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# U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security

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# Summary

International trade is a critical component of the U.S. economy, with U.S. merchandise imports amounting to $2.4 trillion and exports to $1.6 trillion in 2014. The efficient flow of legally traded goods in and out of the United States is thus a vital element of the country's economic security.

U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is the primary agency charged with monitoring, regulating, and facilitating the flow of goods through U.S. ports of entry (POEs). CBP's policies are designed to (1) ensure the smooth flow of imported cargo through U.S. POEs; (2) enforce trade and customs laws designed to protect U.S. consumers and business and to collect customs revenue; and (3) enforce import security laws designed to prevent weapons of mass destruction, illegal drugs, and other contraband from entering the United States—a complex and difficult mission. Congress has a direct role in organizing, authorizing, and defining CBP's international trade functions, as well as appropriating funding for and conducting oversight of its programs. In the Senate, on May 14, 2015, S. 1269 was incorporated into H.R. 644 (renamed the Trade Facilitation and Trade Enforcement Act of 2015) and subsequently passed by a vote of 78-20. On June 12, 2015, the House passed an amended version of H.R. 644 by a vote of 240-190. Senate and House leaders have reportedly committed to resolve the two bill versions in a conference committee.

Laws currently authorizing the trade facilitation and enforcement functions of CBP (as outlined in the Customs Modernization and Informed Compliance Act, Title VI of P.L. 103-182) emphasize a balanced relationship between CBP and the trade community based on the principles of "shared responsibility," "reasonable care," and "informed compliance." Since the 9/11 terrorist attacks of 2001, Congress has placed greater emphasis on import security and CBP's role in preventing terrorist attacks at the border. Legislation addressing customs procedures and import security includes the Homeland Security Act of 2002 (P.L. 107-296), the Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347), and the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).

CBP's current import strategy emphasizes a risk management approach that segments importers into higher and lower risk pools and focuses trade enforcement and import security procedures on higher-risk imports, while expediting lower-risk flows. CBP's "multi-layered" risk management approach means that security screening and enforcement occur at multiple points in the import process, beginning before goods are loaded in foreign ports (pre-entry) and continuing long after the time goods have been admitted into the United States (post-entry).

How effectively CBP has performed its import policy mission is a matter of some debate. Some participants in CBP's "trusted trader" programs argue that the concessions (e.g., expedited processing; fewer container inspections) CBP provides at the border do not adequately justify the effort and expense to certify their supply chains. Questions have also been raised about CBP's management of trade facilitation, especially the means through which the Automated Commercial System (ACS) trade data management system is being phased out in favor of the newer Automated Commercial Environment (ACE). Some critics also assert that CBP has not adequately fulfilled its trade enforcement role, especially its duties for preventing illegal transshipments, protecting U.S. intellectual property rights, and collecting duties. Still others criticize CBP's performance of its security functions, especially because it does not yet physically scan 100% of maritime cargo as mandated by the SAFE Port Act of 2006, as amended. In May 2014, DHS Secretary Jeh Johnson extended the deadline for an additional two years.

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# Introduction

International trade is a critical component of the U.S. economy, with U.S. goods trade amounting to about $4 trillion in 2014, with merchandise imports of $2.4 trillion and exports of $1.6 trillion (see **Appendix B**).[1] The efficient flow of legally traded goods in and out of the United States is thus a vital element of the country's economic security. While U.S. trade in imports depends on the smooth flow of legal cargo through U.S. ports of entry (POE), the goal of trade facilitation often competes with two additional goals: enforcement of U.S. trade laws and import security. How to strike the appropriate balance among these three goals is a fundamental question at the heart of U.S. import policies.

Striking the appropriate balance among competing import policy goals is made more difficult due to the volume and complexity of trade inflows. U.S. Customs and Border Protection (CBP), the agency charged with managing the import process at the border, admitted about 30.4 million import entries[2] per year through over 300 U.S. POEs, in fiscal year (FY) 2013.[3] The largest volume of imports comes through land (truck and rail) and maritime flows, which together account for over 25 million shipping containers per year. Air cargo consists mainly of lower volume, higher value goods.[4]

This report describes and analyzes CBP's role in the U.S. import process. (The report does not cover CBP's role in the U.S. export control system.) The first section of the report describes the three overarching goals of U.S. import policy and the tension among them. Second, the report summarizes recent legislative developments and provides a legislative history of customs laws, followed by an overview of the U.S. import process as it operates today. Third, the import process and CBP's role in it are discussed.

Congress has a direct role in organizing, authorizing, and defining CBP's international trade functions, as well as appropriating funding for and conducting oversight of its programs. Thus, the final section highlights several policy issues that Congress may consider in its oversight role or as part of customs or trade legislation, including measures seeking to provide additional trade facilitation benefits to importers and others enrolled in "trusted trader" programs, to improve enforcement of intellectual property and trade remedy laws, to strengthen cargo scanning practices, and/or to promote modernization of customs data systems, among other issues.

# Overarching Import Policy Goals

U.S. import policy seeks to balance three overarching policy goals. First, import policy promotes *trade facilitation*. Trade facilitation refers to efforts to simplify and streamline international trade procedures to allow for the easier flow of legitimate goods across international boundaries and

[1] Bureau of Economic Analysis figures.

[2] "Entry" is the process of, and documentation required for, securing the release of imported merchandise from CBP.

[3] Latest available data. Customs and Border Protection (CBP) *FY2013 Performance and Accountability Report*, p. 3, http://www.cbp.gov/newsroom/publications/performance-accountability-financial.

[4] CRS calculations for FY2005-FY2013, based on data presented in **Table 1**. The value of imports in FY2014 was divided among sea (49%), air (23%), and land (26%) inflows, based on data presented in **Table B-1**. Although certain issues raised in this report apply to the import process in general, this report focuses on containerized (as opposed to bulk) goods, and does not address imports and exports in foreign trade zones. This report also does not address the Transportation Security Administration's role in air cargo security, which is discussed in CRS Report RL33512, *Transportation Security: Issues for the 114th Congress*, by Bart Elias, David Randall Peterman, and John Frittelli, and CRS Report R41515, *Screening and Securing Air Cargo: Background and Issues for Congress*, by Bart Elias.

thereby to reduce the costs of trade.[5] Trade facilitation includes the availability of advanced customs rulings, transparent and efficient procedures, elimination of "red tape," clear information, effective communications, and cooperation between border agencies, among other provisions.[6]

Trade facilitation is a priority for CBP and the trade community because trade represents a key component of the U.S. economy. International trade accounts for about a quarter of the U.S. economy, with merchandise trade (i.e., cargo) accounting for more than three-quarters of all U.S. trade flows.[7] Most economic research finds that while international trade may impose short-term costs on certain sectors and industries that compete with imports, in the long run, trade promotes efficiency, reduces costs to consumers, and increases economic growth due to competitive advantage.[8] With the production of goods increasingly organized into global supply chains, in which the manufacture and final product assembly often occur in two or more countries, intermediate components during the manufacturing process are a significant percentage of total imports and exports in most countries, and a wide variety of U.S. manufacturers depend on the efficient import and export of these inputs.[9]

Partly for this reason, trade facilitation has been a priority issue for the United States and its international partners in organizations such as the World Trade Organization (WTO) and the World Customs Organization (WCO), and in free trade agreement negotiations (FTAs). Within the WTO Doha Development Round of multilateral trade negotiations, for example, the United States has pursued "the shared objective of a rules-based, transparent, and efficient approach to goods crossing the border."[10] In the WTO, the United States was instrumental in negotiating binding disciplines on trade facilitation included in the December 2013 multilateral "Bali Agreement." The United States and other members of the WCO are encouraging the use of electronic systems to expedite the clearance of merchandise entries and to ensure effective customs controls, including the adoption of a "single window" data system through which multiple cross-border regulatory agencies can clear merchandise entries (see "Interagency Coordination").[11]

There is an inherent tension between efforts to promote efficient trade flows, and a second goal of U.S. import policy: the *enforcement of trade laws* designed to protect U.S. consumers and business against illegal imports and to collect customs revenue. In general, U.S. trade laws seek to protect U.S. consumers by enforcing health and safety standards, and to protect U.S. businesses by enforcing patent, trademark, and copyright laws and by collecting anti-dumping and countervailing duties (AD/CVD).[12] Trade enforcement policies also govern the collection of

[5] Organization for Economic Cooperation and Development (OECD) definition, http://www.oecd.org.

[6] Moïsé, E., T. Orliac and P. Minor (2011), "Trade Facilitation Indicators: The Impact on Trade Costs," OECD Trade Policy Working Papers, No. 118, OECD Publishing.

[7] U.S. imports and exports of goods and services totaled $5.2 trillion in 2014. The overall U.S. gross domestic product was $17.4 trillion. See Bureau of Economic Analysis, "U.S. International Trade in Goods and Services, 1992-present," http://www.bea.gov/newsreleases/international/trade/trad_time_series.xls.

[8] See for example, CRS Report RL31932, *Trade Agreements: Impact on the U.S. Economy*, by James K. Jackson.

[9] Beltramello, A., K. De Backer and L. Moussiegt (2012), "The Export Performance of Countries within Global Value Chains (GVCs)," OECD Science, Technology and Industry Working Papers, 2012/02, OECD Publishing.

[10] World Trade Organization, *Introduction to Proposals by the United States of America*, Communication from the United States, TN/TF/W/11, February 2005.

[11] World Customs Organization, http://www.wcoomd.org.

[12] For an overview of U.S. trade laws, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

tariffs, fees, and taxes; CBP generated more than $36 billion in revenue in FY2013, including more than $31 billion in customs duties.[13]

The third overarching goal of U.S. import policy is *import security*, or preventing the entry of chemical, biological, radiological, and nuclear (CBRN) weapons and related material; illegal drugs; and other contraband. While customs agencies have always played a role in protecting public safety, including through narcotics enforcement in particular, the terrorist attacks of September 11, 2001 (9/11), caused many Americans to place even greater emphasis on transportation and port security. Thus, security measures enacted after 9/11 placed additional responsibilities on customs officials to pro-actively prevent weapons of mass destruction and other threats to the homeland from entering the United States and have made import security a central feature of U.S. trade policy (see "Major Post-9/11 Import Security Legislation"). Import security also has become an important feature of international efforts, and the United States and its partners in the WCO have adopted new security protocols for tracking, inspecting, and screening containerized imports and exports.[14]

Trade facilitation is in tension with trade enforcement and import security because trade facilitation involves promoting faster and more efficient trade flows, while trade enforcement and import security involve identifying and preventing illegal flows—tasks that often involve slower cargo flows and reduced efficiency for the importer. These competing pressures make the implementation of import policy a complex and difficult task, which CBP addresses through a process of risk management, as described below (see "The Import Process").

Many policy questions with respect to the import process concern how Congress and CBP balance these three goals. Some U.S. importers and some in Congress have criticized CBP for neglecting trade facilitation in favor of import security and trade enforcement. For example, some in the trade community view the paperwork and additional reporting requirements imposed on U.S. importers as overly burdensome, and they assert that these requirements run counter to U.S. interests by threatening America's economic security.[15] Others argue that infrastructure issues, scanning, and inspections at land ports of entry result in unacceptably long and unpredictable border wait times. Delays have been described as particularly onerous at the U.S.-Mexico border, where trade has increased more than sixfold since the North American Free Trade Agreement (NAFTA) was implemented in 1994.[16] Several studies have estimated the economic consequences of border crossing delays, including a 2008 draft report by the Department of Commerce that estimated that crossing delays at the U.S.-Mexico border resulted in $5.8 billion in lost economic output, $1.4 billion in lost wages, 26,000 lost jobs, and $600 million in lost tax revenues—and would result in losses twice this size by 2017.[17] A review of nine additional studies concluded that

[13] *FY2013 Performance and Accountability Report*, p. 97, see http://www.cbp.gov/newsroom/publications/performance-accountability-financial.

[14] Joann Peterson and Alan Treat, "The Post-9/11 Global Framework for Cargo Security," *Journal of International Commerce and Economics*, March 2008.

[15] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Customs Trade Facilitation and Enforcement in a Secure Environment*, 111th Cong., 2nd sess. May 20, 2010, Testimony of Frank Vargo, National Association of Manufacturers.

[16] U.S. imports from Mexico increased from $39.9 billion in 1993 to $280.5 billion in 2013, an increase of 603%. CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson, http://grijalva.house.gov/uploads/ Draft%20Commerce%20Department%20Report%20on%20Reducing%20Border%20Delays%20Findings%20and%20Options%20March%202008.pdf.

[17] Ibid.

"one message comes through quite clearly—long and unpredictable wait times at the POEs are costing the United States and Mexican economies many billions of dollars each year."[18]

At the same time, others in Congress and in the trade community assert that the United States may remain vulnerable to a terrorist attack against a port of entry—with potentially catastrophic results—and that CBP should place greater emphasis on import security, even if the economic costs are high. Some Members have expressed frustration, for example, that the great majority of cargo containers are not scanned or physically inspected prior to arrival at a U.S. port.[19] Similarly, some manufacturers have alleged that CBP has not adequately investigated allegations of duty evasion, product mislabeling, fraudulent country of origin declarations, or deliberate misclassification of shipments;[20] and some assert that their intellectual property rights (IPR) are being violated by ever growing imports of counterfeit goods, and that CBP efforts in collaboration with the private sector in identifying and enforcing IPR violations have been inadequate.[21] In short, how Congress and CBP balance trade facilitation, trade law enforcement, and import security has important implications for homeland security, public safety, and virtually every sector of the U.S. economy. To varying degrees, this tension underlies most aspects of U.S. import policymaking.

# Legislation in the 114th Congress

Several bills have been introduced in the 114th Congress to reauthorize CBP's customs-related activities, including S. 1269, the Trade Facilitation and Trade Enforcement Act of 2015 (Hatch; introduced May 11, 2015); related bill H.R. 1907 (Tiberi; introduced April 21, 2015); and H.R. 1916 (Levin; introduced April 21, 2015). S. 1269 was reported by the Senate Finance Committee on May 13, 2015; and H.R. 1907 was marked up and ordered reported by the House Committee on Ways and Means on April 23, 2015.

In the Senate, on May 14, 2015, the text of S. 1269 was incorporated into H.R. 644 (which was renamed the Trade Facilitation and Trade Enforcement Act of 2015) and subsequently passed by a vote of 78-20. On June 12, 2015, the House passed an amended version of H.R. 644 by a vote of 240-190. In a joint statement released June 17, 2015, Senate Majority Leader Mitch McConnell and House Speaker John Boehner stated their intent "to have a conference on the customs bill and complete that in a timely manner so that the President can sign it into law."[22]

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[18] Erik Lee and Christopher E. Wilson, "The State of Trade, Competitiveness, and Economic Well-Being in the U.S.-Mexican Border Region," Woodrow Wilson International Center for Scholars and El Colegio de la Frontera Norte, Working Paper Series on the State of the U.S.-Mexico Border, Washington, DC, June 2012, http://www.wilsoncenter.org/sites/default/files/State_of_Border_Trade_Economy_0.pdf, p. 10. See also, U.S. General Accountability Office, *U.S.-Mexico Border: CBP Action Needed to Improve Wait Time Data and Measure Outcomes of Trade Facilitation Efforts*, GAO-13-603, July 2013, Appendix I, p. 45.

[19] See, for example, Border and Maritime Security Subcommittee of the Homeland Security Committee, U.S. House, hearing "Balancing Maritime Security and Trade Facilitation: Protecting our Ports, Increasing Commerce and Securing the Supply Chain—Part I," February 7, 2012.

[20] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement*, 112th Cong., 2nd sess., May 17, 2012. For example, see Testimony of Mr. John Williams, Executive Director, Southern Shrimp Alliance.

[21] U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Hearing on H.R. 4223, the "Safe Doses Act"; H.R. 3668, the "Counterfeit Drug Penalty Enhancement Act of 2011; and H.R. 4216, the "Foreign Counterfeit Prevention Act",* 112th Cong., 2nd sess., March 28, 2012, Testimony of Mr. Travis D. Johnson.

[22] "Joint Statment by Speaker Boehner, Leader McConnell on Trade," press release, June 17, 2015.

Title I of the House and Senate versions of H.R. 644 would require CBP to, among other things, work with the private sector and other federal agencies to ensure that all CBP partnership programs provide meaningful trade benefits to program participants; require CBP to establish key performance measures on modification; carry out facilitation and trade enforcement functions; require CBP and Immigration and Customs Enforcement (ICE) to establish joint educational seminars (with private sector input authorized) for enforcement personnel at POEs; and require CBP and ICE, in consultation with federal agencies, other law enforcement agencies, international organizations, and other interested parties, to develop and report to Congress on a biennial joint strategic plan for trade facilitation and enforcement.

Title I would also authorize existing CBP programs, including customs modernization efforts such as the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), the Commercial Customs Advisory Committee (COAC), the Centers of Excellence and Expertise (CEEs), and targeting and analysis groups to focus on each of CBP's Priority Trade Issues (PTIs). The Government Accountability Office (GAO) and CBP would also be required to report on CBP improvements in areas including trade enforcement, tracking merchandise in-bond, and drawback simplification. In Section 111, the Senate version would authorize a Commercial Targeting Division (CTG) and National Targeting and Analysis Groups (NTAGS) to target priority trade issues (PTIs). The CTG would establish methodologies for assessing import risk and issuing Trade Alerts to port directors. Section 111 of the House version would authorize the National Targeting Center to perform similar functions. Both versions would allow a port director to determine not to conduct further inspections for certain reasons, provided that other Customs authorities are notified. Additionally, Title I of the House and Senate versions of H.R. 644 would require CBP to strengthen internal controls, in part, by developing criteria for assigning importer-of-record identification numbers; and would provide CBP with the authority to strengthen enforcement controls over new importers, including ensuring collection of duties, fees, and penalties through risk-based bonding. The House-passed version would also require CBP to collect additional information on "nonresident importers" and would require customs brokers to collect information on the identity of importers.

