

# Trade Facilitation and Trade Enforcement Reauthorization Act of 2013: Section-by-Section Analysis

## SECTION 1: SHORT TITLE.

Section 1 entitles the bill the “Trade Facilitation and Trade Enforcement Reauthorization Act of 2013” (Act).

## SECTION 2: DEFINITIONS

Section 2 defines key terms in the Act.

### TITLE I – CUSTOMS ORGANIZATION

#### Subtitle A – Functions Other Than Investigative Functions

## SECTION 101: ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION AGENCY; COMMISSIONER

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

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

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

Section 1(c) requires the Commissioner to carry out certain duties, including:

- (1) coordinating and integrating the security, trade facilitation and trade enforcement functions of CBP;
- (2) directing the administration of commercial and non-commercial operations of CBP;
- (3) otherwise safeguarding the homeland security interests of the United States; and
- (4) ensuring that overall economic security is not diminished by activities to secure the homeland.

CBP’s commercial operations include:

- (1) administering customs revenue functions;
- (2) coordinating all DHS efforts with respect to trade facilitation and, as appropriate, trade enforcement;
- (3) coordinating with the Director of U.S. immigration and Customs Enforcement with respect to trade enforcement investigations and joint strategic planning;
- (4) coordinating efforts among Federal agencies with respect to trade facilitation and, as appropriate, trade enforcement;
- (5) coordinating with foreign customs authorities to facilitate international trade and enforce customs and trade laws; and
- (6) collecting, assessing, and disseminating information regarding U.S. imports to ensure compliance with U.S. laws.

**Section 1(d)** requires consultations with the Senate Committees on Finance and Appropriations and House of Representatives Committees on Ways and Means and Appropriations regarding the resources that CBP needs to safeguard U.S. economic security interests at the border and international negotiations related to customs and trade laws. It also requires CBP to consult with private sector entities with respect to implementation of new or amended customs and trade laws and the development, implementation or revision of policies or regulations administered by CBP.

**Section 1(e)** sets the compensation level for the Commissioner.

**Section 1(f)** provides that the Deputy Commissioner for Trade shall act as Commissioner if the Commissioner is absent or disabled.

**Section 1(g)** defines key terms.

**Section 101(b)** strikes section 3 of the Act of March 3, 1927 to insert the following provisions:

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

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

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

## **SECTION 102: OFFICERS AND EMPLOYEES**

**Section 102(a)** amends section 2 of the Act of March 3, 1927 to read as follows:

**Section 2(a)** establishes not more than 3 and not fewer than 2 deputy commissioners reporting directly to the Commissioner and provides that the deputy commissioners shall be Senior Executive Service positions.

**Section 2(b)** requires that one of the deputy commissioners shall be the Deputy Commissioner for Trade, whose duties include: (1) overseeing CBP's commercial operations; (2) overseeing the Office of Trade and Office of International Affairs established under this Act; (3) overseeing the development and implementation of Agency policies and regulations related to the administration of the customs and trade laws; (4) coordinating training programs for personnel with responsibility for trade facilitation and trade enforcement; (5) overseeing the development and implementation of information technology, research, and communication functions that support the commercial operations of the Agency, including the Automated Commercial Environment (ACE) computer system; and (6) overseeing the administration of the financial management activities of the Agency. It also sets out the qualifications for the Deputy Commissioner for Trade and provides for continuity for the position.

**Section 2(c)** establishes the Trade Advocate as a Senior Executive Service position in the office of the Commissioner, appointed by and reporting directly to the Commissioner. The duties of the Trade Advocate include: (1) developing and maintaining strategic communications with private sector entities and the public to enhance trade facilitation and trade enforcement; (2) serving as the primary liaison between CBP and private sector entities and the public with respect to the Agency's trade facilitation and trade enforcement functions; (3) consulting with private sectors entities for input with respect to Agency policies and regulations, joint strategic planning, assessment of effectiveness of trade facilitation and trade enforcement activities, trade modernization activities, development of the joint strategic plan, assessment of the effectiveness of the trade activities of CBP, trade modernization activities, and identification of private sector resources and capability to supplement Agency activities; (4) advising the Commissioner with respect to private sector consultations; and (5) promoting private-public partnerships. The Trade Advocate must have at least 10 years of professional experience working with the customs and trade laws, and at least 3 of those years working in the private sector. The Office of Trade Relations within CBP is eliminated, its assets are to be transferred to the Trade Advocate, and neither CBP nor DHS may use appropriated funds to transfer the assets of the Office of Trade Relations to an office or official other than the Trade Advocate.

