verification of country of origin markings, and seek to work with foreign government in compiling the database.

Section 309(c) expresses the sense of Congress that the Commissioner of the Food and Drug Administration should promptly establish a honey national identification standard to (1) ensure that honey imports are classified appropriately for duty assessment; and (2) are denied entry to the United States if such imports pose a threat to the health or safety of consumers.

SECTION 310: CONTRABAND ARCHAEOLOGICAL OR ETHNOLOGICAL MATERIALS

Section 310(a) requires the Commissioner to ensure that appropriate CBP personnel are trained to detect, identify, and detain imports of archaeological or ethnological materials that violate U.S. customs and trade laws.

Section 310(b) permits the Commissioner to accept training and support services from experts outside the Federal Government in the detection, identification, and detention of imports of such materials.

SECTION 311: DE MINIMIS AND INFORMAL ENTRY ISSUES

Section 311 amends section 321 of the Tariff Act of 1930 to permit the Secretary to admit articles valued at less than \$500 to be imported by one person on one day duty-free. The Secretary may also prescribe regulations to permit the informal entry of merchandise when the aggregate value of the shipment is \$2500 or less.