The House-passed version of H.R. 644 would also require CBP to establish priority trade issues (PTIs), including Agriculture, antidumping and countervailing duties (AD/CVD), Import Safety, Intellectual Property (IPR), Textiles and Wearing Apparel, and Preference Programs. Additionally, for purposes of the Title, the term "appropriate congressional committees" is specifically identified as the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate; and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives.

Title II of both versions address import health and safety. Title II would establish an interagency import safety working group, chaired by the Secretary of Homeland Security. The group would be responsible for developing a joint import safety rapid response plan to establish protocols and practices that CBP, in conjunction with other federal, state and local authorities, must use when responding to cargo that poses a threat to the health or safety of U.S. consumers. Title II also requires joint exercises with these entities and training for CBP port personnel in enforcement of import health and safety laws.

Title III of both versions of H.R. 644 addresses intellectual property rights (IPR) enforcement. First, Title III would amend customs laws to authorize and direct CBP (except in cases that would compromise an ongoing law enforcement or national security investigation) to share information with rights holders so that they could help to quickly identify whether a product entering the United States at a POE is in violation of a copyright or trademark. Second, CBP would be authorized to seize merchandise if it is found to be in circumvention of IPR laws, and would

require CBP to notify an injured right holder if they are included on an annually revised, CBP-maintained list. Third, the Secretary of DHS is directed to enforce copyrights on goods for which the owner has submitted a copyright application in the same manner as if the copyright were already registered. Title III would also establish a National Intellectual Property Rights Coordination Center within CBP.

Title IV of S. 1269, and H.R. 1907, and Title V of H.R. 1916, address antidumping (AD) and countervailing duty (CVD) evasion. One major difference between the Senate and House versions is that even though both bills would require the investigation of allegations of AD and CVD evasion within specific deadlines and requirements, the Senate version would require CBP to investigate the allegations, while the House version would grant the Department of Commerce authority to carry out investigations.[23] H.R. 1916 would assign primary investigative duties of AD/CVD evasion to CBP.

Also related to AD/CVD laws, the House version would establish a Trade Remedy Law Enforcement Division in CBP, direct CBP to identify evasion, authorize increased data sharing between CBP, the Department of Commerce, and the U.S. International Trade Commission for enforcement actions against evasion, and direct CBP to enter into agreements with customs officials in foreign countries to increase cooperation in combatting evasion The House version would also require CBP to assign sufficient personnel to prevent and investigate evasion, require CBP to submit an annual report to Congress detailing evasion policies and activities, terminate the ability of new shippers to post bonds during new shipper AD/CVD reviews, and require the Government Accountability Office (GAO) to submit a report to Congress on the effectiveness of CBP efforts in investigating and preventing AD/CVD duty evasion.

Title V of both versions of H.R. 644 seeks to amend AD and CVD laws, in part, by clarifying and expanding the methods that the International Trade Administration of the Department of Commerce (ITA) and the U.S. International Trade Administration (USITC) may use to make determinations in AD/CVD investigations. For example, Title V would clarify that the ITA, in cases in which an exporter, manufacturer or producer of the targeted merchandise fails to cooperate by providing information needed to calculate the duty rate, that the highest applicable dumping or subsidy rate may be used. The amendment would also clarify and expand the calculation methods that the ITA may use to calculate AD/CVD rates if there are particular market situations that may distort prices or costs. Title V would also clarify the authority of the ITA to limit the number of foreign exporters, manufacturers, or producers for which it calculates individual duty rates[24] if it finds that an investigation is unduly burdensome due to the complexity of the issues or information presented, among other factors.

With regard to the USITC's injury phase of AD/CVD investigations, Title V would amend the definition of "material injury" to provide that a negative determination of material injury may not be found solely on the basis of domestic industry profitability or recently improved performance. The section would further expand the criteria that the USITC must use to evaluate the impact of competing imports to include the effects of "actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity, return on investment, return on assets, and utilization of capacity." Title V would also revise the "captive

[23] Antidumping (AD) and countervailing duty (CVD) laws are found in Title VII of the Tariff Act of 1930 (19 U.S.C. 1671-1677n). The International Trade Administration of the Department of Commerce (the administering authority in the statute) investigates the existence and amount of dumping or subsidies, and the U.S. International Trade Commission investigates material injury with respect to the U.S. industry petitioners.

[24] Foreign exporters, producer, and manufacturers often request that their individual U.S. sales be calculated because they could receive a lower duty rate than the overall AD/CVD rate.

production test" that the USITC must use to assess injury if the targeted product is a component used in a downstream finished good.[25]

Title V of both bill versions would also address additional trade enforcement priorities by requiring the Administration, in close consultation with Congress, to identify these priorities and to more regularly consult with Congress on enforcement strategies. The Administration would be directed to address trade enforcement issues that, if eliminated, would have the most impact on positive U.S. economic growth. The enforcement provisions in these bills would also authorize the Administration to reinstate the suspension of concessions under Article 22 of the WTO dispute settlement agreement under certain conditions. The bills would also require the USITC to provide an Internet-based database to provide information on the volume and value of imports; and would require the Department of Commerce to provide reports on quarterly changes in the volume and value of imports.

Title VI of the Senate bill would also establish a Trade Enforcement Trust Fund to be used by the USTR and other agencies to enforce U.S. trade agreements and trade rights under the WTO and U.S. free trade agreements (FTAs). The trust fund could also be used for trade capacity building efforts. Title VI of the Senate version of H.R. 644 would also require CBP and ICE to institute certain measures to stop illegal honey transshipment; and require that the two agencies train and employ sufficient personnel to detect, identify, and seize cultural property, archeological or ethnological materials, and other fish, wildlife or plants that violate U.S. laws. Title VI would also codify the establishment of the Interagency Trade Enforcement Center (ITEC).[26]

Regarding IPR enforcement, the Senate version would add countries that deny adequate protection of trade secrets to the USTR's priority watch list, and require the USTR to develop an action plan for each country that has been on the list for at least one year. S. 1269 would also establish at USTR a Chief Innovation and Intellectual Property Negotiator with the rank of Deputy USTR.

Title VII of the Senate version addresses issues regarding currency undervaluation. Among other things, Title VII would require the ITA to investigate alleged currency undervaluation in AD/CVD investigations and would provide a method for calculating the amount of undervaluation. The bill would also require the Administration to actively engage with those countries found to manipulate exchange rates in order to urge implementation of monetary policies that would address the issue. The House version would provide for engagement with other countries on currency undervaluation, but contains no enforcement provisions. Both bills would also establish an Advisory Committee on Exchange Rate Policy to advise the Treasury Secretary on the impact of international exchange rates on the policies of the United States.

Title VIII of the Senate version would provide a process for Congress, in conjunction with the USITC, to receive and consider a miscellaneous trade bill (MTB) containing proposed duty suspensions and reductions in 2015 and 2018. The process would require Congress to post on the Internet a process for submission and consideration of proposed duty suspensions for possible inclusion in the MTB, and also require the USITC to publish in the Federal Register and on the Internet a notice requesting MTB submissions from the public.[27]

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[25] Captive products are items designed specifically for use with another product. Many captive products are necessary to the function of the core product. For example, a razor cannot function without blades (a captive product).

[26] The ITEC was originally established by Executive Order 13601.

[27] See CRS Report RL33867, *Miscellaneous Tariff Bills: Overview and Issues for Congress*, by Vivian C. Jones.

Title IX of the House and Senate versions of H.R. 644 address miscellaneous customs provisions. All three bills would raise the *de minimis* value (currently $200) for unaccompanied cargo to $800.[28] The bills would also require DHS to consult with Congress no later than 30 days after proposing and 30 days prior to finalizing, any DHS policies, initiatives, or actions that would have a major impact on trade and customs revenue functions. Other provisions include adding committing or conspiring to commit an act of terrorism to the list of offenses that are grounds for removal of a customs broker's license, amending Harmonized Tariff Schedule chapter 98 to reduce the record-keeping burden on U.S. goods entering without improvement abroad, and allowing for the subtraction of the value of U.S. components assembled in goods that are exported and returned after being improved abroad. Miscellaneous provisions also include making bulk cargo residue exempt from duty and implementing drawback simplification. All three bills would eliminate the "consumptive demand" exception to the prohibition on importation of goods made with convict, forced, or indentured labor.[29] The Senate version of H.R. 644 would also provide offsets, in Title X, for the bill by temporarily extending an increased customs user fee, among other things.

# Legislative History of U.S. Customs and Trade Facilitation, Enforcement, and Import Security Policies

The U.S. Customs Service (USCS),[30] the agency historically responsible for trade facilitation and enforcement, was established by an act of Congress on July 31, 1789 (1 Stat. 29), and on September 2, 1789, was placed under the Secretary of the Treasury.[31] At that time, the primary role of the service was to collect U.S. customs tariffs, which were the major revenue source for the U.S. government until the federal income tax was established in 1913. Key laws establishing and authorizing the trade functions of the USCS included provisions in the Tariff Act of 1930,[32] the Customs Simplification Act of 1953,[33] and the Reorganization Plan of 1965.[34]

More recent customs legislation can be categorized into two components. The first is focused on the Customs Service's traditional role of trade facilitation and enforcement, and the second, which emerged following the 9/11 terrorist attacks, has focused on the issue of import security. The Homeland Security Act (P.L. 107-296) placed all or parts of 22 different federal departments and agencies, including the Customs Service, into the Department of Homeland Security (DHS).[35]

[28] The *de minimis* value level (19 U.S.C. 1321, as amended), is the value threshold below which unaccompanied shipments may enter U.S. commerce without the need for formal entry procedures or payment of customs duties.

[29] Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), as amended, prohibits the importation of goods made by convict labor, forced labor, child labor, and indentured labor. The law, however, excludes products that "are not mined, produced, or manufactured in such quantities in the United States as to meet the *consumptive demands* of the United States.

[30] In this report, the U.S. Customs Service or USCS is used to refer to the legacy customs agency (before the Homeland Security Act of 2002 and the subsequent reorganization modification plan changed the name of the agency). When referring to legislation after 2002, Customs and Border Protection, or CBP, is used.

[31] National Archives, Records of the United States Customs Service, 1749-1997.

[32] 46 Stat. 590, June 17, 1930.

[33] 68 Stat. 1136, September 1, 1954.

[34] 79 Stat. 1317, May 25, 1965.

[35] On the creation of the Department of Homeland Security (DHS), see archived CRS Report RL31751, *Homeland*

DHS's bureau of Customs and Border Protection (CBP) has been the lead agency facilitating, enforcing, and securing trade flows since 2003.

## Major Trade Facilitation and Enforcement Legislation

The last time that the then-USCS's trade functions were fundamentally reorganized was in 1993, in Title VI of the North American Free Trade Agreement Implementation Act (P.L. 103-182), also known as the Customs Modernization and Informed Compliance Act, or "Mod Act." Other major legislation addressing these functions was Title IV of the Security and Accountability For Every (SAFE) Port Act of 2006 (P.L. 109-347) that addressed trade facilitation and enforcement by reorganizing DHS's trade functions, requiring increased interaction with the trade community, and providing for greater congressional oversight.

### The "Mod Act" of 1993 (Title VI of P.L. 103-182)

The Mod Act, implemented on December 8, 1993, amended many sections of the Tariff Act of 1930 that applied to USCS's role in trade enforcement. The law was the culmination of a multi-year effort among Congress, the USCS, and the Joint Industry Group (a coalition of private-sector firms involved in international trade), to develop legislation on Customs modernization.[36] While the main purpose of the law was to streamline, automate, and modernize USCS's commercial operations, the law was also intended to improve compliance with U.S. customs laws, and to provide safeguards, uniformity, and due process rights for importers.[37]

The Mod Act addressed the tension between trade facilitation and trade enforcement by replacing the historical "agency-centric" model of trade enforcement with a "shared responsibility" approach.[38] Thus, whereas USCS previously had monitored imports and determined the level of customs duties owed by each importer, under the shared responsibility approach USCS (now CBP) is required to inform importers of their rights and responsibilities under the customs regulations and related laws; and importers of record are required to be aware of their legal obligations and to make their own duty determinations through the concept of "informed compliance."[39] Importers are also required to exercise "reasonable care" when classifying and determining the value of imported merchandise. If importers have questions about the country of

*Security: Department Organization and Management—Implementation Phase*, by Harold C. Relyea; and archived CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by Jennifer E. Lake.

[36] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Customs Modernization and Informed Compliance Act*, Hearing on H.R. 3935, 102nd Cong., 2nd sess., March 10, 1992, Serial 102-85 (Washington: GPO, 1992), p. 86.

[37] U.S. Congress, House Committee on Ways and Means, *North American Free Trade Agreement Implementation Act*, report to accompany H.R. 3450, 103rd Cong., 2nd sess., November 15, 1993, H. Rept. 103-361(I) (Washington: GPO, 1993), p. 106, (hereinafter NAFTA Report).

[38] The previous model employed by USCS resembled utility companies' billing model, which measures usage and sends customers a statement; while the current model resembles tax collection by the Internal Revenue Service, which requires businesses and individuals to estimate their own tax liabilities.

[39] NAFTA Report, p. 106. In meeting the "reasonable care" standard, House lawmakers suggested that importers consider using assistance when bringing products into the United States. These aids could include seeking advance rulings from Customs, consulting with a customs broker or trade attorney, using in-house employees with a knowledge of customs laws, or obtaining analyses from accredited labs (NAFTA Report, p. 120).

origin, classification, or valuation of merchandise, they may apply to CBP for a binding determination (known as a customs ruling) prior to importation.[40]

The Mod Act placed a greater administrative burden on the importer, and shifted USCS's focus to the collection of data and post-entry enforcement (i.e., audits) to ensure that all legal requirements have been met.[41] By reducing USCS's role in duty determination, the act freed up agency assets to modernize the import process and improve post-entry enforcement.[42] Private industry stakeholders accepted these increased responsibilities because the law also provided for a quicker and more transparent import process through streamlined and automated customs operations.

### Title IV of the Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347)

Title IV of the SAFE Port Act addressed the organization, management, and oversight of CBP enforcement functions. Title IV required DHS to designate a senior official to ensure the coordination of the trade and customs revenue functions in DHS and with other federal departments and agencies; and that CBP's trade functions were not diminished and kept pace with the level of trade entering the United States.

Title IV also required additional consultation with representatives of the business community, including CPB's Commercial Operations Advisory Committee (COAC) on DHS policies and actions that could have significant impact on international trade and customs revenue functions; and established an Office of International Trade (OIT) within CBP; required DHS, the U.S. Trade Representative (USTR) to work through the World Trade Organization (WTO), the World Customs Organization (WCO), and other international organizations to align customs requirements to the extent possible to facilitate the efficient flow of international trade.

Title IV also authorized the establishment of the International Trade Data System (ITDS) as part of the Automated Commercial Environment (ACE), CBP's interactive customs data management system. ITDS is an intergovernmental project to coordinate and standardize the collection of trade enforcement data by creating a single portal for the collection and distribution of import and export data to be used by all 48 federal government agencies that play a role in trade enforcement. The section required all federal agencies involved in trade enforcement to participate in the ITDS.

## Major Post-9/11 Import Security Legislation

While previous customs legislation focused on the tension between trade facilitation and enforcement, the 9/11 attacks focused America's attention on homeland security. With the attacks having been executed by foreign nationals traveling on commercial aircraft, an immediate priority was to reorganize existing law enforcement resources related to immigration, transportation, trade, and border security into a new federal Department of Homeland Security (DHS). At least six laws enacted between 2002 and 2007 included provisions related to the trade process and made import security a central feature of U.S. trade policy.

[40] 19 U.S.C. 1625, as amended. CBP, *What Every Member of the Trade Community Should Know About: U.S. Customs and Border Protection Rulings Program*, CBP Informed Compliance Publication series, http://www.cbp.gov.

[41] 19 U.S.C. 1509, as amended. CBP, Preface to *Informed Compliance Publication* series maintained by CBP, http://www.cbp.gov/xp/cgov/trade/legal/informed_compliance_pubs/.

[42] 19 U.S.C. 1411ff.

## Trade Act of 2002 (P.L. 107-210)

Customs reauthorization legislation in the Trade Act of 2002 (Title III of P.L. 107-210, the Customs Border Security Act of 2002) authorized appropriations for a number of noncommercial and commercial CBP programs as well as CBP's air and marine interdiction program. Funds were also authorized to be appropriated for the Automated Commercial Environment (ACE; see "Pre-Entry: Advanced Cargo Screening, Scanning, and Inspections"), for equipment and programs for drug enforcement, and for the detection of terrorists and illicit narcotics along the U.S borders with Mexico and Canada, and in Florida and Gulf Coast seaports.

The Trade Act also included one of the most significant additions to the customs clearance process since 9/11: a requirement that importers and exporters submit advance cargo manifest information prior to cargo arriving at a U.S. port of entry (POE). The law authorized the Secretary of the Treasury to publish regulations requiring the submission of this information, and directed the Secretary to consult with a broad range of import and export stakeholders and to base the regulations on the Secretary's determination of what is "reasonably necessary to ensure aviation, maritime, and surface transportation safety and security."[43] CBP uses this advance cargo information to conduct risk-based targeting through the Automated Targeting System (ATS; see "Automated Targeting System").