**Section 2(d)** allows the Commissioner to appoint other officers necessary to manage CBP offices, subject to the provisions of the civil service laws and Title 5 of the U.S. Code.

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

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

**Section 4(b)** eliminates the Office of International Trade within CBP, and its assets are to be transferred to the Office of Trade, and neither CBP or DHS may use appropriated funds to transfer the assets of the Office of International Trade to an office other than the Office of Trade. The Commissioner may transfer other assets, functions or personnel within CBP to the Office of Trade but must provide notification of the transfer to the Senate Committee on Finance and the House of Representatives Committee on Ways and Means (Committees) not less than 90 days prior to the transfer.

**Section 4(c)** requires the Commissioner to appoint an Assistant Commissioner for Trade to be the head of the Office of Trade, which shall be a Senior Executive Service position. The Assistant Commissioner reports directly to the Deputy Commissioner for Trade, and must have a minimum of 10 years of professional experience in the operation of customs and trade laws, not less than 3 of which shall involve either working with or for the private sector on matters relating to trade facilitation and trade enforcement. The Assistant Commissioner must carry out certain duties including: (1) directing CBP's development and implementation of policies and regulations administered by CBP pursuant to the customs and trade laws; (2) advising the Deputy Commissioner for Trade on the impact on trade facilitation and trade enforcement of proposed CBP policies or regulations; (3) cooperating with the Assistant Commissioner for Field Operations with respect to trade facilitation and trade enforcement activities of CBP, (4) directing the development and implementation of matters relating to the priority trade issues identified in the joint strategic plan on trade facilitation and trade enforcement and advising the Commissioner on the development and implementation of the joint strategic plan; (5) directing CBP's trade enforcement activities, including the activities of the National Targeting and Analysis Groups (NTAGs); (6) overseeing CBP's trade modernization activities; (7) directing the administration of customs revenue functions as provided by law or delegated by the Commissioner; and (8) preparing an annual report to the Committees on changes to CBP's customs policies and regulations and the public vetting and interagency consultation with respect to each change. It also provides that the person serving as Assistant Commissioner of the Office of International Trade on the day before the enactment of this Act may continue to serve as the Assistant Commissioner for Trade on or after such date of enactment, at the discretion of the Commissioner.

**Section 5(a)** establishes within CBP an Office of International Affairs that is headed by an Assistant Commissioner for International Affairs.

**Section 5(b)** requires the Commissioner to appoint an Assistant Commissioner for International Affairs, which shall be a Senior Executive Service position. The Assistant Commissioner for International Affairs reports directly to the Deputy Commissioner for Trade, and must have a minimum of 10 years professional experience in the operation of customs and trade law, not less than 3 of which shall involve either working with or for the private sector on matters relating to trade facilitation or trade enforcement. The Assistant Commissioner must carry out certain duties including: (1) coordinating CBP initiatives in foreign countries; (2) advising the Commissioner with respect to matters arising in the World Customs Organization and, if appropriate, other international organizations; (3) ensuring that Agency's policies and regulations are consistent with U.S. obligations under international agreements; (4) coordinating with other Federal agencies on the Agency's international efforts to enhance trade facilitation and trade enforcement; (5) coordinating with foreign customs authorities with respect to trade facilitation and, as appropriate, trade enforcement; and (6) providing training and capacity building to customs authorities of foreign countries.

**Section 6** requires that the Commissioner ensure that the Assistant Commissioner for Trade and the Assistant Commissioner for Field Operations work together on certain matters, including on: (1) trade facilitation and trade enforcement activities at U.S. ports of entry; (2) operational training of Office of Field Operations personnel to administer trade enforcement and trade facilitation activities; (3) evaluating the operation effectiveness of trade facilitation and trade enforcement activities at U.S. ports of entry; (4) cooperating with the Trade Advocate to consider input from private sector entities; (5) ensuring uniform administration and implementation of customs and trade laws, policies or regulations related to trade facilitation and trade enforcement activities of the Agency; (6) implementing operational provisions of the joint strategic plan; (7) in cooperation with the Office of International Affairs, ensuring that trade facilitation and trade enforcement activities comply with U.S. obligations pursuant to international agreements; and (8) ensuring prompt collection of data regarding cargo that violates customs and trade laws and the prompt issuance of Trade Alerts relating to such violations.

**Section 7(a)** establishes a Trade Facilitation and Trade Enforcement Division in the Office of Field Operations.

**Section 7(b)** requires the Commissioner to assign sufficient personnel to operate the Trade Facilitation and Trade Enforcement Division and, not later than 180 days after enactment of the Act, to designate and dedicate at least 40 officers within the Office of Field Operations as commercial enforcement officers and assign them among the 40 U.S. ports of entry with the highest volume of trade. The duties of commercial enforcement officers shall be to: (1) supervise all trade enforcement activities of personnel of the Office of Field Operations personnel at the port of entry to which the commercial enforcement officer has been assigned; (2) coordinate with the Office of Trade on all trade enforcement activities at that port of entry; (3) direct training of personnel at the port of entry to carry out the trade enforcement activities of the Office of Field Operations; and (4) otherwise conduct trade enforcement activities at the port of entry.

**Section 8(a)** establishes a Customs Facilitation and Enforcement Interagency Committee to improve coordination and collaboration among Federal agencies with respect to trade facilitation and trade enforcement.

**Section 8(b)** provides that the functions of the Committee include: (1) advising the Commissioner with respect to CBP policies that may significantly affect the trade facilitation and trade enforcement mission of the Agency or the international trade policy, commitments or competitiveness of the United States; (2) consulting with the Commissioner on policies of the Committee member agencies that significantly affect the trade facilitation and trade enforcement missions of the Agency; (3) reviewing recommendations and concerns identified by the Customs Facilitation and Enforcement Review Group; and (4) such other functions as are agreed on by the Commissioner and the members of the Committee.

**Section 8(c)** sets out the membership of the Committee.

**Section 8(d)** establishes a Customs Facilitation and Enforcement Review Group as a subordinate body of the Committee, identifies its membership, establishes the procedure for convening meetings, and assigns functions, including: (1) reviewing and advising the Committee with respect to CBP policies procedures, regulations and activities that may significant affect the trade facilitation and trade enforcement mission of the Agency or the international trade policy, commitments or competitiveness of the United States; (2) advising the Committee with respect to policies, procedures, regulations and activities of member Agencies that significantly affect the trade facilitation and trade enforcement mission of the Agency; and (3) such other functions as the Committee may direct.

**Sections 102(c) and (d)** make conforming amendments to Section 5315 of title 5.

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

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

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

### **SECTION 104: REVOLVING FUND**

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

### **SECTION 105: ADVANCES IN FOREIGN COUNTRIES**

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

### **SECTION 106: ADVANCES FOR ENFORCEMENT OF CUSTOMS PROVISIONS**

### **SECTION 107: CERTIFICATION OF REASON FOR ADVANCE**

### **SECTION 108: PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR REIMBURSEMENT**

**Sections 106, 107, and 108** makes conforming amendments to sections 2, 3, and 4, respectively, of the Act of March 28, 1928 (19 U.S.C. 2078).

## **SECTION 109: CUSTOMS ADMINISTRATION**

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

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

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

## **SECTION 110: PERSONNEL**

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

**Section 401(a)** creates a Director of Trade Policy within DHS's Office of Policy and Planning. The Director of Trade Policy must: (1) coordinate with the Commissioner and Director of ICE to ensure that economic security interests are considered when DHS develops and implements policies; (2) engage with foreign law enforcement and customs authorities and the private sector regarding international standards for securing key systems of the global economy and more effectively facilitating trade; and (3) report to Congress how DHS considered such interests when developing or implementing its policies. The Director of Trade Policy must have significant experience with the customs and trade laws.

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

**Section 412(c)** requires the Secretary of Treasury, not later than 90 days after enactment of this Act, to dedicate not less than five and not more than 20 staff to work with the exclusively with the Deputy Assistant Secretary of Treasury for Tax, Trade, and Tariff Policy to in the performance and oversight of customs revenue functions.

## **SECTION 111: AUTHORIZATION OF APPROPRIATIONS**

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

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

**Section 301(b)** authorizes for CBP's commercial operations such sums as are necessary for the salaries and expenses of the Agency for fiscal years 2014 through 2018.

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

**Section 301(d)** provides that no part of the funds appropriated pursuant to subsection (a) for any fiscal year may be used to provide less time for the collection of estimated duties than the 10-day deferment procedure in effect on January 1, 1981.

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

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

**Section 301(g)** requires the Commissioner to use any savings in salaries and expenses that result from consolidation of administrative functions to strengthen commercial operations, to the extent the savings are not needed to meet emergency requirements of the Agency, by increasing the number of personnel dedicated to customs revenue functions.