## Maritime Transportation Security Act of 2002 (P.L. 107-295)

The Maritime Transportation Security Act of 2002 (MTSA, P.L. 107-295) expanded DHS's authority under the Trade Act of 2002 to collect and share advance cargo data, and took several steps to strengthen port security.[44] Section 102 of the MTSA established a new chapter of the U.S. Code (46 U.S.C. 701) to establish DHS's overall role in port security. Among other things, the law required DHS to assess vessel and port security and to develop national and regional maritime transportation security plans,[45] required certain ports and vessels to develop security and incident response plans to be approved by DHS,[46] and established a Department of Transportation grant program to help ports implement their security plans.[47]

The MTSA also established new security requirements for U.S. and foreign ports and for ships operating in U.S. waters. Within the United States, the law required DHS to establish regulations to prevent individuals from entering secure areas of vessels or ports unless the individuals hold security cards. The port security cards are known as Transportation Worker Identity Credential (TWIC) cards, and are administered by the Transportation Security Administration (TSA) along with the U.S. Coast Guard.[48] With respect to foreign ports (where Congress has no direct authority), the law required DHS to assess port security at foreign ports and to notify foreign ports if they are found to lack appropriate counter-terrorism measures.[49] DHS is authorized to

[43] P.L. 107-210, §343(a), 19 U.S.C. 2071 note.

[44] On the Maritime Transportation Security Act, see archived CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*, by John Frittelli; also see U.S. Government Accountability Office (GAO), *Maritime Security: Progress and Challenges 10 Years after the Maritime Transportation Security Act*, GAO-12-1009T, September 11, 2012.

[45] §102 of P.L. 107-295; 46 U.S.C. 70103(a).

[46] §102 of P.L. 107-295; 46 U.S.C. 70103(b).

[47] §102 of P.L. 107-295; 46 U.S.C. 70103(c).

[48] §102 of P.L. 107-295; 46 U.S.C. 70105. See Transportation Worker Identity Card (TWIC) regulations at 33 C.F.R. §§101–106 and 49 C.F.R. §§1515, 1540, 1570, and 1572.

[49] §102 of P.L. 107-295; 46 U.S.C. 70108.

restrict the entry of vessels arriving from foreign ports that fail to maintain effective counter-terrorism measures.[50] With respect to ships and other vessels operating in U.S. waters, the law required that certain vessels be equipped with an automatic identification system while operating in U.S. waters, and that DHS also develop and implement a long-range automated vessel tracking system for certain vessels.[51]

## Homeland Security Act of 2002 (P.L. 107-296)

The Homeland Security Act of 2002 (HSA, P.L. 107-296) created a framework for the transfer of all or part of 22 different federal departments into the Department of Homeland Security (DHS), including the USCS and the U.S. Coast Guard.[52]

Title IV of the act created within DHS a Directorate of Homeland Security headed by the Under Secretary for Border and Transportation Security.[53] The directorate was given responsibility for preventing the entry of terrorists and the instruments of terrorism into the United States, and for ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce, among other things. Title IV also established the U.S. Customs Service and the office of the Commissioner of Customs within DHS.[54] The act specified that certain customs revenue functions would be retained by the Secretary of the Treasury, who may delegate the authority to the Secretary of Homeland Security.[55] Although the customs inspection and enforcement authority of the former USCS were transferred to CBP, Section 412(b) of the HSA mandated that DHS could not "consolidate, discontinue, or diminish" the trade and customs revenue functions of the USCS, or reduce staffing levels or the resources attributable to these functions.[56]

The HSA directed the President, no later than 60 days after enactment of the act, to transmit to the appropriate congressional committees a reorganization plan for the transfer of agencies, personnel, assets, and obligations to the new Department of Homeland Security.[57] The President submitted an initial plan on November 25, 2002,[58] and modified the plan shortly thereafter following consultation with then Secretary of Homeland Security designate Tom Ridge.[59] In the modification plan, the USCS was renamed the Bureau of Customs and Border Protection (CBP),

[50] §102 of P.L. 107-295; 46 U.S.C. 70110.

[51] §102 of P.L. 107-295; 46 U.S.C. 70114.

[52] On the establishment of the Department of Homeland Security, see archived CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by Jennifer E. Lake; and archived CRS Report RL31493, *Homeland Security: Department Organization And Management—Legislative Phase*, by Harold C. Relyea.

[53] §401 of P.L. 107-296; 6 U.S.C. 201.

[54] §411 of P.L. 107-296; 6. U.S.C. 211.

[55] §412 of P.L. 107-296, 6 U.S.C. 212. In Treasury Department Order No. 100-16 (set out as an appendix to 19 C.F.R. §0), the Secretary of the Treasury transferred the customs revenue functions of U.S. Customs Service to the Secretary of Homeland Security, but in some cases retained sole authority to issue regulations concerning these functions. This document, along with 19 C.F.R. §0, outlines the framework by which the authorities of Secretaries of the Treasury and Homeland Security are divided with regard to customs revenue functions and enforcement.

[56] Ibid.

[57] §1502 of P.L. 107-296; 6 U.S.C. 502.

[58] See U.S. Congress, House Committee on Homeland Security, *Reorganization Plan for the Department of Homeland Security*, Communication from the President of the United States, House Document 108-16, 108th Cong., 1st sess., January 7, 2003, http://www.gpo.gov/fdsys/pkg/CDOC-108hdoc16/pdf/CDOC-108hdoc16.pdf.

[59] See U.S. Congress, House, Committee on Homeland Security, *Reorganization Plan Modification for the Department of Homeland Security*, Communication from the President of the United States, House Document 108-32, 108th Cong., 1st sess., February 3, 2003, http://www.gpo.gov/fdsys/pkg/CDOC-108hdoc32/pdf/CDOC-108hdoc32.pdf.

and the Bureau of Border Security was renamed the Bureau of Immigration and Customs Enforcement (ICE).[60]

## Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293)

The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) contained a number of maritime security provisions that amended the MTSA. Title VIII of the law added security requirements to the import process provisions, including amendments to certain long-range vessel tracking system requirements.[61] DHS was also required to submit a plan for implementation of a maritime intelligence system (previously authorized in the MTSA) to incorporate information on vessel movements and assign incoming vessels a terrorism risk rating.[62]

Section 808 of the law required the Department of Transportation to "conduct investigations, fund pilot programs, and award grants" to examine and develop certain equipment to enhance the investigative ability of CBP, including equipment to accurately detect nuclear, chemical, or biological materials; and tags and seals equipped with sensors that are able to track marine containers throughout their supply chains and to detect hazardous and radioactive materials within containers.[63]

The law also required DHS to report on several cargo import security issues, including the costs to the government of vessel and container inspections, plans for implementing secure systems of transportation, progress on the installation of radiation detectors at all major U.S. seaports, the willingness of foreign seaports to utilize non-intrusive inspection (NII) techniques to inspect cargo bound for the United States, and evaluation of the existing cargo inspection targeting system for international intermodal cargo containers.[64]

## Security and Accountability For Every (SAFE) Port Act of 2006 (P.L. 109-347)

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) published its report on the circumstances surrounding the 9/11 attacks and made recommendations to guard against future attacks. The report expressed concern that the United States lacked "a forward-looking strategic plan" that devoted adequate attention to maritime and surface transportation.[65]

Congress responded by passing the Security and Accountability For Every Port Act of 2006 (SAFE Port Act, P.L. 109-347) and the Implementing Recommendations of the 9/11 Commission

[60] Ibid. The reorganization plan consolidated customs, immigration, and agricultural inspection functions within CBP, merging certain USCS, Immigration and Naturalization Service (INS), and U.S. Department of Agriculture (USDA) functions within the new agency; USCS and INS officers previously had been cross-designated to perform both customs and immigration functions. S. 662 seeks to statutorily establish CBP and its sister agency, U.S. Immigration and Customs Enforcement (ICE) within DHS, rather than as a function of discretionary authority under the Homeland Security Act.

[61] §803 of P.L. 108-293. The long-range identification and tracking (LRIT) of ships applies to all passenger ships including high-speed craft, cargo ships including high-speed craft of 300 gross tonnage and above, and mobile offshore drilling units. The U.S. requirements conform to an international system adopted by the International Maritime Organization (IMO).

[62] §803 of P.L. 108-293, 46 U.S.C. 70113, as amended.

[63] §808 of P.L. 108-293, 46 U.S.C. 70107, as amended.

[64] §809 of P.L. 108-293.

[65] National Commission on Terrorist Attacks on the United States, *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), p. 391.

Act of 2007 (The 9/11 Act, P.L. 110-53). Title I of the SAFE Port Act focused on port security. The act updated several deadlines from previous legislation, including a deadline of April 1, 2007, for DHS to implement a long-range vessel tracking system,[66] and a deadline of January 1, 2009, for issuing TWIC cards and for all ports to implement TWIC readers.[67] In addition, the act required by December 31, 2008, that all containers entering U.S. ports be subject to radiation detection scanning.[68]

Title II of the SAFE Port Act focused on international supply chain security, defined by Section 2 of the act as the "end-to-end process for shipping goods to or from the United States beginning at the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination." The Title includes five main provisions with respect to maritime cargo security, which are summarized here and discussed in greater detail below:

- Section 203 authorized cargo to be *screened* through CBP's Automated Targeting System (ATS; see "Automated Targeting System") and further authorized DHS to require advanced electronic cargo data (see "Advance Electronic Cargo Information") as needed to improve ATS targeting.[69]
- Section 205 authorized the Container Security Initiative (CSI; see "Import Security Scanning and Inspections"), designed "to identify and examine or search maritime containers that pose a security risk before loading such containers in a foreign port for shipment to the United States." The section authorized DHS to designate particular foreign seaports to participate in the CSI, and directed DHS to establish criteria and procedures for nonintrusive inspection (NII) and for nuclear and radiological detection systems at CSI ports.[70]
- Sections 211-223 authorized the Customs-Trade Partnership Against Terrorism (C-TPAT; see "Trusted Trader Programs") and set forth C-TPAT program parameters. C-TPAT is a voluntary program that allows certain trade-related firms to be certified by CBP as having secured the integrity of their supply chains. The law established three tiers of C-TPAT membership, and described potential membership benefits associated with each.[71]
- Section 231 directed DHS to establish pilot programs in three foreign seaports to conduct NII and radiation detection scanning of cargo containers. Beginning one year after enactment of the act (i.e., by October 2007), the section required that DHS scan 100% of containers destined for the United States loaded in the three pilot ports and that questionable or high-risk cargo be identified for further

[66] §107 of P.L. 109-347; 46 U.S.C. 70105 note. The U.S. Coast Guard issued a final rule in April 2008 concerning long-range vessel tracking. See 73 *Federal Register* 23310; also see U.S. Government Accountability Office, *Maritime Security: Vessel Tracking Systems Provide Key Information, but the Need for Duplicate Data Should Be Reviewed*, GAO-09-337, March 2009.

[67] §104 of P.L. 109-347; 46 U.S.C. 70105. DHS tested a TWIC card reader pilot program in seven ports between August 2008 and May 2011. As of August 2012, DHS has published a final report on the TWIC card reader pilot program, but has not published final regulations governing TWIC card readers.

[68] §121 of P.L. 109-347; 6 U.S.C. 921.

[69] §203 of P.L. 109-347; 6. U.S.C. 943.The Automated Targeting System (ATS) already was operational in 2006 as a pilot program without formal congressional authorization.

[70] §205 of P.L. 109-347; 6 U.S.C. 945.The Container Security Initiative (CSI) was already operational in 2006 as a pilot program without formal congressional authorization.

[71] §211ff of P.L. 109-347; 6 U.S.C. 961ff.The Customs-Trade Partnership Against Terrorism (C-TPAT) already was operational in 2006 as a pilot program without formal congressional authorization.

inspection.[72] The program is known as the Secure Freight Initiative (SFI; see "Import Security Scanning and Inspections").

- Section 232 required that 100% of cargo containers originating outside the United States and imported into the United States be *screened* by DHS to identify high-risk containers. As enacted, the section required DHS to ensure that containers identified as high risk during the screening process also be *scanned* through NII and radiation detection equipment before they arrive in the United States (see "100% Scanning Requirement").[73]

### Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53)

The 9/11 Act of 2007 included two provisions with respect to the import process. Section 1602 of the 9/11 Act required, by August 3, 2010, that 100% of air cargo bound for the United States or traveling within the United States be subject to scanning or inspection commensurate with standards established for passenger checked baggage.[74]

Section 1701 of the 9/11 Act amended the SAFE Port Act to require by July 1, 2012, that 100% of maritime containers imported to the United States—that is, whether or not they are identified as high-risk during the ATS screening process—be scanned by NII and radiation detection equipment before being loaded onto a vessel in a foreign port. The act authorized the secretary of DHS to extend the deadline by two years, and in additional two-year increments, by certifying that scanning systems are not available, are insufficiently accurate, cannot be installed, cannot be integrated with existing systems, will significantly impact trade and the flow of cargo, and/or do not provide adequate notification of questionable or high-risk cargo (see "100% Scanning Requirement").[75]

## The Import Process

Under the Homeland Security Act of 2002 (P.L. 107-296) as amended in 2003, CBP is the lead agency charged with enforcing the trade laws under the Mod Act and the security measures under the MTSA, the SAFE Port Act, and the other post-9/11 laws. CBP's trade strategy emphasizes *risk management*, which means that CBP collects advance information about shippers, importers, and cargo to evaluate cargo for potential import security and trade enforcement risks, and focuses enforcement efforts primarily on cargo and shippers identified as relatively high risk.[76] Conversely, those deemed lower-risk imports (including, e.g., shipments of "trusted traders") are less likely to be targeted for CBP enforcement and may be eligible for expedited processing—thus advancing CBP's trade facilitation goal and freeing up resources for targeting higher-risk imports.

**Import Security and Trade Enforcement Terminology and Procedures**

[72] §231 of P.L. 109-347; 6 U.S.C. 981.

[73] §232 of P.L. 109-347; 6 U.S.C. 982.

[74] §1602 of P.L. 110-53; 49 U.S.C. 44901, as amended. On air cargo security, see CRS Report R41515, *Screening and Securing Air Cargo: Background and Issues for Congress*, by Bart Elias.

[75] §1701 of P.L. 110-53; 6 U.S.C. 982(b) as amended. The Secretary must certify to Congress that at least two of these conditions exist in order to extend the 100% scanning deadline.

[76] See CBP, *CBP Trade Strategy: Fiscal Years 2009-2013*, Washington, DC, 2009.

As discussed throughout this report, cargo being imported to the United States may be subject to multiple and varied types of import security and trade enforcement reviews, including the following:

- **Screening**: A risk assessment based on an analysis of data elements (e.g., cargo manifest, country of origin, shipper and consignee information) provided by an importer or carrier.
- **Scanning**: An analysis of container contents based on **non-intrusive inspection (NII)** technologies, including x-ray and gamma ray imaging systems and other technologies. NII scanning produces a high-resolution image of container contents that is reviewed by law enforcement officers to detect hidden cargo and other anomalies that suggest container contents do not match reported manifest data. If an officer detects an abnormality, containers may be "cracked open" for a physical **examination**. Scanning may also refer to **radiation detection**.
- **Radiation detection**: An analysis of container contents based on radiation portal monitors, handheld radiation detection monitors, and/or other radiation detection technology to detect nuclear material that may be part of a nuclear weapon or dirty bomb.
- **Examination**: A physical examination of container contents (requires that the container be opened and, in some cases, unpacked).
- **Primary inspection**: A review of entry documents to determine whether cargo may be admissible to the United States.
- **Secondary inspection**: A review of container contents to confirm that cargo is admissible to the United States. Secondary inspections may include **NII scanning** and/or a physical **examination** of container contents.
- **Liquidation**: The final assessment of import-related taxes and fees; typically occurs a year or more after cargo enters the United States.

**Source**: CRS analysis of the SAFE Port Act of 2006 (P.L. 109-347) and CBP briefing materials.

CBP's trade strategy also emphasizes *layered enforcement*, meaning that risk assessment and risk-based enforcement happen at a number of different points in the import process, beginning well before cargo arrives at a U.S. port of entry, and continuing long after cargo has been formally admitted to the United States. CBP attempts to target high-risk flows as early as possible in the import process, but its ability to conduct enforcement activities at different stages of the import process is designed to create multiple opportunities to interdict illegal imports.

The import process includes three main stages, as illustrated in **Figure 1**. First, prior to entry at a U.S. POE, importers and carriers file paperwork and provide advance electronic cargo information, and all imports are subject to risk-based *screening*. Based on the results of this screening, certain goods are subject to import security *scanning* and *inspection* in foreign ports and/or upon arrival at a U.S. port. Second, importers file "entry documents" when cargo reaches a U.S. port, and cargo may be subject to additional scanning and inspection for import security and trade enforcement purposes. Admissible cargo is *released* from the port, and importers file an additional set of "entry summary" documents, which CBP uses to calculate customs duties and to make an initial assessment of taxes, fees, and duties owed. Third, following cargo entry, importers may challenge the assessment for up to a year, or longer under certain circumstances, until the final assessment of taxes and fees, a process known as *liquidation*. Trade enforcement activities may continue through audits and other post-entry investigations.

**Figure 1. The U.S. Import Process**

| PRE-ENTRY | ENTRY | POST-ENTRY |
|---|---|---|
| • Importers and couriers provide advance electronic cargo information<br>• Data are screened through Automated Targeting System<br>• Containers may be subject to non-intrusive inspection (NII) import security scanning and/or inspection in foreign port<br>• Containers may be subject to NII import security scanning and/or inspection in US port | • Importers file entry documents within 15 days of cargo's arrival at POE<br>• Containers may be subject to additional NII trade enforcement scanning and/or inspection<br>• CBP officers make a preliminary determination about cargo admissibility<br>• Importers may submit additional evidence to prove admissibility as necessary<br>• Admissible cargo is released; importers must file entry summary documents with additional customs data<br>• CBP uses entry summary documents to make an initial assessment of duties owed | • Importer has up to one year to challenge assessment unless liquidation period is extended (by CBP or by importer) or suspended (typically due to ongoing investigation or legal proceeding)<br>• Entry is liquidated, resulting in the final assessment of duties or drawback entries<br>• CBP and ICE may audit importers as part of trade enforcement investigations |

**Source:** CRS presentation of information provided by CBP.

**Notes:** Import security includes screening, scanning, and inspections to detect chemical, biological, radiological, and nuclear (CBRN) weapons, illegal drugs, and other contraband; trade enforcement includes screening, scanning, and inspections to detect trademark and copyright violations, unsafe products, and illegal agricultural products, and to ensure proper collection of tariffs, fees, and anti-dumping and countervailing duties (AD/CVD).