**Section 301(h)** requires the Commissioner to notify the Committees at least 180 days before taking any action that would (1) significantly reduce the number of CBP employees; (2) significantly reduce the number of hours of operation or services provided at any CBP office or U.S. port; (3) eliminate or relocate any CBP office; (4) eliminate any U.S. port of entry; or (5) significantly reduce the number of employees assigned to any office or any function of the agency.

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

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

### **Subtitle B – Investigative Functions**

## **SECTION 121: ESTABLISHMENT OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY**

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

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



**Section 442(b)** requires the President to appoint a Director as the head of ICE, who shall be confirmed by the Senate, carry out the duties prescribed by law and the Secretary of Homeland Security, report directly to the Secretary of Homeland Security, and have at least five years of professional law enforcement experience as well as at least five years of management experience, and be compensated at level III of the Executive Schedule. As an exercise of the rulemaking power of the Senate, the Director's nomination shall be referred to the Finance Committee. If the Finance Committee has not reported out the nomination within 30 days, the nomination shall be automatically discharged and referred to the Senate Judiciary Committee.

**Section 442(c)** specifies the duties of the Director, which include: (1) performing the functions transferred to the Under Secretary for Border and Transportation Security by section 441 of the HSA, or otherwise vested in the Assistant Secretary for ICE by law; (2) advising the Secretary of Homeland Security regarding any ICE policies that may affect U.S. Citizenship and Immigration Services; (3) conducting and coordinating investigations of violations of U.S. customs and trade laws, and, when appropriate, referring alleged violation for criminal prosecutions; (4) coordinating efforts with foreign law enforcement and customs authorities to investigate violations of customs and trade laws; and (5) coordinating with the CBP Commissioner with respect to investigations of violations of the customs and trade laws and on the development and implementation of joint strategic plan on trade facilitation and trade enforcement.

**Section 442(d)** authorizes the Secretary to appoint a Deputy Director of ICE to assist the Director and act as Director during the absence or disability of the Director or if the position is vacant.

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

**Section 442(f)** requires the Director to administer the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and to use such information to carry out ICE's enforcement functions.

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

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

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

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

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

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

## **SECTION 123: UNDERCOVER INVESTIGATIVE OPERATIONS**

**Section 123** makes conforming amendment to section 3131 of the Customs Enforcement Act of 1986.

## **SECTION 124: AUTHORIZATION OF APPROPRIATIONS**

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

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

**Section 302(b)** authorizes for the customs operations of ICE such sums as are necessary for fiscal years 2014 through 2018.

### **Subtitle C – Joint Strategic Plan on Trade Facilitation and Trade Enforcement**

## **SECTION 131: JOINT STRATEGIC PLAN ON TRADE FACILITATION AND TRADE ENFORCEMENT**

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

**Section 123(a)** requires the Commissioner and Director to create and submit to the Committees a biennial joint strategic plan on trade facilitation and trade enforcement.

**Section 123(b)** requires the joint strategic plan to contain a comprehensive plan for trade facilitation and trade enforcement that includes: (1) a summary of action taken to improve trade facilitation and trade enforcement, including specific performance metrics to evaluate progress over a 2-year period; (2) a statement of the objectives and plans to further improve trade facilitation and trade enforcement; (3) a statement of objectives and plans to strengthen U.S. economic security and competitiveness; (4) designation of priority trade issues that can be addressed to enhance trade facilitation and trade enforcement and the strategies, plans and metrics for addressing each one; (5) description of efforts to improve consultation and coordination among Federal agencies regarding trade facilitation and trade enforcement; (6) a description of efforts to work with international organizations to enhance trade facilitation and trade enforcement; (7) a description of efforts to improve consultation and coordination with the private sector to enhance trade facilitation and trade enforcement; (8) a description of training to improve trade facilitation and trade enforcement; (9) an identification of domestic or international best practices or technologies to improve trade facilitation and trade enforcement; and (10) legislative recommendations to further improve trade facilitation and trade enforcement.

**Section 123(c)** requires the CBP Commissioner and ICE Director to consult with officials from the Customs Facilitation and Enforcement Interagency Committee and other Agencies as appropriate, the Customs Operations Advisory Committee (COAC), and the Trade Support Network (TSN) when developing the joint strategic plan.

**Section 131(b)** includes conforming amendments to the Customs and Trade Act of 1990.

## **TITLE II –TRADE FACILITATION, TRADE ENFORCEMENT, AND TRANSPARENCY**

### **Subtitle A – Trade Facilitation and Transparency**

#### **SECTION 201: IMPROVING PARTNERSHIP PROGRAMS**

**Section 201(a)** requires the Commissioner to work with the private sector and other Federal agencies to ensure that all Agency partnership programs provide trade benefits to participants.

**Section 201(b)** requires the Commissioner in developing and operating all partnership programs to consult with the private sector, the public, and other Federal agencies to ensure that participants receive commercially significant and measurable trade benefits in all such programs, as well as ensure an integrated and transparent system of trade benefits and compliance requirements. The section also requires the Commissioner to consider consolidating Agency partnership programs to support the objectives of such programs, increase participation, and enhance the benefits provided to participants. The section also requires the Commissioner to coordinate with other Federal agencies with authority to detain and release merchandise regarding the development of their respective partnership programs and to work on criteria with them to provide expedited release to compliant partnership program participants.

**Section 201(c)** requires the Commissioner to submit a report to the Committees no later than 180 days after enactment and on December 31 of each year thereafter describing for each partnership program the requirements, the commercially significant and measurable trade benefits, and the number of participants. The required reports will also assess the effectiveness of each program, summarize the Agency's efforts to coordinate with other Federal agencies, and summarizes the Agency's efforts regarding the partnership programs with the private sector.

## **SECTION 202: TRADE FACILITATION PARTNERSHIP PROGRAM**

**Section 202(a)** amends title IV of the Tariff Act of 1930 by inserting the following provisions:

**Section 499A(a)** requires the Commissioner to establish a voluntary government-private sector program or modify an existing such program to enhance trade facilitation, trade enforcement, and program trade benefits to participants.

**Section 499A(b)** summarizes that qualified persons who may participate in the program include those involved in the entry of merchandise into the United States including multi-modal transportation providers, customs brokers, importers and forwarders that can demonstrate compliance with the program requirements.

**Section 499A(c)** requires that the Commissioner develop enhanced commercially significant and measurable trade benefits designed to expedite the release of merchandise of qualified persons that meet the program requirements. These benefits shall include consideration of the status of persons as qualified persons for the purposes of commercial targeting under section 211(c) of this Act, giving priority to clearance of merchandise when there is a disruption in trade, providing preclearance for qualified persons that demonstrate the highest levels of compliance with the customs and trade laws and regulations of the United States and any other such benefits that the Commissioner determines is appropriate. The section requires the Commissioner to consult with the Customs Operations Advisory Committee (COAC), the Trade Support Network, and the Committees in developing these benefits.

**Section 499A(d)** requires the Commissioner to establish procedures regarding the submission, application, verification and reverification of information provided by qualified persons seeking to participate in the program, as well as withdrawal of the trade benefits for participants that fail to comply.

**Section 499A(e)** requires the Commissioner, in consultation with COAC, the TSN, and the Committees to establish requirements for participation in the program and provides that the Commissioner may establish tiers of requirements and benefits in the program. The section also sets out minimum requirements to participate in the program.

**Section 499A(f)** requires the Commissioner to collaborate with the head of other Federal agencies with authority to detain and release merchandise to provide trade benefits under the program that include the submission and retrieval of information to and from other federal agencies through ACE and ITDS, the preclearance of that merchandise, and any other benefits to which they agree.

**Section 499A(g)** requires the Commissioner, in consultation with the COAC, to establish procedures to safeguard confidential information.

**Section 202(b)** requires the Commissioner to publish a Federal Register Notice setting for the requirements in Section 499A of the Tariff Act of 1930, as added by subsection (a), and seeing public comments.

### **SECTION 203: CENTERS OF EXCELLENCE AND EXPERTISE**

**Section 203** requires the Commissioner, in consultation with the private sector, to develop and implement Agency-wide Centers of Excellence and Expertise that focus on particular industry operations, supply chains and compliance requirements, ensure uniform implementation of policies and regulations across ports, centralize Agency decision making, and formalize account-based importation of merchandise.

### **SECTION 204: MUTUAL RECOGNITION AGREEMENTS**

**Section 204(a)** requires as a negotiating objective for any mutual recognition agreement with a foreign country regarding partnership programs to ensure compatibility with Agency partnership programs and to enhance trade facilitation and trade enforcement.