## Pre-Entry: Advanced Cargo Screening, Scanning, and Inspections

The import process begins well before cargo arrives at a U.S. port of entry (POE). During the pre-entry stage of the process, importers of record submit electronic cargo manifests and other shipment data to CBP. This information may be submitted through CBP's Automated Customs System (ACE) or its Automated Customs Environment (ACE; see "Text Box: CBP's Data Management Systems," below). CBP uses these advanced filing data to pre-clear cargo for admission, facilitate inflows, and target certain cargo for import security and trade enforcement. Cargo may be subject to import security scanning and inspections in foreign ports prior to being loaded on U.S.-bound ships and/or upon arrival at a U.S. port of entry (POE).

**CBP's Data Management Systems**

Each stage of the import process involves an ongoing exchange of information between CBP and importers. CBP manages two systems for tracking this information and for managing the collection of import duties and other trade-related fees: the **Automated Commercial System (ACS)** and the **Automated Commercial Environment (ACE)**. Both of these systems serve as data management systems for CBP and as contact points for trade partners to submit electronic data to CBP, to receive information about the status of their shipments, and to make payments and manage customs accounts.

The ACS began operating in 1984 and relies on mainframe computer hardware and software that are considered at least a generation out of date, factors which reportedly limit ACS functionality and reliability. The U.S. Customs Service created ACE in 2001 to begin replacing ACS, a transition known as "customs modernization." The challenge in the customs modernization process is to create a new data management system that meets all of CBP's trade enforcement and import security needs, while supporting a streamlined import process for legitimate importers, and to test and implement the new system without disrupting trade flows during the transition period.

To this end, CBP has initiated ACE as a series of modules that encompass discrete phases of the import process. In general, as new ACE modules are introduced, importers initially are permitted to use either ACS or ACE for the affected task; and once the new ACE component has been tested and proven effective, importers are required to use the ACE components as certain ACS functions are disabled. CBP's eventual goal is to eliminate the ACS, and for ACE to provide a single point-of-access and data management system covering the entire trade process for all U.S. importers.

According to CBP's office of legislative affairs, trade users may use their ACE accounts to pay duties and fees and to generate 125 downloadable and customized reports. As of March 2012, electronic manifest data for truck, rail, and ocean shipments may be filed through ACE at all U.S. POEs. Air and multi-modal integration is anticipated, but not yet planned. On September 29, 2012, ACE became the only CBP-approved Electronic Data Interchange (EDI) for submitting rail and sea manifests.

On October 18, 2014, CBP added a new ACE Automated Brokers Interface (ABI) query capability to request entry record status, cargo and manifest information on file with ACE. On January 3, 2015, a series of new ACE capabilities were launched including the transmission of antidumping and countervailing duty entries; electronic bond processing for both Single Transaction Bonds and Continuous Bonds; and the deployment of an import air manifest. CBP plans on completing trade processing capabilities in ACE and decommissioning similar capabilities in its other system by the end of 2016.

CBP is working to transition cargo processing to the ACE, which is being developed as the primary system CBP and all federal partner government agencies (PGAs) will use as a "single window" to track, control, and process all imported and exported goods. To that end, CBP has announced three key dates. On May 1, 2015, CBP will require mandatory use of ACE for all electronic manifest filing. On November 1, 2015, use of ACE will be mandatory for all electronic cargo release and related entry summary filing. On October 1, 2016, all remaining electronic portions of the CBP cargo process will be required to be completed through ACE.

**Source**: U.S. Customs and Border Protection, Automated Commercial Environment/International Trade Data System (ACE/ITDS) "ACEopedia", October 2012; 77 *Federal Register* 19030-19032, March 29, 2012; see also ACE Deployment D–January 2015 Release Capabilities for the Trade Community".

## Trusted Trader Programs

One of CBP's primary tools for risk management is the use of trusted trader programs, including the Customs-Trade Partnership Against Terrorism (C-TPAT), which was established in November 2001, after the 9/11 attacks, and subsequently authorized as part of the SAFE Port Act of 2006 (see "Security and Accountability For Every (SAFE) Port Act of 2006 (P.L. 109-347)"). Trusted trader programs are voluntary public-private partnership programs that permit certain import-related businesses to register with CBP, follow instructions prescribed by the agency to secure their supply chains, and thereby become recognized as low-risk actors and become eligible for expedited processing and other benefits. These programs are described in greater detail in the text box below.

### CBP Trusted Trader Programs

**Customs-Trade Partnership Against Terrorism (C-TPAT)**

- C-TPAT is open to U.S. importers, customs brokers, and port and terminal operators; Mexican and Canadian manufacturers and certain other foreign manufacturers; rail, sea, air, and truck carriers; and U.S. consolidators and certain other logistics providers.
- Businesses may apply to join C-TPAT by filling out an on-line application and submitting a supply chain security profile that meets or exceeds minimum standards established by CBP. The security profile includes a narrative description of measures in place to ensure the security of cargo at all stages of the company's supply chain, including procurement, production, packing, storage, loading, and transportation of goods for import. CBP reviews profiles within 90 days and reviews company compliance histories. Upon a favorable review, the company is certified as a Tier I C-TPAT partner.
- Within one year of a C-TPAT partner being certified, CBP conducts a physical examination of the company's supply chain to validate that the security measures described in the profile are in place. Companies that meet minimum security criteria are validated as Tier II C-TPAT partners, and companies that show a sustained commitment beyond minimal security expectations are validated as Tier III partners.
- Membership in C-TPAT reduces an importer's ATS risk score, with greater reductions for Tier II and Tier III members. C-TPAT members are less likely than non-members to be selected for security or trade related scanning.
- Certified C-TPAT members are also eligible for expedited processing at POEs and for expedited treatment when containers are selected for scanning or inspection. C-TPAT permits stratified exams, so that if an entry with multiple line items is selected for secondary inspection, only the selected container(s) are detained for inspection, minimizing importers' storage costs. (For non-C-TPAT members, multiple containers may be delayed when a single container must be examined.) CBP's business-resumption plans also call for C-TPAT members to have front-of-the-line privileges in the event of a future port closure.
- As of September 30, 2013, over 10,662 trade partners were certified as C-TPAT members and 2,235 companies were validated or re-validated in FY2013, according to CBP.

**Free and Secure Trade System (FAST)**

- FAST is open to commercial truck drivers who have completed background checks and fulfill eligibility requirements and whose imports have supply chains that are fully C-TPAT certified.
- FAST members are eligible to use dedicated FAST lanes at certain land POEs. FAST lanes generally have shorter wait times and faster processing.
- More than 78,000 commercial drivers are enrolled in the FAST program, and 17 ports at the northern and southern borders have FAST lanes.

**Importer Self-Assessment Program (ISA)**

- The ISA is open to C-TPAT members who are residents of the United States, have a two-year import history, and are known importers that have businesses physically established, located, and managed within the United States.
- Importers must demonstrate a willingness to maintain an ongoing, mutually beneficial trade relationship with CBP, the ability to manage and monitor their ongoing compliance with trade laws through self-assessment, and the willingness to demonstrate an ongoing compliance through internal controls and annual risk assessments.
- Accepted ISA importers are assigned a National Account Manager who serves as a liaison between CBP and the importer, and identifies and resolves issues through consultation.
- ISA members receive guidance from CBP upon request and are exempted from the comprehensive audit pool known as Focused Assessment Audit (single issue audits may be conducted to address specific concerns).
- As of November 17, 2014, CBP reports that 308 companies participate in the Importer Self-Assessment Program, accounting for 23% of U.S. imports by value.

**Mutual Recognition Arrangements**

- As of June 27, 2014, CBP has established mutual recognition arrangements with Canada, the European Union, Israel, Japan, Jordan, Mexico, New Zealand, South Korea, and Taiwan.[77] These arrangements allow C-TPAT members and trusted traders to receive similar benefits in partner countries as those in the United States.

**Sources:** CBP Office of Legislative Affairs, CBP, "C-TPAT Overview," "C-TPAT: A Guide to Program Benefits," "FAST Fact Sheet," and "Importer Self-Assessment Program.," *CPB Performance and Accountability Report, FY2013.*

## Advance Electronic Cargo Information

Under the Trade Act of 2002, as amended, importers and carriers seeking to import goods to the United States must provide DHS with electronic manifest and other data prior to arrival in U.S. ports. Carriers are required to provide names and addresses of shippers and consignees, detailed descriptions of the goods being imported, information about the carrier, and information about the day, time, and port of arrival. Specific filing requirements differ by mode of entry (truck, rail, maritime, or air) and in some cases by country of origin (see text box below).

**Deadlines for Submission of Electronic Manifests and Other Shipping Data**

**Air Cargo** (North America, Caribbean, Central America, and South America north of equator): Prior to aircraft departure bound for the United States (wheels up)

**Air Cargo** (Other countries of origin): 4 hours prior to arrival

**Rail Cargo**: 2 hours prior to arrival

**Truck Cargo**: 1 hour prior to arrival, or 30 minutes prior to arrival for C-TPAT members

**Maritime Cargo**: Importer data due 24 hours before cargo is loaded on vessel bound for the United States; carrier data due 24 hours prior to loading in a foreign port for containerized and break-bulk cargo or 24 hours prior to arrival at the first U.S. port for bulk cargo, with updates as they occur.

**Source:** 19 C.F.R. §§4, 122-123.

### *Maritime Cargo: 10 + 2 Importer Security Filing*

Maritime cargo is subject to additional reporting requirements under Section 203 of the SAFE Ports Act and an interim final rule published by CBP on November 25, 2008.[78] Under the rule, maritime vessels must submit Importer Security Filings (ISF) and Additional Carrier Requirements known collectively as "10 + 2" filings—so-called because they include 10 data elements to be submitted by importers of record, plus 2 data elements to be submitted by carriers. The 10[79] data elements supplied by importers are

1. importer of record number;
2. consignee number;
3. seller name and address;
4. buyer name and address;
5. ship-to party name and address;
6. manufacturer (supplier) name and address;
7. country of origin;
8. Harmonized Tariff Schedule (HTS) 6-digit classification;
9. container stuffing location; and
10. consolidator (stuffer) name and address.

The two data elements provided by carriers are

[77] See http://www.cbp.gov/newsroom/national-media-release/2014-06-27-000000/us-israel-sign-mutual-recognition-arrangement.

[78] P.L. 109-347 §203; 19 C.F.R. §§4.7–4.7d; also see 73 *Federal Register* 71730.

[79] Ten data elements are required for all maritime cargo destined for U.S. entry. If cargo is transiting through the United States, only five elements are required: booking party name/address; ship to party; harmonized tariff schedule (HTS) classification; foreign port of unlading; and place of delivery.

1. the vessel stow plan; and
2. daily messages with information about any changes in container status.[80]

The first 8 importer data elements must be provided 24 hours prior to lading of the goods on a vessel. Information on the stuffing location and the consolidator must be filed as soon as possible, but no later than 24 hours before arrival in the United States. Regarding the carrier data, the vessel stow plan must be provided no later than 48 hours after departure, and container status messages must begin within 24 hours of creation or receipt of the container.

## Automated Targeting System

Electronic manifests and other advanced data elements (including the 10+2 data elements mentioned above) are forwarded to CBP's Automated Targeting System (ATS). CBP officers screen imports by comparing cargo and conveyance information against intelligence from CBP's National Targeting Center (NTC) and other intelligence and law enforcement databases. The ATS assigns every incoming container a risk-based score related to weapons of mass destruction, narcotics, and other contraband, as well as for the potential for commercial fraud, and other customs violations.[81] The rule-sets for assigning risk scores are designed to identify suspicious activity or behavior and are updated on an ongoing basis in response to changes in intelligence and previous enforcement records.

## Import Security Scanning and Inspections Abroad

The SAFE Port Act of 2006 authorizes a pair of programs to conduct radiation detection and NII scanning in foreign ports: the Secure Freight Initiative and the Container Security Initiative.

### *Secure Freight Initiative (SFI)*

The Secure Freight Initiative (SFI) is a pilot program to test CBP's ability, working with international partners, to conduct radiation detection and NII scanning of 100% of cargo containers being loaded on U.S.-bound ships in certain ports. The SFI employs an integrated scanning system consisting of radiation portal monitors (provided by the Department of Energy) and NII imaging systems (provided by CBP) in a single location. CBP officers review the scanning data to determine which containers should be subject to secondary inspections. Secondary inspections, when called for, are conducted by host-state law enforcement agencies.

In 2007, Section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act; P.L. 110-53) amended the SAFE Port Act to require that by July 1, 2012, 100% of maritime containers imported to the United States—that is, from all ports, whether or not they are identified as high-risk—be scanned by NII and radiation detection equipment before being loaded onto a U.S.-bound vessel in a foreign port. Pursuant to law, the program began operation operated in three foreign ports in 2007: Port Qasim in Pakistan, Puerto Cortes in Honduras, and Southampton in the United Kingdom. The pilot was also subsequently implemented on a limited

[80] U.S.CBP, "Fact Sheet: New Cargo Security Requirements for Maritime Carriers and Importers," November 24, 2008. Also see U.S. Government Accountability Office, *Supply Chain Security: CBP Has Made Progress in Assisting the Trade Industry in Implementing the New Importer Security Filing Requirements, but Some Challenges Remain*, GAO-10-841, September 2010, http://www.gao.gov/assets/320/311023.pdf.

[81] The ATS includes modules for inbound cargo and conveyances; outbound cargo and conveyances; air, ship, and rail passengers; private vehicle land passengers; international cargo outside the United States; and a trend analytic module. Only the inbound cargo and conveyance module is discussed in this report, though some features of the ATS are common to more than one module.

basis in the larger ports of Port Salalah in Oman, Port Busan in South Korea, and Singapore. Following DHS's evaluation of the program, however, the program was scaled back and currently operates only in Port Qasim.[82]

On May 2, 2012, however, then-DHS Secretary Janet Napolitano notified Members of Congress that she would exercise her authority under the 9/11 Act to extend the deadline for 100% scanning.[83] In May 2014, DHS Secretary Jeh Johnson extended the deadline for an additional two years.[84] In the May 2014 letter, Secretary Johnson added that "DHS's ability to fully comply with this unfunded mandate of 100 percent scanning, even in [the] long term, is highly improbable, hugely expensive, and in our judgment, not the best use of taxpayer resources to meet this country's port security and homeland security needs."[85] The Secretary also stated that he had instructed CBP to fulfill the underlying objective of 100% scanning by, among other things, making refinements to its layered-security/risk-management strategy[86]

### *Container Security Initiative (CSI)*

The Container Security Initiative (CSI) is a partnership program among CBP, Immigration and Customs Enforcement, and law enforcement agencies in CSI countries. Under the program, CBP officers and other federal agents at the National Targeting Center–Cargo (NTC-C) in Herndon, VA, review advanced sea cargo data and identify high-risk containers. High-risk containers are targeted for radiation detection and NII scanning within CSI ports. Host state law enforcement agents typically conduct physical scans in the foreign ports, and CBP personnel located in the port or in the United States evaluate the scan results. When an abnormality is detected, host state law enforcement agents conduct a physical inspection before the container is loaded on a U.S.-bound ship. CBP officers and ICE agents participate in such inspections either remotely or as partners within foreign ports.

According to CBP, the CSI is operational in 58 foreign seaports in 30 countries; approximately 80% of all U.S. incoming maritime containerized cargo originates in or transits through a CSI port.[87] About 1% of all cargo passing through CSI ports bound for the United States is scanned using radiation detection technology and NII scanning prior to being shipped to the United States

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[82] CBP, *Report to Congress on Integrated Scanning System Pilots (Security and Accountability for Every Port Act of 2006, Section 231*). Also see DHS, *Congressional Budget Justification–CBP Salaries and Expenses, FY2013*, p. 48.

[83] Letter from Janet Napolitano, Secretary of Homeland Security, to Hon. Joseph I. Lieberman, Senator, May 2, 2012. The 9/11 Act permits the Secretary to extend the deadline by two years and in additional two-year increments by certifying that two of the following conditions exist: that scanning systems are not available, are insufficiently accurate, cannot be installed, cannot be integrated with existing systems, will significantly impact trade and the flow of cargo, and/or do not provide adequate notification of questionable or high-risk cargo. In her notification to Congress, Secretary Napolitano certified that the use of systems to scan containers would have a significant and negative impact on trade capacity and cargo flows, and that systems to scan containers cannot be purchased, deployed, or operated at overseas ports due to limited physical infrastructure.

[84] Letter from Jeh Charles Johnson, DHS Secretary, to Thomas R. Carper, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, May 5, 2014.

[85]Letter from Jeh Charles Johnson, DHS Secretary, to Thomas R. Carper, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, May 5, 2014. See also Stephen L. Caldwell, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office, testimony before the U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Evaluating Port Security: Progress Made and Challenges Ahead*, 113th Cong., 2nd sess. June 4, 2014.

[86] Ibid.

[87] See CSI: Container Security Initiative, http://www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief.

(also see "100% Scanning Requirement").[88] CBP reported that in FY2013, CBP officers reviewed 11,228,203 bills of lading and conducted 103,999 examinations of high-risk cargo in cooperation with host country counterparts.[89]

## Import Processing At Ports of Entry

Imported goods are not legally entered until after the shipment has arrived within the port of entry, entry of the merchandise has been authorized by CBP, and all estimated duties have been paid.[90] The importer of record (i.e., the owner, purchaser, or a licensed customs broker) has the option to enter the goods for consumption, enter them into a bonded warehouse at the port of entry, or to transport the cargo in-bond to another port of entry for processing.

If goods are being entered for consumption (e.g., going directly into U.S. commerce) importers are typically required to file entry documents within 15 calendar days of a shipment arriving at a U.S. port of entry. These documents may include an entry manifest or other form of merchandise release, evidence of the right to make entry, commercial invoices, packing lists, and other documents necessary to determine admissibility. Since most cargo is released electronically, however, packing lists and invoices are rarely requested.

Importers also must provide evidence that a bond has been posted with CBP to cover estimated duties, taxes, and charges that may accrue. If the goods are to be released from CBP custody, an entry summary must be filed and estimated duties deposited at the port within 10 days of the entry of the merchandise.

Based on screening of the cargo and a review of the entry documents, CBP officers at the port make a preliminary determination about cargo admissibility and either release or challenge the shipment. For cargo that is challenged, importers may be required to provide additional documents or take other steps to prove admissibility.

### Import Security and Trade Enforcement at U.S. Ports

#### *Radiation Scanning*

The SAFE Port Act[91] requires that 100% of cargo containers passing through U.S. POEs be scanned for radioactive material prior to being released from the port. Containers typically pass through drive-through portals at about five miles per hour, and radiation detection requires a few seconds per container, apart from congestion.[92] Portals are often placed at natural choke-points, including near port exits or entrances to facilitate 100% radiation scanning. A radiation alarm may be triggered by naturally occurring radiation found in granite and other stone or by radioactive medical or scientific materials. When radiation is detected, further tests are conducted, including more sophisticated scanning or physical inspection, to match the radioactive profile detected

[88] CBP Office of Congressional Affairs, August 23, 2012.

[89] CBP, *FY2013 Performance and Accountability Report*, http://www.cbp.gov/newsroom/publications/ performance-accountability-financial.

[90] CBP, *Importing into the United States: A Guide for Commercial Importers*, updated May 2011, http://www.cbp.gov/.

[91] §121 of P.L. 109-347; 6 U.S.C. 921.

[92] Maritime containers may be scanned prior to being loaded onto U.S.-bound ships, and are also scanned after being removed from a cargo ship onto a truck or train, but before exiting a U.S. POE.

against known radioactive materials in the shipment, or to identify and remove illegal radioactive material.

As of August 2012, CBP reported that 100% of containerized cargo entering through Northern and Southwest border land ports and 99.8% of containerized sea cargo is scanned through radiation portal monitors (RPMs).[93] According to a 2012 GAO report, however, radiation scanning of international rail cargo mainly is conducted with less powerful portable, hand-held scanners; and scanning may only be triggered when NII scanning indicates a cause for alarm.[94] Another GAO report found that CBP's radiation portal monitors may not detect certain nuclear materials when they are lightly shielded, and that such shielding may not be detected in the absence of NII scanning.[95] GAO also has identified problems with the acquisition of RPMs by CBP and by DHS's Domestic Nuclear Detection Office.[96]

### *Non-Intrusive Inspection (NII) and Secondary Inspections in U.S. Ports*

Within each port, officers in CBP's Advanced Targeting Unit use the ATS to select containers at a high risk for weapons of mass destruction, drugs, or other contraband for NII scanning. Containers with risk scores above a certain threshold are automatically selected for such scans, and officers also may select additional containers for NII scanning and/or physical inspection. **Table 1** lists the number of rail, truck, and maritime cargo containers inspected by CBP between FY2005 and FY2013 (i.e., the total number processed for entry), and the number subject to secondary inspection, including NII scanning, physical inspection, or both.

**Table 1. Primary and Secondary Inspections of U.S. Containerized Imports,**

Number of Cargo Containers and Percentage of Secondary Inspections

| | Rail | | | Truck | | | Maritime | | |
|---|---|---|---|---|---|---|---|---|---|
| Fiscal year | Primary | Secondary | % | Primary | Secondary | % | Primary | Secondary | % |
| 2005 | 2,658,764 | 2,090,687 | 79 | 11,323,070 | 2,641,877 | 23 | 11,342,493 | 569,308 | 5 |
| 2006 | 2,735,335 | 2,277,447 | 83 | 11,593,554 | 2,771,266 | 24 | 11,621,658 | 578,628 | 5 |
| 2007 | 2,737,149 | 2,444,479 | 89 | 11,250,482 | 2,843,730 | 25 | 11,702,610 | 441,414 | 4 |
| 2008 | 2,747,259 | 2,499,399 | 91 | 11,012,928 | 2,773,995 | 25 | 11,357,442 | 354,908 | 3 |
| 2009 | 2,178,604 | 2,017,851 | 93 | 9,237,649 | 2,794,256 | 30 | 9,854,337 | 447,616 | 5 |
| 2010 | 2,430,873 | 2,305,656 | 95 | 10,002,606 | 3,279,851 | 33 | 11,116,791 | 489,340 | 4 |
| 2011 | 2,636,781 | 2,519,856 | 96 | 10,114,167 | 3,130,647 | 30 | 11,515,475 | 475,569 | 4 |

[93] CBP Office of Congressional Affairs, August 23, 2012.

[94] U.S. Government Accountability Office, *Combatting Nuclear Smuggling; DHS Has Developed Plans for Its Global Nuclear Architecture, but Challenges Remain in Deploying Equipment*, GAO-12-941T, July 26, 2012, p. 5, http://www.gao.gov/assets/600/593027.pdf.

[95] U.S. Government Accountability Office, *Supply Chain Security: Container Security Programs Have Matured, but Uncertainty Persists over the Future of 100 Percent Scanning*, GAO-12-422T, February 7, 2012, pp. 10-12, http://www.gao.gov/assets/590/588253.pdf. See also CRS Report R40154, *Detection of Nuclear Weapons and Materials: Science, Technologies, Observations*, by Jonathan E. Medalia, for a more comprehensive discussion of nuclear detection technologies.

[96] Ibid; see also U.S. Government Accountability Office, *Combating Nuclear Smuggling: Inadequate Communication and Oversight Hampered DHS Efforts to Develop an Advanced Radiography System to Detect Nuclear Materials*, GAO-10-1041T, September 15, 2010.

| | Rail | | | Truck | | | Maritime | | |
|---|---|---|---|---|---|---|---|---|---|
| Fiscal year | Primary | Secondary | % | Primary | Secondary | % | Primary | Secondary | % |
| 2012 | 2,936,270 | 2,833,518 | 97 | 10,367,841 | 3,222,136 | 31 | 10,975,111 | 763,564 | 7 |
| 2013 | 3,060,933 | 2,888,860 | 94 | 10,567,332 | 2,834,469 | 27 | 11,041,099 | 715,660 | 6 |

**Source:** CBP Office of Legislative Affairs, April 28, 2014.

**Notes**: Data include inspections of empty and full containers. Secondary inspection includes non-intrusive imaging (NII) scanning and/or opening a cargo container for physical inspection.

As **Table 1** indicates, the majority of cargo containers between FY2005 and FY2013 entered by ship (about 101 million out of 220 million containers, or 46%) or by truck (about 95 million, or 44%), with the remainder entering by rail (about 24 million, or 11%). Secondary inspection rates vary greatly by mode of entry, with 91% of all rail containers being scanned or inspected, versus 28% of truck-mounted containers, and 5% of maritime containers. Overall, about 25% of all incoming containers (6.1 million out of 24.3 million) were subject to secondary inspection in FY2011.

The different NII scanning percentages may reflect differences in port infrastructure and the shipping process, among other factors. While land ports are naturally structured as choke points with a relatively limited number of trucking or rail lanes, sea ports are larger facilities, and containers from any given ship may flow in multiple directions before being placed on another ship, rail, or truck conveyance. Truck and rail cargo also may be more regular than maritime cargo (i.e., one type of good per container), whereas maritime containers may be more likely to include multiple shipments bundled into a single container, making NII scanning more time consuming. The flow of maritime shipping is also less regular than land-based modes. Whereas truck and rail traffic arrives in a relatively steady stream at ports of entry, maritime cargo arrives in surges, with each incoming ship containing hundreds or thousands of containers that must quickly be processed.

Some Members have expressed frustration that most cargo is not scanned before entering the United States, including the great majority of maritime cargo. However, while NII scans take less than one minute per container overall, evaluating NII images and comparing them to declared cargo manifests is a labor-intensive process that may involve multiple officers and may require up to several minutes per container, depending on the complexity of the cargo. Thus, substantially increasing the proportion of cargo scanned likely would be resource-intensive, and could slow the flow of goods in and out of the United States. Moreover, CBP estimates that the overwhelming majority of cargo entries are lawful,[97] so that increased scanning may be of limited practical benefit (also see "100% Scanning Requirement").

[97] CBP projected the trade compliance rate (measured against transactional discrepancies) to be 98.9% in FY2012, and the compliance rate averaged 98.0% for FY2006-FY2012; see CBP, *Import Trade Trends: FY2011 Year End Report*, Washington, DC 2012, p. 17. Similarly, CBP's audit of travelers at ports of entry found that about 99% of travelers at air and land ports in FY2006 were in compliance with all relevant rules, laws, and regulations; see GAO, *Border security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry*, GAO-08-219, November 2007, p. 47. And in FY2007-FY2010, CBP's Office of Field Operations made a total of 168,504 drug seizures at ports of entry—a figure which amounts to less than 0.2% of all cargo entries, and less than 0.01% of all cargo and travelers entering through POEs; see DHS Office of Inspector General, *CBP's Efficacy of Controls Over Drugs Seizures*, OIG-11-57, March 2011, p. 3.

### *Trade Enforcement Inspections*

CBP trade specialists at POEs also target certain containers for trade enforcement inspections based on ATS risk scores along with other intelligence and local enforcement considerations. Goods may be selected for trade enforcement examinations related to concerns about product safety, intellectual property violations (copyright or trademark infringement), counterfeit goods, labeling violations, or anti-dumping and countervailing duty (AD/CVD) circumvention, among other considerations. Trade enforcement inspections ensure that goods are correctly classified and accurately weighed for duty assessment, and administrative corrections are made as necessary. Trade specialists also look for evidence of trade-related fraud (e.g., false rules of origin labeling or valuation of merchandise), which may trigger an investigation by CBP trade specialists, ICE investigators, or other federal agents.

CBP's trade enforcement efforts are focused on five priority trade issues (PTIs), or "high risk areas that can cause significant revenue loss, hurt the U.S. economy, or threaten the health and safety of the American people."[98] The five issues are antidumping and countervailing duties; import safety; intellectual property rights; textiles and apparel; and trade agreements.[99] According to CBP, these PTIs serve as the core of CBP's trade enforcement strategy, and CBP focuses considerable resources and personnel on them. CBP's *Performance and Accountability Report, Fiscal Year 2013* reported gains in identifying "threats, challenges, and vulnerabilities in each step" of the duty collection process, and in targeting textile and apparel manufacturers overseas whose trade preference claims could not be substantiated.

Trade enforcement examinations can be a time-consuming procedure, especially in the case of containers with diverse contents, because CBP officers must physically unpack the container and examine all of its contents or a sample of contents. In some cases, such as when containers include certain food, plant, or animal products, CBP officers may be required to bring in representatives from other federal agencies (e.g., the U.S. Department of Agriculture) to assist with physical inspections, and to determine whether or not a good may be admitted or how it should be classified. Any storage and transportation costs associated with trade enforcement examinations are borne by the importer, and may also occur outside the port at a centralized examination station. As noted, one benefit of C-TPAT membership is that large shipments subject to secondary inspection may be eligible for stratified exams, minimizing storage costs in these cases (see "Text Box: CBP Trusted Trader Programs").

As **Table 2** indicates, about 2% (3.2 million out of 140.5 million) of all cargo containers seeking admission to the United States were physically examined at a POE in FY2005-FY2013; and slightly less than half (1.5 million out of 3.2 million) of physical examinations were trade-related (as opposed to security-related). These examinations resulted in a total of 157,905 trade-related seizures during this period, meaning that seizures occurred in about 10% of examined containers. Most seizures were related to intellectual property violations (122,355 cases; 77% of trade-related seizures) and import safety violations (24,503 cases; 16% of trade-related seizures).

[98] CBP website, http://www.cbp.gov/xp/cgov/trade/priority_trade/.

[99] Ibid.

**Table 2. Trade Enforcement at U.S. Ports, FY2005-FY2013**

Number of Cargo Containers

| Fiscal Year | Primary Inspections | Examinations | | Trade-Related Seizures | | |
|---|---|---|---|---|---|---|
| | Total | Total | Trade-Related | Total | Intellectual Property | Import Safety |
| 2005 | 25,324,327 | 473,726 | 100,350 | 12,476 | 8,022 | NA |
| 2006 | 25,950,547 | 515,740 | 201,000 | 17,600 | 14,700 | 1,000 |
| 2007 | 25,690,241 | 400,805 | 219,064 | 17,195 | 13,656 | 1,296 |
| 2008 | 25,117,629 | 404,497 | 228,445 | 18,421 | 14,992 | 2,677 |
| 2009 | 21,270,590 | 376,256 | 178,204 | 19,218 | 14,839 | 2,744 |
| 2010 | 23,550,270 | 393,106 | 199,461 | 23,687 | 19,962 | 4,477 |
| 2011 | 24,266,423 | 384,226 | 200,916 | 30,911 | 24,823 | 6,607 |
| 2012 | 24,279,222 | 390,035 | 209,360 | 38,802 | 22,894 | 10,028 |
| 2013 | 24,669,364 | 423,534 | 255,262 | 33,702 | 24,361 | 7,763 |

**Source:** CBP Office of Legislative Affairs March 2, 2012, May 17, 2012, and April 28, 2014.

**Notes:** Total inspections include the total number of loaded truck, rail, and maritime cargo containers inspected. Examinations include cases in which cargo containers were opened and their contents physically inspected.

### *Cargo Release*

Cargo that is found to be admissible and cleared through security and trade enforcement inspections is formally released into U.S. commerce. In these cases, importers must file additional entry summary documentation within 10 days to provide detailed information about the shipment (including customs classification, weight, and duty rates) that CBP will use to determine that all import requirements have been satisfied.[100] Importers must pay storage and transportation costs during the cargo release period, and must pay initial customs duties and fees assessed prior to taking possession of imported goods.

## Trade Facilitation

Several CBP programs are in place that are designed to facilitate lawful trade during and after the entry process, including CBP "Simplified Entry" process, its Centers of Excellence and Expertise (CEE), and the in-bond transportation system.

### *Automated Commercial Environment (ACE) Cargo Release (formerly "Simplified Entry")*

In April 2011, CBP established a joint industry-CBP working group to establish a simplified entry process intended to reduce the administrative burden for importers, while providing the necessary

[100] In certain cases, including certain produce and other merchandise from Mexico and Canada, shipments consigned to the U.S. government, and articles for a trade fair, shipments may be delivered immediately to the consignee, rather than being held between formal entry and delivery as in the standard procedure described above. In these cases, importers file entry documents and entry summary documents and pay estimated duties at the same time within 10 working days of the cargo's release.

documentation needed by CBP officials to do their jobs of identifying risks and collecting tariffs, taxes, and fees. The "Simplified Entry" process proposed to reduce the number of duplicative data elements required to obtain release of products for cargo. The process allows filers to submit a streamlined data submission of 12 required and 3 optional data elements. These data may be filed early in the import process to allow an expanded window of opportunity to identify potential risks. Filers may also update entry information throughout the import process to provide CBP more accurate data.[101]

In December 2011, CPB began a simplified entry pilot program for air cargo. CBP selected 9 customs brokers (out of 40 applicants) operating out of 3 POEs (Chicago, Atlanta, and the Indianapolis Express Consignment Operation). In August 2012, CBP opened the program to all self-filers who hold a Tier-2 or higher C-TPAT status, and all importers who use customs brokers to file simplified entry information.[102] As of September 2013, over 159,000 simplified entries had been filed for more than 1,100 importers.[103]

In November 2013, CBP re-named the program the "ACE Cargo Release Test," and dropped the C-TPAT requirement to allow more importers to participate. Eligible applicants are now accepted on a first-come, first-served basis, but if the volume of applicants exceeds CBP's administrative capabilities, CBP reserves the right to select individual participants to ensure a diverse pool.[104] In February 2014, the test was expanded to cargo entries by ocean and rail; and to limited truck entries at 10 POEs on May 2014.[105]

### *Centers of Excellence and Expertise*

To facilitate post-entry processing, CBP has launched several Centers of Excellence and Expertise (CEEs or Centers) since October 2011 to serve as industry-specific single points of post-entry processing for certain businesses enrolled in the C-TPAT and ISA trusted trader programs.[106] The Centers are designed as "one-stop-shops" to align customs practices with the demands of modern business and to facilitate trade in the targeted industries. CBP-integrated staff in the Centers process entry summaries, post-entry amendment and correction reviews, protests, and other administrative work.[107]

The 10 CEEs operating as of November 2012 are as follows:

- Electronics in Los Angeles;

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[101] CBP, *Simplified Entry Overview*, May 2012, http://www.cbp.gov/xp/cgov/trade/trade_transformation/simplified_entry/. For trade facilitation initiatives, see also meeting announcements of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), 76 *Federal Register*, 17143, 76 *Federal Register* 46312, and 76 *Federal Register* 58030.

[102] 77 *Federal Register* 48527, August 14, 2012.

[103] CBP, *FY2013 Performance and Accountability Report*, http://www.cbp.gov/newsroom/publications/. CBP, *CBP Announces Expansion of Cargo Release/Simplified Entry Pilot*, October 2012, http://www.cbp.gov/trade/process-improvement-initiatives/simplified-entry/ac-se-expansion.

[104] 78 *Federal Register* 66039, November 4, 2012.

[105] 79 *Federal Register* 6210, February 3, 2014; CBP, 79 *Federal Register* 25143, May 2, 2014.

[106] The first two CEEs began as pilot programs in November 2010 when CBP established an Information Technology and Consumer Electronics CEE in Los Angeles and a Pharmaceuticals, Health and Chemicals CEE in New York. After evaluation, these CEEs were established permanently in October 2011. On May 10, 2012, CBP announced the creation of two additional Centers: Automotive and Aerospace in Detroit, and Petroleum, Natural Gas, and Minerals in Houston.

[107] CBP website, Centers of Excellence and Expertise, http://www.cbp.gov/xp/cgov/trade/trade_transformation/industry_int/.

- Pharmaceuticals, Health and Chemicals in New York;
- Automotive and Aerospace in Detroit;
- Petroleum, Natural Gas, and Minerals in Houston;
- Apparel, Footwear, and Textiles in San Francisco;
- Agriculture and Prepared Products in Miami;
- Consumer Products and Mass Merchandising in Atlanta;
- Industrial and Manufacturing Materials in Buffalo;
- Base Metals in Chicago; and
- Machinery in Laredo.[108]

The Centers were designed so that the industries would receive fewer cargo delays, reduce costs, and enjoy greater predictability, while CBP would be able to shift its emphasis at the ports of entry to address higher-risk shipments and focus on trade enforcement issues. On a similar track, an Account Executive (AE) pilot was established to work with selected trusted partners in the electronics industry. At the end of these pilots, the two concepts were combined. The Centers also support improved information sharing between industry representatives and CBP staff to lead to more focused trade enforcement efforts.[109]

### *In-bond Transportation*

In-bond transportation facilitates the efficient flow of goods trade into the United States by allowing imported merchandise to arrive at one U.S. POE and be transported by a bonded carrier to another U.S. POE, where it officially enters into U.S. commerce (duties are paid upon entry), is exported out of the United States (duty payment is not required), enters a bonded warehouse (duties are paid upon release), or is brought into a free trade zone for further processing (duties are paid on the finished product upon entry).[110] According to CBP, the four field offices that process the most in-bond shipments are Los Angeles, New York, Miami, and Seattle.

Many in the trade community value the flexibility provided by the in-bond system as a way to avoid congestion and delays at U.S. seaports, but a 2007 GAO report raised concerns that CBP collects little information on in-bond shipments, does not know exactly how often the system was used, and performs limited analysis on in-bond flows.[111] As a result, CBP is reportedly unable to identify systemic risks that could lead to revenue losses or to implement appropriate compliance measures to mitigate such risks.[112] GAO also found that many in-bound cargo shipments remained unreconciled, and that regulatory flexibility that benefited the trade community created challenges for CBP's efforts to track in-bond shipments.[113] Some in the trade community have

[108] "CBP Announces Six New Centers of Excellence and Expertise," CBP Press Release, November 28, 2012.

[109] CBP website, Trade Intelligence, http://www.cbp.gov/xp/cgov/trade/trade_transformation/trade_intell/.

[110] See also CRS Report R42686, *U.S. Foreign-Trade Zones: Background and Issues for Congress*, by Mary Jane Bolle and Brock R. Williams.

[111] U.S. Government Accountability Office, *Persistent Weaknesses in the In Bond Cargo System in Peak Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns*, GAO-07-561, April 2007, p. 12, http://www.gao.gov/products/GAO-07-561. In-bond shipments are allowed by various amendments to the Tariff Act of 1930, including 19 U.S.C. §1552-1553. Regulations are found in 19 C.F.R. parts 18, 122, and 123.

[112] Ibid.

[113] Ibid. These regulations, for example, allow 15 to 60 days for the in-bond cargo to reach its destination, depending on mode of transportation, and allow the ultimate destination of the shipment to be changed in transport (19 C.F.R. §18.2

also commented that vulnerabilities in the in-bond system may allow the entry of contraband goods, such as illegal apparel shipments or goods that violate international property rights laws.[114]

On February 22, 2012, CPB proposed regulatory changes to the in-bond process. Among other things, the proposed changes would require electronic filing of in-bond applications, that applications contain 6-digit Harmonized Tariff Schedule (HTS) classification of all in-bond merchandise, a 30-day maximum arrival time for all in-bond shipments (except for pipelines), and the disclosure of any information relevant to the safety and security of the shipment.[115] As of this writing, CBP has not made any announcements regarding the adoption or implementation of these proposed rules. A public comment by the National Customs Brokers and Forwarders Association of America pointed out, among other things, that some of the information that CBP proposed to require for in-bond shipments were duplicative, as they were already required pursuant to the Importer Security Filing and other CBP regulations.[116]

## Post-Entry: Continued Trade Enforcement

CBP responsibilities do not end when a product has entered the United States. Importers have up to 180 days from the date of entry to challenge CBP's assessment of duties owed, after which CBP makes a final determination of the rate and amount of duty owed, a process known as liquidation, and importers pay additional duties or receive refunds to reconcile any differences between estimated and final duties owed.[117] CBP trade specialists and other federal agencies involved in trade enforcement may conduct additional enforcement activities in the period after cargo enters the United States, including audits of importers' records to ensure compliance with U.S. trade laws.

### Liquidation

Liquidation is "the final computation or ascertainment of duties on entries for consumption or drawback entries."[118] In most cases, the liquidation must take place within one year of the merchandise entry, but may be extended if (1) CBP does not have the documentation for proper appraisement, classification, or to ensure compliance with trade laws; or (2) the importer requests an extension and shows good cause. Liquidation also may be *suspended* (meaning the final assessment of duties is held open) in certain cases, including cases in which merchandise is affected by a pending court case, products are suspected to be prohibited, or merchandise has not been completely withdrawn from a customs warehouse or otherwise accounted for.[119]

Liquidation is suspended, for example, if imported merchandise is the subject of an ongoing antidumping (AD) or countervailing duty (CVD) investigation.[120] In AD and CVD investigations,

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and 18.5).

[114] James Giermanski, "In-bond Shipments: The Trojan Horse," *Journal of Commerce*, March 9, 2008.

[115] CBP, "Changes to the In-Bond Process," 77 *Federal Register* 10622, February 22, 2012. On July 26, 2012, CBP issued a correction to the notice, after officials noted that the complete Initial Regulatory Flexibility Analysis (IRFA) was not posted on the regulations.gov website. CBP subsequently posted the IRFA, and requested comments prior to August 27, 2012; see 77 *Federal Register* 43740.

[116] Letter from Alan R. Klestadt, Customs Counsel, National Customs Brokers and Forwarders Association of America, Inc., to U.S. Customs and Border Protection, April 23, 2012.

[117] See 19 C.F.R. §174, 19 U.S.C. 1514 (c)(3) as amended.

[118] 19 C.F.R. §159.1.

[119] 19 C.F.R. §§159.52-159.57.

[120] AD and CVD laws authorize the imposition of duties if (1) the International Trade Administration of the

the suspension of liquidation begins as soon as the ITA makes an affirmative preliminary determination of dumping or subsidies. Suspensions end, and final duties are collected, after an administrative review of the investigation is conducted. In a Government Accountability Office (GAO) investigation regarding CBP's collection of AD/CVD duties, GAO investigators noted that the long lag time between cash deposit of estimated duties and the collection of the final duties assessed (on average 3.3 years, and in many cases much longer) made it difficult for CBP to collect the duties. In fact, the longer the lag time and larger the amount of duty owed, the greater the likelihood that CBP would be unable to collect the duties owed.[121]

## Recordkeeping and Post-Entry Audits

As a general rule, CBP requires that all records regarding imports of merchandise be kept for a period of five years after the date of entry.[122] These documents must be made available to CBP officials if they request an audit to determine if any additional duties, fees, and taxes are owed, or to insure that the importer is in compliance with laws administered by CBP.[123]

### *Regulatory Audits*

CBP conducts two main types of regulatory audits.[124] First, focused assessment (FA) audits are risk-based evaluations of a company's CBP transactions. FAs begin with an assessment of the company's internal controls in order to identify system strengths and weaknesses and help predict future compliance. If certain risk areas are identified, CBP auditors examine those areas. Second, quick response audits (QRAs) are single-issue audits narrowly focused to address a specific objective within a short period of time. Examples of QRAs could include an audit of an importer's operations to determine if unlawful transshipments may have occurred, or an audit of a company's internal controls on intellectual property rights.[125] Both types of audits may result in enforcement action and penalties if discrepancies are found.

### *Prior Disclosure*

Any party who may have violated U.S. trade laws (including undervaluation, inaccurate description of merchandise, AD/CVD duty evasion, or improper country of origin declarations or markings) may choose to make a prior disclosure of the violation and thereby become eligible for

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Department of Commerce (ITA) determines that foreign merchandise is being, or likely to be, sold in the United States at less than fair value or a foreign country or public entity has subsidized the merchandise; and (2) the U.S. International Trade Commission (USITC) determines that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, due to imports of that merchandise. For a fuller discussion of AD and CVD issues, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones and CRS Report IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones

[121] U.S. Government Accountability Office (GAO), *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, GAO-08-391, March 26, 2008.

[122] 19 U.S. C. §1304(i).

[123] 19 U.S. C. §1509.

[124] CBP audit procedures are regulated in 19 C.F.R. §163.11. Members of the Importer Self-Assessment (ISA) trusted trader program work with CBP to monitor their own trade compliance and conduct annual risk assessments, and they are exempt from most types of enforcement-related audits (see **Text Box: CBP Trusted Trader Programs**).

[125] CBP, http://www.cbp.gov/xp/cgov/trade/trade_programs/audits/quick_response.xml.

reduced penalties.[126] In order to receive reduced penalties, the party must make a complete disclosure before, or without knowledge of, a formal CBP investigation.[127]

# Issues for Congress

Reauthorization of CBP's trade, enforcement, and security functions has been the subject of several hearings and legislative proposals in recent years. This section reviews selected issues addressed in previous legislation and hearings related to import policy involving customs issues, including policies related to the competing goals of trade facilitation, trade enforcement, and import security, along with customs modernization and interagency coordination. Many of these issues are also addressed in the customs reauthorization bills being discussed in the 114th Congress (see "Legislation in the 114th Congress").

## Trade Facilitation

Some in Congress have identified trade facilitation as a top priority with respect to U.S. customs law and CBP's import policies.[128] Recent legislative attention has focused on the possible authorization of existing CBP trade facilitation programs, on trusted trader program benefits, and on proposals to reduce wait times at ports-of-entry, including through increases in CBP port-of-entry staffing.

### Authorization of Existing CBP Trade Facilitation Programs

Several CBP trade facilitation efforts have been initiated as pilot programs without explicit legislative authorization. Examples include the Simplified Entry program (see "Automated Commercial Environment (ACE) Cargo Release (formerly "Simplified Entry"), and the Centers of Excellence and Expertise (see "Centers of Excellence and Expertise"). In February 2014, the test was expanded to cargo entries by ocean and rail; and to limited truck entries at 10 POEs in May 2014.

S. 1269 as reported on May 13, 2015 by the Senate Finance Committee and S. 1907, as ordered reported by the House Ways and Means Committee on April 23, 2015, seek among other things, to direct CBP to improve the benefits received by trusted trader program participants, and to authorize the Centers of Excellence and Expertise.

### Trusted Trader Program Benefits

CBP's risk management approach to import policy emphasizes the use of trusted trader programs, such as C-TPAT and FAST, in part, to identify and facilitate the entry of low-risk importers and cargo, while focusing enforcement efforts on higher-risk flows. For this reason, some in Congress

[126] See 19 U.S.C. §1592(c)(4). If the merchandise is unliquidated and there is no fraud involved, the party receives no penalty. If the goods have been liquidated and no fraud is involved, the penalty is reduced is reduced from the normal assessment of the domestic value of the goods to one times the duty loss, or if there is no duty assessed, 10% of the dutiable value of the merchandise. See also U.S. Customs and Border Protection, *The ABC's of Prior Disclosure*, Informed Compliance Publication, April 2004, http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp028r2.ctt/icp028r2.pdf.

[127] Ibid.

[128] See, for example, U.S. Congress, Senate Committee on Finance, *Customs Facilitation and Trade Enforcement Act of 2009*, 111th Cong., 1st sess., October 20, 2009, Opening Statement of Hon. Max Baucus, A Senator from Montana, Chairman, Committee on Finance.

and some CBP officials support maximizing participation in C-TPAT and related programs. However, some businesses have described the benefits received by C-TPAT members as inadequate, especially in light of the time and financial investments required to become certified as C-TPAT members. In congressional testimony, some industry representatives have described their constituents as "particularly unsatisfied" by CBP's "one-size-fits-all approach" to risk management.[129] And while it appears that many large import-related businesses have joined

C-TPAT, CRS estimates, based on CBP data that only about 6% of all import-related businesses and about 8% of customs brokers have joined the program.[130]

One issue for Congress is whether to increase C-TPAT benefits or initiate other steps to strengthen trusted trader programs in an effort to increase C-TPAT participation and to facilitate trade flows.[131]

In practice, however, it may be difficult to substantially expand C-TPAT benefits. In the case of land ports, the primary benefit of C-TPAT/FAST membership is access to dedicated lanes where wait times may be shorter and more predictable. However, CBP may have limited capacity to add lanes because many ports are located in urban areas with limited space for expansion.[132] And even if new lanes can be added at the border, carriers may confront ingress and egress bottlenecks that limit the benefits of such investments. In the case of maritime imports, the primary benefit of C-TPAT membership is that low ATS scores reduce the likelihood of an inspection. But with just 4% of all maritime containers selected for secondary inspection (see **Table 2**), C-TPAT membership may offer little practical advantage in this regard. In addition, some CBP officials have told CRS that further reductions in C-TPAT inspections may raise security risks because smugglers may establish clean companies and join the program in order to game the system.[133] For these reasons, the best way to encourage C-TPAT membership may be to increase enforcement against non-members, thereby increasing the *relative* benefits of C-TPAT membership.

## Wait Times at Land Ports of Entry

Some in Congress have expressed concern about delays and unpredictable wait times at land ports of entry, particularly on the U.S.-Mexico border.[134] Several governmental and nongovernmental

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[129] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Customs Trade Facilitation and Enforcement in a Secure Environment*, 111th Cong., 2nd sess., May 20, 2010, Testimony of Frank Vargo, National Association of Manufacturers.

[130] As of August 22, 2012, CBP reported that 10,337 businesses had joined C-TPAT, including 845 customs brokers, according to data provided by CBP Office of Legislative Affairs, August 24, 2012. By comparison, U.S. Census data indicates that there were 181,648 U.S. importers in 2010 and CBP data indicate that there were 11,000 customs brokers; see U.S. Census, "A Profile of U.S. Importing and Exporting Companies, 2009-2010," http://www.census.gov/foreign-trade/Press-Release/edb/2010/edbrel.pdf; and CBP, "Becoming a Customs Broker," http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/brokers.xml. Nonetheless, data from the CBP Office of Legislative Affairs also indicate that C-TPAT members account for 50-56% of all imports by value.

[131] Certain C-TPAT benefits are described in statute under §§213-216 of the SAFE Port Act of 2006. During the 112th Congress, the SAFE Port Act Reauthorization Act (S. 832, introduced April 14, 2011) and the Securing Maritime Activities through Risk-Based Targeting (SMART) Port Security Act (H.R. 4251, passed House, June 28, 2012), for example, would have directed CBP to provide additional incentives to joining C-TPAT by promoting an information sharing program with certain C-TPAT members regarding potential supply chain vulnerabilities.

[132] See U.S. Department of Commerce, *Draft Report: Improving Economic Outcomes by Reducing Border Delays, Facilitating the Vital Flow of Commercial Traffic Across the US-Mexican Border*, Washington, DC, 2008.

[133] CRS interview with CBP port officials, April 10, 2012. Also see Tony Payan, *The Three U.S.-Mexico Border Wars: Drugs, Immigration, and Homeland Security* (Westport, CT: Praeger, 2006), pp. 34-36.

[134] See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime

groups have examined this issue and recommended strategies for reducing wait times. A draft Commerce Department report, for example, identifies three main strategies: (1) optimizing the dispersal of demand across available capacity; (2) improving throughput within the existing system through trusted trader programs and risk-management; and expanding capacity by adding crossing lanes (physical infrastructure); and (3) increasing staffing and operating hours.[135] Similarly, a Department of Homeland Security Southwest Border Task Force made 10 recommendations in 2009 for improving U.S.-Mexico commerce, including enhanced trusted trader programs and risk management systems, faster throughput through improved scanning systems and document reviews, expanded POE infrastructure, and additional POE officers.[136] A third set of taskforce recommendations presented in 2011 included a recommendation that CBP take the lead on adopting best practices related to border inspections, including use of automated risk management, establishing an automated release process, and developing a "single window" approach so that all importers and customs brokers to provide all of the necessary data elements at one U.S. government portal.[137]

While many strategies for promoting faster throughput may be in tension with security and trade enforcement goals (i.e., because faster throughput means less time reviewing each case), increasing port of entry personnel levels may speed flows while also increasing enforcement capacity. Moreover, as **Figure 2** illustrates, while staffing for enforcement between ports of entry (i.e., U.S. Border Patrol) more than doubled between FY2004 and FY2012 (increasing from 10,819 to 21,394), DHS's Office of Field Operations (OFO) staffing at ports of entry increased just 20% during this period (from 18,110 to 21,790), even as enforcement responsibilities increased substantially in the post-9/11 period.

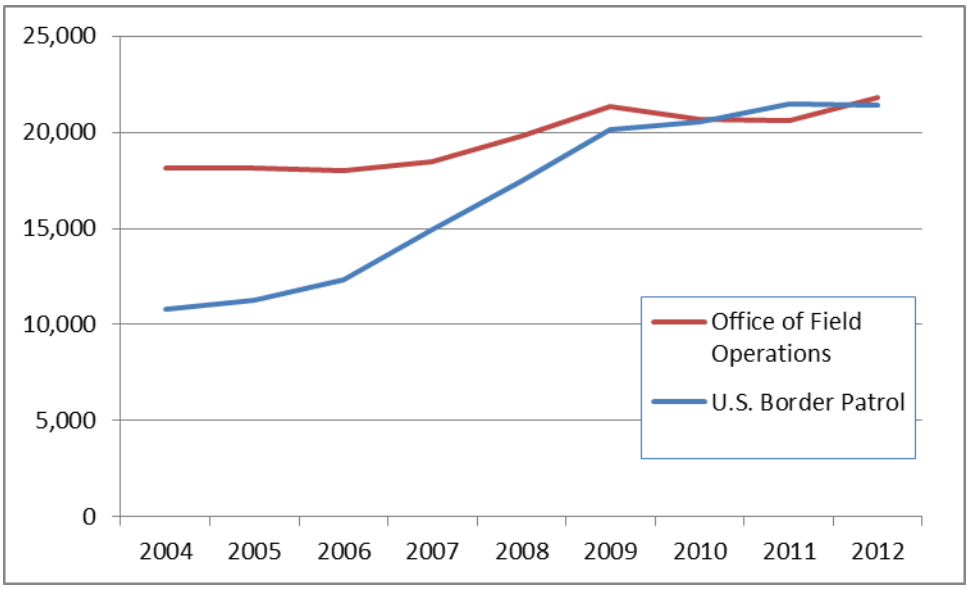
Security, *Using Technology to Facilitate Trade and Enhance Security at Our Ports of Entry*, 112th Cong., 2nd sess., May 1, 2012.

[135] U.S. Department of Commerce, *Draft Report: Improving Economic Outcomes by Reducing Border Delays, Facilitating the Vital Flow of Commercial Traffic Across the US-Mexican Border*, Washington, DC, 2008, p. 5.

[136] Department of Homeland Security Advisory Council, Southwest Border Task Force, *Recommendations*, Washington, DC, September 2009, pp. 3-5, http://www.dhs.gov/xlibrary/assets/hsac_southwest_border_task_force_recommendations_september_2009.pdf.

[137] Department of Homeland Security, Homeland Security Advisory Council, *Southwest Border Task Force Report, Third Set of Recommendations*, 2011, p. 11, http://www.dhs.gov/xlibrary/assets/hsac-southwest-border-task-force.pdf.

**Figure 2. CBP Enforcement Staffing, FY2004-FY2012**




**Source:** Data provided by CBP Office of Congressional Affairs, January 9, 2013.

On the other hand, some Members have expressed skepticism about CBP's staffing model, and may oppose efforts to increase OFO personnel.[138] Some have also encouraged CBP to make better use of technology and risk management (i.e., trusted trader programs), among other strategies, to reduce border wait times.[139]

## Trade Enforcement

CBP's role in trade enforcement has been the subject of congressional attention, especially as it relates to CBP's collection of tariffs and fees and its enforcement of trade laws including antidumping (AD) and countervailing (CVD) duty orders, U.S. intellectual property (IPR) laws, textile and apparel trade violations (e.g., transshipment), and import safety regulations. Some in Congress and some U.S. businesses assert that CBP does not adequately enforce these laws. Some manufacturers also allege that CBP has not adequately investigated allegations of duty evasion, product mislabeling, fraudulent country of origin declarations, or deliberate misclassification of shipments.[140] And some assert that their intellectual property rights have been violated by growing imports of counterfeit goods, and that CBP collaboration with the private sector to identify and enforce IPR violations has been inadequate.[141] Manufacturers also have asserted that

[138] See, for example, U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2013*, Report to accompany H.R. 5855, 112th Cong., 2nd sess., May 23, 2012, pp. 30-31.

[139] Ibid.; U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Using Technology to Facilitate Trade and Enhance Security at Our Ports of Entry*, 112th Cong., 2nd sess., May 1, 2012.

[140] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement*, 112th Cong., 2nd sess., May 17, 2012. For example, see Testimony of Mr. John Williams, Executive Director, Southern Shrimp Alliance.

[141] U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Hearing on H.R. 4223, the "Safe Doses Act"; H.R. 3668, the "Counterfeit Drug Penalty Enhancement Act of 2011; and H.R. 4216, the "Foreign Counterfeit Prevention Act"*, 112th Cong., 2nd sess., March 28, 2012, Testimony of Mr. Travis D. Johnson.

CBP has not actively investigated alleged violations. CBP officials have responded that although CBP would like to be as transparent as possible, the agency must also honor due process requirements, which may require confidentiality.[142]

## Import Security

The major policy question with respect to import security is how CBP can minimize the risk that chemical, biological, radiological, and nuclear (CBRN) weapons, illegal drugs, and other contraband will enter through U.S. POEs, while also limiting the costs and delays associated with such enforcement.[143]

### 100% Scanning Requirement

The SAFE Port Act of 2006 (P.L. 109-347), as amended, required that as of July 1, 2012, that 100% of maritime cargo containers admitted into the United States be scanned through non-intrusive inspection (NII) and radiation detection equipment in a foreign port prior to being loaded on a U.S.-bound ship, unless the Secretary of DHS extends this deadline.[144] On May 2, 2012, then-Homeland Security Secretary Napolitano notified Congress that she would exercise her authority to extend the 100% scanning deadline.[145] In May 2014, Homeland Security Secretary Jeh Johnson extended the Department's time to meet the requirement by an additional two years.[146]With just 1% of cargo scanned before being loaded on U.S.-bound ships—and only about 5% of cargo subject to NII scanning at any point (see **Table 1**)—some Members have expressed frustration that DHS has made little progress toward implementing 100% scanning, and questioned the department about plans to increase the percentage of cargo scanned.[147]

The decision to delay implementation of the 100% scanning program partly reflects the department's findings from the Secure Freight Initiative (SFI) 100% scanning pilot program. In its final report to Congress on the program, CBP identified three main obstacles to implementing 100% scanning at all foreign ports.[148] First, 100% scanning requires significant host state and

[142] Remarks of Assistant Commissioner of International Trade Allen Gina at November 28 press conference following the CBP East Coast Trade Symposium, "CBP Official Says Anti-Evasion Bills Should Not Set Deadlines for Response," *Inside U.S. Trade,* November 29, 2012.

[143] In the 112th Congress, discussion of import security mainly focused on CBP's incomplete implementation of the SAFE Port Act's 100% scanning requirement and the Transportation Security Administration's (TSA) incomplete implementation of the MTSA's provisions related to TWIC cards.

[144] This provision in P.L. 109-347, was amended by P.L. 110-53, the Implementing Recommendations of the 9/11 Commission Act of 2007.

[145] Letter from Janet Napolitano, Secretary of Homeland Security, to Hon. Joseph I. Lieberman, Senator, May 2, 2012. In her notification to Congress, Secretary Napolitano cites "diplomatic, financial, and logistical" obstacles to implementing a 100% scanning system. Pursuant to §232(b)(4) of the SAFE Port Act, as amended, Secretary Napolitano identified two conditions which necessitated the deadline extension: that the use of systems to scan containers would have significant and negative impact on trade capacity and cargo flows, and that systems to scan containers cannot be purchased, deployed, or operated at overseas ports due to limited physical infrastructure.

[146] Letter from Jeh Charles Johnson, DHS Secretary, to Thomas R. Carper, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, May 5, 2014.

[147] See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Balancing Maritime Security and Trade Facilitation: Protecting Our Ports, Increasing Commerce, and Securing the Supply Chain—Part I*, 112th Cong., 2nd sess., February 7, 2012.

[148] See CBP, *Report to Congress on Integrated Scanning System Pilots (Security and Accountability for Every Port Act of 2006, Section 231*). Also see U.S. Government Accountability Office, *Supply Chain Security: Container Secuirty Programs Have Matured, but Uncertainty Persists over the Future of 100 Percent Scanning*, GAO-12-422T, February

private sector cooperation, but some foreign governments and business groups do not fully support 100% scanning. Second, 100% scanning would be logistically difficult. Initial pilots were deployed in relatively low-volume ports with natural chokepoints, but many cargo containers pass through large volume ports with more varied port architectures. Logistical challenges are particularly burdensome given the priority that the modern shipping industry places on the rapid and efficient movement of goods. Third, 100% scanning would be costly. In February 2012, the Congressional Budget Office (CBO) estimated that implementing 100% scanning at foreign ports would cost an average of $8 million per shipping lane, or a total of $16.8 billion to implement 100% scanning for all U.S.-bound containers.[149] Port operators and foreign partners also absorb costs associated with fuel and utilities, staffing, and related expenses.

### *100% Scanning Versus Risk-Based Scanning*

In light of these challenges, Congress may consider provisions to allow DHS to scan less than 100% of U.S.-bound cargo. Two reasons to scan less than 100% of incoming cargo are to reduce the costs of enforcement and to speed processing time. Some assert that the costs of 100% scanning may be great enough to shift certain trade flows away from U.S. markets, potentially harming the U.S. economy.

More generally, 100% scanning conflicts with DHS's general approach to risk management, which seeks to focus scarce inspection resources on the highest-risk containers.[150] By scanning a smaller number of containers, DHS may be able to devote additional resources to each individual scan. This consideration is important because NII is labor-intensive, and scanning fewer containers may allow DHS to subject individual scans to greater scrutiny, and to maintain a lower threshold for opening containers with questionable NII images.

If illicit cargo is estimated to be limited to less than 1% of incoming containers, as CBP believes to be the case, focusing enforcement on the likeliest containers may be the most effective enforcement strategy. According to this line of thinking, rather than focus on 100% scanning, people concerned about import security may emphasize risk-based scanning along with investment in CBP intelligence to improve targeting, and/or increased CBP personnel, which would allow ports to conduct a larger number of targeted special enforcement operations.[151]

### *Scanning Abroad Versus Scanning in U.S. POEs*

If Congress were to revisit the 100% scanning requirement, a second question may be where security scanning takes place. While the SAFE Port Act, as amended, requires cargo containers to be scanned in foreign ports, most NII scanning now occurs within U.S. ports, where CBP and

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7, 2012, http://www.gao.gov/assets/590/588253.pdf.

[149] Testimony of Kevin McAleenan, Acting Assistant Commissioner, Office of Field Operations, CBP, U.S. Department of Homeland Security, before the Border and Maritime Security Subcommittee of the Homeland Security Committee, U.S. House, hearing "Balancing Maritime Security and Trade Facilitation: Protecting our Ports, Increasing Commerce and Securing the Supply Chain—Part I," February 7, 2012. CBP reports that the U.S. government spent a total of about $120 million during the first three years of the Secure Freight Initiative; CBP, *Report to Congress on Integrated Scanning System Pilots*, p. 13.

[150] See CBP, "CBP Trade Strategy: Fiscal Years 2009-2013," Washington, DC: 2009.

[151] Under a *purely* risk-based scanning system, DHS would scan only those containers identified as high risk. Although such a system may offer the greatest cost savings and efficiency (i.e., would offer the greatest reduction in the number of scans conducted), it also would be vulnerable to smugglers who study the scanning protocols or otherwise learn about DHS's risk modeling and intentionally adopt "low risk" profiles in order to avoid being scanned. Thus, any risk-based scanning system may also require some amount of random scanning.

DHS grant programs have supported investments in scanning equipment, and where Congress has direct authority to impose scanning requirements. Efforts to implement 100% scanning abroad may be difficult for the reasons discussed above.

With respect to radiation scanning to defend against a WMD attack, however, scanning cargo *within* U.S. ports may come too late in the process to prevent an attack—that is, the threat that a nuclear weapon or dirty bomb would be detonated within a port prior to being scanned. Given that several major ports are located close to population centers, and given the costs that would be associated with a significant disruption in port activities, a case can be made for conducting radiation detection scanning in foreign ports, before cargo is shipped to the United States.[152] Scanning within foreign ports may be a less urgent priority with respect to NII scanning to detect drugs and other contraband. In this case, detection at any point prior to cargo being released from a U.S. POE may still accomplish the enforcement goals of detection and interdiction.

## Transportation Worker Identity Credential (TWIC) Card Readers

Some Members have expressed frustration that DHS has not yet published final regulations governing card readers for the Transportation Worker Identity Credential (TWIC) program.[153] One issue for Congress is whether to encourage DHS through legislation to move ahead more quickly with regulations to require that ports use TWIC card readers to restrict access to secure areas.[154]

Yet Congress may also want to consider the overall effectiveness of the TWIC program. In 2011, a GAO report identified several weaknesses with the TWIC program, including that internal controls in the enrollment process and background checks may not limit cards to eligible individuals or insure that they maintain their eligibility after cards are issued, that facilities were vulnerable to security breaches in GAO's covert testing, and that DHS has not adequately assessed TWIC program effectiveness.[155] DHS's report on its TWIC pilot program also identified strengths and weaknesses of the program, which may have contributed to the delay in publishing regulations. On one hand, DHS found that TWIC readers functioned properly when installed and operated in a manner that was consistent with a port's operational needs, and that certain TWIC readers verified card-holders' credentials more efficiently than visual inspections by security personnel. On the other hand, DHS also identified a number of problems that limited the overall success of the pilot programs. In particular, some card readers were less efficient than visual inspections; TWIC systems required more training than anticipated; some cards and card readers malfunctioned; some facilities had problems installing TWIC readers; some readers had problems scanning cards under certain environmental conditions; and some operators did not use the TWIC readers correctly or consistently.[156] In 2012-2013, GAO conducted a performance audit that

[152] On the potential consequences of a weapon of mass destruction being detonated in a U.S. port, see Charles Meade and Roger C. Molader, *Considering the Effects of a Catastrophic Terrorist Attack*, RAND Center for Terrorism Risk Management Policy, Santa Monica, CA, 2006, http://www.rand.org/pubs/technical_reports/2006/RAND_TR391.pdf.

[153] See, for example, U.S. Congress, House Committee on Transportation and Infrastructure, *A Review of the Delays and Problems Associated with TSA's Transportation Worker Identification Credential*, 112th Cong., 2nd sess., June 28, 2012. Pursuant to the SAFE Port Act, DHS tested a TWIC card reader pilot program in seven ports between August 2008 and May 2011, and published a final report on the TWIC card reader pilot program in August 2012.

[154] In June 2012, for example, during the 112th session of Congress, the House passed the SMART Port Security Act (H.R. 4251), which would direct DHS to publish a final regulation for the installation of TWIC readers.

[155] U.S. Government Accountability Office, *Transportation Worker Identification Credential: Internal Control Weaknesses Need to be Corrected to Help Achieve Security Objectives*, GAO-11-657, May 2011, http://www.gao.gov/assets/320/318123.pdf.

[156] DHS Transportation Security Administration, "*Transportation Worker Identification Credential Reader Pilot*

identified that many of the same weaknesses cited above persisted. GAO recommended, among other things, that Congress should halt DHS's efforts to promulgate a final regulation until the successful completion security assessment of the effectiveness of using TWIC.[157]

## Customs Modernization

Customs modernization refers to the transition from CBP's Automated Commercial System (ACS) to its Automated Commercial Environment (ACE) for managing trade-related data (see "Pre-Entry: Advanced Cargo Screening, Scanning, and Inspections"), and the development of the International Trade Data System (ITDS).[158] This transition has taken longer than expected and has substantially exceeded its original cost predictions,[159] and not all import-related businesses have established ACE accounts.[160] Some Members of Congress and some business groups have expressed frustration that ACE development lags behind expectations,[161] however, CBP officials report that most have expressed support for the plans that CBP has put forth to develop the remaining core ACE processes in three years.[162]

In February 2014, the President issued Executive Order 13659, "Streamlining the Export Import Process for America's Businesses."[163] The Executive Order required the completion of the International Trade Data System (ITDS), and automated "single window" through which importers and exporters will be able to transmit data and coordinate with Federal trade-participating government agencies (PGAs)[164] regarding shipments of merchandise in an "efficient and cost-effective" manner. The order mandated that by December 31, 2016: (1) PGAs would have "capabilities, agreements, and other requirements" in place to utilize the ITDS; and (2) that the Department of Homeland Security (DHS) would confirm the completion of operational

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*Program: Final Report*," February 27, 2012, http://chsdemocrats.house.gov/sitedocuments/twicreaderreport.pdf.

[157] U.S. Government Accountability Office, *Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed*, GAO-13-198, May 8, 2013, http://www.gao.gov/products/GAO-13-198.

[158] The ITDS was mandated by Section 405 of P.L. 109-347, the Security and Accountability for Every Port Act of 2006.

[159] The U.S. Customs Service initiated the transition to ACE in 1994, and initially estimated that implementation of the new system would cost $150 million over a 10-year period. Five years later, in 1999, the GAO reported that that the life-cycle cost had grown to $1.05 billion, over a 15-year life cycle; see General Accounting Office, *Customs Service Modernization: Actions Initiated to Correct ACE Management and Technical Weaknesses*, GAO/T-AIMD-99-186, May 13, 1999, pp. 1-2. According to CBP's Office of Legislative Affairs, Congress appropriated $3.2 billion between 2001 and May 2012 for the development of ACE.

[160] According to CBP's Office of Legislative Affairs, 20,600 ACE accounts have been established as of August 2012. By comparison, there were 181,648 U.S. importers in 2010 and 11,000 customs brokers; see U.S. Census Bureau, "A Profile of U.S. Importing and Exporting Companies, 2009-2010," http://www.census.gov/foreign-trade/Press-Release/edb/2010/edbrel.pdf; and CBP, "Becoming a Customs Broker," http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/brokers.xml. Thus, CRS calculates that about 11% of eligible import-related business had established ACE accounts. This calculation excludes freight carriers, so the actual percentage of eligible ACE account holders may be somewhat less than 11%. On the other hand, as with C-TPAT membership, it appears that most large-scale importers *have* established ACE accounts, as two-thirds of all customs duties and fees are collected through ACE.

[161] See, for example, U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Supporting Economic Growth and Job Creation Through Customs Trade Modernization, Facilitation, and Enforcement*, 112th Cong., 2nd sess., May 17, 2012.

[162] Email from CBP officials, March 15, 2013.

[163] Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses," 79 *Federal Register* 10657, February 19, 2014.

[164] CBP has identified 47 PGAs that participate in the import/export process.

capabilities to enable trade community users to transmit import and export data to PGAs to facilitate the release and clearance of goods, and to transition from paper-based to electronic submission of data.[165]

CBP has designated ACE as the automated system that will become the platform for the "single window" required by the Executive Order, and plans to integrate or disable all other electronic functions by the end of December 2016.[166] To that end, CBP has announced to the trade community three key "mandatory use" dates in the development process:

- By May 1, 2015, all import or export manifest data filed electronically must be sent through ACE. This requirement extends to all modes of transportation—air, rail, ocean, and truck.
- By November 1, 2015, all electronic cargo release and entry summary data must be transmitted to ACE, including any data that extends to the jurisdiction of PGAs.
- By October 1, 2016, all additional cargo data must be sent to ACE, including protest and liquidation data.[167]

CBP has initiated ACE as a series of modules that encompass discrete phases of the import process. In general, as new ACE modules are introduced, importers initially are permitted to use either ACS or ACE for the affected task; and once the new ACE component has been tested and proven effective, importers are required to use the ACE components as certain ACS functions are disabled. The ACE development deployment schedule (latest version, December 2014) is available on the CBP website.[168]

The ACE "Monthly Trade Update" for December 2014 provides a wrap-up of ACE deployment efforts in 2014.[169] The final phase of "Deployment D," completed on January 3, 2015, included the ability to file air import manifests (import manifests can now be filed for all modes of travel); the ability to file and process single transaction and continuous bonds; and integration of capabilities to support the Animal and Plant Health Inspection Service (APHIS), the Drug Enforcement Agency (DEA), and the Office of Foreign Assets Control (OFAC).[170]

According to CBP, the Automated Commercial Environment system is on target to be completed by the end of calendar year 2016.[171] The agency's FY2014 and FY2015 budget for the project amounted to about $141 million each year, and CBP's FY2016 budget request is $154 million.[172] With respect to maintenance costs, CBP projects a per annum budget of $68 million between FY2018–FY2026.[173]

S. 1269 and H.R. 1907 would address ACE by

[165] Ibid.

[166] CBP website, "ACEopedia January 2015," http://www.cbp.gov/document/report/aceopedia.

[167] CBP website, "ACE Mandatory Use Dates," http://www.cbp.gov/trade/automated/ace-mandatory-use-dates.

[168] CBP website, "ACE Development and Deployment Schedule," http://www.cbp.gov/document/guidance/ace-development-and-deployment-schedule.

[169] CBP website, ACE Monthly Trade Update, December 2014, http://www.cbp.gov/document/presentations/ace-monthly-trade-update.

[170] CBP website, http://www.cbp.gov/sites/default/files/documents/deploymentD_infographic_1-15-15.pdf.

[171] CRS conversation with CBO Legislative Affairs office on February 12, 2015.

[172] Ibid. and Department of Homeland Security, *Congressional Budget Justification, FY2016*.

[173] For FY2017, the agency projects operation and maintenance cost to be $84 million. According to CBP, these numbers are based on the August 1, 2014 ACE Life Cycle Cost Estimate. Ibid.

- authorizing the ACE computer system;
- authorizing funding of $153.7 million from FY2016 through FY2018 to complete ACE development and implementation;
- requiring several reports from CBP at various stages of ACE development and implementation; and
- and requiring a GAO report on the costs and effectiveness of CBP's efforts to complete ACE development, establishment, and implementation.

## Interagency Coordination

CBP works with 47 partner government agencies (PGAs) that play a role in trade enforcement, but CBP and its PGAs have different missions and do not always collaborate successfully to implement U.S. import policies. For example, with respect to import security, important partners include the Transportation Security Administration (TSA), which takes the lead on air cargo scanning and TWIC cards, and the Coast Guard, which also plays a role on security and TWIC card enforcement. With respect to trade enforcement, CBP officers rely on the Food and Drug Administration and the Departments of Agriculture and Commerce, in certain cases, to identify health and safety violations, or to rule on other complex import questions. Similarly, while CBP conducts border enforcement of intellectual property rights at the port of entry, CBP relies on partnerships with ICE and other federal agencies to conduct criminal investigations and prosecute intellectual property theft and other trade violations. In this case, CBP's primary mission to detect and prevent illegal entries may conflict, to some degree, with ICE and other agencies' efforts to gather evidence and build cases against suspected trade violators. A DHS Office of the Inspector General report in 2012 found that CBP and ICE do not always share information and intelligence related to investigations, and that their data systems are not designed to allow efficient information sharing.[174]

CBP and its partner agencies are attempting to advance interagency cooperation, in part, through the Border Interagency Executive Council (BIEC), created in January 2010. The BIEC is comprised of agency leaders at the Assistant Administrator and Assistant Commissioner level and serves as an advisory board on interagency import safety issues. The BIEC also works in collaboration with CBP's Advisory Committee on Commercial Operations (COAC), the International Trade Data System (ITDS), and the National Strategy for Global Supply Chain Security.[175]

The ITDS, which is being implemented through ACE, is one tool for improving interagency coordination. ITDS is an intergovernmental project to coordinate and standardize the collection of trade enforcement data by all relevant federal government. The goal is to build a "single window" for the electronic collection and distribution of standard government-wide import and export data for the use of government agencies with a role in trade enforcement. Under Section 405 of the SAFE Port Act, all federal agencies that require documentation related to the importation or exportation of cargo are required to participate in the ACE once ITDS is fully operational. As of

[174] DHS Office of Inspector General, *Information Sharing on Foreign Nationals: Border Security*, OIG-12-39, Washington, DC, February 2012; see also U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Eleven Years Later—Preventing Terrorists from Coming to America*, 112th Cong., 2nd sess. September 11, 2012, Testimony of Charles K. Edwards, Acting Inspector General, DHS.

[175] Communication from CBP officials, March 13, 2013.

this writing, all 47 PGAs are involved in ITDS implementation, with the Treasury Department coordinating interagency participation and CBP responsible for building and managing ITDS.[176]

Some in Congress may favor efforts to require other agencies to work more closely with CBP at various stages of the trade enforcement process. One option might be to require that each agency with responsibility for cargo clearance use the ITDS exclusively for authorizing the documentation, clearing, or licensing of cargo. On the other hand, some Members may be reluctant to delegate additional enforcement powers to CBP because doing so may dilute the enforcement authority of other federal agencies, potentially undermining their own missions.

S. 1269 and H.R. 1907 would amend the Tariff Act of 1930 by adding a paragraph on information technology infrastructure that would require the Secretary of the Treasury to work with the head of each agency participating in the ITDS and the Interagency Steering Committee to ensure that each agency

- develops and maintains the necessary information technology infrastructure to support ITDS operation and submit all data electronically through ITDS;
- enters into a memorandum of understanding, or take other actions as necessary, to provide for information sharing between the agency and CBP for ITDS operation and maintenance; and
- identifies and transmits to the Commissioner of Customs the admissibility criteria and data elements necessary to authorize the release of cargo by CBP so that CBP can incorporate them into the operational functionality of ACE.

# Concluding Comments

An overarching goal of U.S. trade policy is to facilitate the efficient flow of goods in and out of the United States, but there is an inherent tension between the commercial interest in trade facilitation and the often competing goals of enforcing trade laws and import security measures.

The Mod Act of 1993 (Title VI of P.L. 103-182) sought to address this tension, to a degree, by replacing the previous model of trade enforcement, in which the then-U.S. Customs Service (USCS) was responsible for the classification of goods and assessment of duties, with a "shared responsibility" approach, in which importers make their own duty determinations and the customs agency is primarily responsible for revenue collection and oversight of importers. In theory, robust post-entry audits and high penalties for noncompliance should act as a deterrent, and shared responsibility may facilitate legal flows without compromising trade enforcement.

The tension is more profound when it comes to import security, however, because post-entry enforcement may be too late to prevent a significant security breach. Post-entry enforcement also may be problematic for certain trade issues, such as consumer safety laws, and in AD/CVD cases where harm may be done to U.S. industries. Thus, while C-TPAT follows a similar logic as the Mod Act by "outsourcing" certain security functions from CBP to trusted industry partners, post-9/11 security concerns may limit the benefits that may be offered to trusted traders—a fact that has been a source of frustration to importers who play by the rules but still confront burdensome trade procedures.

[176] CBP Office of Congressional Affairs August 23, 2012; also see International Trade Data System, "Report to Congress on the International Trade Data System: December 2011," http://www.itds.gov/linkhandler/itds/toolbox/library/resource_documents/2011_itds_report.ctt/2011_itds_report.pdf.

At the same time, certain programs may strengthen the overall import process without forcing such facilitation-versus-enforcement dynamics. Transition to the Automated Commercial Environment (ACE), for example, should streamline the import process while also enhancing enforcement efforts through the International Trade Data System (ITDS). Similarly, improving POE infrastructure and expanding POE personnel may speed trade flows while also making more resources available for inspections. Yet these types of win-win programs often are expensive to implement, and Congress may be reluctant to make such investments at this time.

# Appendix A. Glossary of Trade-Related Acronyms

## Glossary

**ABI** Automated Broker Interface. A computer interface, based on the Automated Commercial System (ACS), that permits qualified customs brokers to file customs import data electronically

**ACE** Automated Commercial Environment. The newer interface system being created (and currently in use) for electronic filing of import data on goods entering the United States

**ACS** Automated Commercial System. The older interface system being used by CBP for electronic filing of import data on goods entering the United States

**ATS** Automated Targeting System. A CBP program to screen inbound and certain outbound cargo and persons and to assign risk-based scores for the purpose of targeting, identifying, and preventing potential terrorists and terrorist weapons from entering the United States and to identify other violations of U.S. trade and immigration laws

**AD** Antidumping. Antidumping (AD) laws (19 U.S.C. §1673 et seq.) authorize the imposition of duties if (1) the International Trade Administration of the Department of Commerce (ITA) determines that foreign merchandise is being, or likely to be, sold in the United States at less than fair value, and (2) the U.S. International Trade Commission (USITC) determines that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, due to imports of that merchandise

**CBP** U.S. Customs and Border Protection. Located within the Department of Homeland Security, CBP is the lead federal agency charged with enforcing U.S. customs and import security laws at ports of entry.

**CEE** Center of Excellence and Expertise. A CBP trade facilitation program through which trusted traders of certain merchandise (e.g., electronics or motor vehicles) can receive CBP assistance and information in one location.

**CSI** Container Security Initiative. A process by which CBP and related agencies identify high-risk containers by pre-screening them before they enter the United States.

**C-TPAT** Customs-Trade Partnership Against Terrorism. A CBP trusted trader program.

**CVD** Countervailing Duties. U.S. countervailing duty laws (19 U.S.C. §1671 et seq.) authorize the imposition of countervailing duties (CVD) if the ITA finds that the government of a country or any public entity has provided a subsidy on the manufacture, production, or export of the merchandise, and the USITC determines injury or threat thereof.

**FA** Focused Assessment. A type of CBP regulatory audit that begins with assessing a company's internal controls for the ability to comply with U.S. trade laws.

**ICE** Immigration and Customs Enforcement. A CBP sister agency in the Department of Homeland Security, ICE's mission is to enforce federal laws relating to border control, customs, trade, and immigration.

**ITDS** International Trade Data System. The computer interface that assists CBP participating government agencies (PGAs) to perform their international trade enforcement activities.

**NII** Non-Intrusive Inspection. Scanning of cargo containers to produce a high-resolution image of a container's contents.

**POE** Port of entry. An air, land, or sea port of entry for goods and people entering the United States.

**PTI** Priority Trade Issue. High-risk areas that CBP has selected for intensive resource investment because they could cause significant revenue loss, injure the economy, or threaten health and safety.

**SFI** Secure Freight Initiative. A pilot program to test CBP's ability, working with international partners, to conduct radiation detection and NII scanning on 100% of containers being loaded on U.S.-bound ships in certain ports.

**TWIC** Transportation Worker Identification Credential. Individuals needing unescorted access to U.S. regulated vessels and facilities (i.e., ports of entry) must obtain this credential.

# Appendix B. Selected Trade Statistics

**Table B-1. U.S. Merchandise Trade by Mode of Transportation, 2005-2014**

Annual Data, Millions of Current U.S. Dollars

| | Exports | | | | Imports | | | |
|---|---|---|---|---|---|---|---|---|
| | Total | Sea | Air | Land | Total | Sea | Air | Land |
| 2005 | 901,082 | 262,662 | 292,937 | 345,483 | 1,673,455 | 859,595 | 359,009 | $454,851 |
| 2006 | 1,025,967 | 307,553 | 336,927 | 381,488 | 1,853,938 | 971,141 | 394,275 | $488,522 |
| 2007 | 1,148,199 | 375,258 | 366,413 | 406,528 | 1,956,962 | 1,023,395 | 415,028 | $518,539 |
| 2008 | 1,287,442 | 471,331 | 388,922 | 427,189 | 2,103,641 | 1,152,481 | 416,688 | $534,472 |
| 2009 | 1,056,043 | 367,077 | 334,438 | 354,528 | 1,559,625 | 795,336 | 367,098 | $397,191 |
| 2010 | 1,278,495 | 455,066 | 392,947 | 430,481 | 1,913,857 | 978,934 | 444,825 | $490,097 |
| 2011 | 1,482,508 | 571,351 | 424,538 | 486,619 | 2,207,954 | 1,159,323 | 494,947 | $553,685 |
| 2012 | 1,545,703 | 591,260 | 427,154 | 527,290 | 2,276,302 | 1,190,141 | 501,172 | $584,989 |
| 2013 | 1,579,593 | 598,363 | 431,066 | 550,164 | 2,268,321 | 1,148,613 | 509,898 | $609,810 |
| 2014 | 1,623,443 | 602,771 | 442,837 | 577,835 | 2,345,187 | 1,150,500 | 543,326 | $651,361 |

**Source:** U.S. Census Bureau, USA Trade, http://usatrade.census.gov.

**Notes:** Data on imports and exports by land are CRS calculations based on Census data on total flows and flows by air and sea.

**Table B-2. U.S. Gross Domestic Product and International Trade, 2005-2014**

U.S Trade in Goods and Services, Billions of Current U.S. Dollars

| Year | Gross Domestic Product | Exports | Imports | Total Trade | Total Trade as % of GDP |
|---|---|---|---|---|---|
| 2005 | 13,093.7 | 1,308.9 | 2,030.1 | 3,339.0 | 26% |
| 2006 | 13,855.9 | 1,476.3 | 2,247.3 | 3,723.6 | 27% |
| 2007 | 14,477.6 | 1,664.6 | 2,383.2 | 4,047.8 | 28% |
| 2008 | 14,718.6 | 1,841.9 | 2,565.0 | 4,406.9 | 30% |
| 2009 | 14,418.7 | 1,587.7 | 1,983.2 | 3,570.9 | 25% |
| 2010 | 14,964.4 | 1,852.3 | 2,365.0 | 4,217.3 | 28% |
| 2011 | 15,517.9 | 2,106.4 | 2,686.4 | 4,792.8 | 31% |
| 2012 | 16,163.2 | 2,194.2 | 2,762.5 | 4,956.7 | 31% |
| 2013 | 16,768.1 | 2,262.2 | 2,770.4 | 5,032.6 | 30% |
| 2014 | 17,418.9 | 2,337.0 | 2,875.2 | 5,212.2 | 30% |

**Source:** Bureau of Economic Analysis.

# Appendix C. Estimated Expenditures for Selected Cargo Security Programs, FY2004-FY2016

**Table C-1. Estimated Expenditures, Selected Cargo Security Programs, FY2004-FY2016**

Millions of Current U.S. Dollars

| Year | Transportation Worker Identification Credential | Automated Targeting System | Container Security Initiative | Customs-Trade Partnership against Terrorism |
|---|---|---|---|---|
| 2003 | $25.0 | NA | NA | NA |
| 2004 | $49.7 | NA | $61.4 | $14.0 |
| 2005 | $5.0 | $29.8 | $126.1 | $37.8 |
| 2006 | $15.0 | $27.9 | $138.0 | $67.4 |
| 2007 | $18.6 | $26.8 | $138.5 | $49.7 |
| 2008 | $50.6 | $26.8 | $145.9 | $57.4 |
| 2009 | $109.3 | $32.5 | $148.9 | $52.4 |
| 2010 | $45.0 | $32.6 | $145.5 | $46.5 |
| 2011 | $30.7 | $32.4 | $103.9 | $45.4 |
| 2012 | $8.3 | $41.4 | $74.6 | $45.0 |
| 2013 | $47.3 | $113.8 | $71.5 | $40.1 |
| 2014 | $70.0 | $116.9 | $69.2 | $40.9 |
| *2015* | *$34.8* | *$109.3* | *$67.1* | *$40.8* |
| *2016* | *$82.3* | *$122.3* | *$69.9* | *$41.4* |
| **Total** | **$591.6** | **$712.5** | **$1360.5** | **$578.8** |

**Source:** GAO, *Maritime Security: Progress and Challenges 10 Years after the Maritime Transportation Security Act*, GAO-12-1009T. DHS, *Congressional Budget Justification,* FY2013 and FY2016 editions, "Total Budget Authority" tables.

**Notes:** FY2015 figures reflect the President's Budget figures and FY2016 figures are FY2016 amounts requested. Transportation Worker Identification Credential (TWIC) data are for total funding authority, including reprogramming, adjustments, and TWIC fee authority. Container Security Initiative funding includes funding for Secure Freight Initiative.

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