**Section 204(b)** requires the Secretary of Homeland Security to consult with the Committees not later than 30 days before entering into an agreement regarding how the agreement advances the security, trade facilitation, and trade enforcement missions of the Agency.

### **SECTION 205: CUSTOMS OPERATIONS ADVISORY COMMITTEE**

**Section 205(a)** requires the Secretaries of Treasury and Homeland Security to jointly establish the COAC by December 31, 2013.

**Section 205(b)** requires that the COAC be comprised of (1) 20 appointed individuals from the private sector; (2) the Commissioner and the Assistant Secretary of Treasury for Tax Policy, who shall co-chair meetings; and (3) the Assistant Secretary for Policy of the Department of Homeland Security and ICE Director, who shall serve as deputy co-chairs of meetings. Private sector individuals must be appointed not later than 180 days after enactment, must be broadly representative of those sectors of the economy affected by the commercial operations of ICE and CBP, and may be appointed to multiple terms but serve not more than two terms sequentially. The Secretaries of Treasury and Homeland Security may transfer members to the COAC who are currently serving on the Advisory Committee on Commercial Operations of the United States Customs Service.

**Section 205(c)** requires the COAC to (1) advise the Secretaries of Treasury and Homeland Security on all matters involving the commercial operations of CBP and the investigations of ICE; (2) provide recommendations to the Secretaries on improvements that CBP and ICE should make to their commercial operations and investigations; and (3) perform other functions relating to the commercial operations of CBP and the investigations of ICE as prescribed by law or as directed by the Secretaries.

**Section 205(d)** requires the COAC to meet at the call of the Secretaries of Treasury and Homeland Security or at the call or at least two-thirds of the COAC membership. The COAC must meet at least four times each year, and the meetings must be open unless the Secretaries determine that a meeting will include matters that cannot be disclosed without seriously damaging policies or other matters affecting the commercial operations of CBP and the investigations of ICE.

**Section 205(e)** requires the COAC to submit annual reports to the Committees that describe the COAC's activities and provide recommendations regarding the commercial operations of CBP and ICE. The COAC also has the discretion to provide the Committees with additional reports regarding the commercial operations of CBP and investigations of ICE.

**Section 205(f)** subjects the COAC to the provisions of the Federal Advisory Committee Act, except section 10, which relates to open meetings and availability of information, and section 11, which relates to the availability of meeting transcripts.

**Section 205(g)** makes a conforming amendment to repeal section 9503(c) of the Omnibus Budget Reconciliation Act of 1987.

**Section 205(h)** changes the name from the Advisory Committee on Commercial Operations of the United States Customs Service to the Customs Operations Advisory Committee.

**Section 205(i)** makes additional conforming amendments.

## **SECTION 206: AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM**

**Section 206(a)** amends section 13031(f)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 by directing authorized appropriations of \$140 million for each of fiscal years 2014 through 2016 to complete the development of the ACE and directing authorized appropriations of \$115 million for each of fiscal years 2017 and 2018 for the operation and maintenance of ACE. The section also allows the Agency to use not more than 1 percent of the amounts authorized to be appropriated to use as matching funds to assist other Federal Agencies develop automated release programs integrated through ACE.

**Section 206(b)** amends section 311(b)(3) of the Customs Border Security Act of 2002 to require the Commissioner to submit to the Senate Finance and Appropriations Committees, and House Ways and Means and Appropriations Committees, a report by December 31, 2013 that specifies the plans and deadlines to fully implement ACE by September 30, 2015. The Commissioner must also provide progress reports on June 30, 2014 and every 180 days thereafter.

**Section 206(c)** requires the Government Accountability Office to provide to the Senate Finance and Appropriations Committees, and House Ways and Means and Appropriations Committees, not later than one year after enactment a report evaluating CBP's effectiveness in developing and implementing ACE, assessing any additional cost-effective functionality that may be added to ACE, and assessing the progress of other Federal agencies in accessing and using ACE.

## **SECTION 207: INTERNATIONAL TRADE DATA SYSTEM**

**Section 207(a)** amends section 411(d) of the Tariff Act of 1930 by inserting a new paragraph that requires the Secretary of the Treasury to work with the heads of Federal agencies participating in the International Trade Data System (ITDS) to ensure the agencies (1) maintain the necessary information technology to support ITDS and submit all data to the ITDS electronically; (2) take action to ensure information sharing between each agency and CBP; and (3) identify and transmit to the Commissioner the information necessary to operationalize ITDS.

**Section 207(b)** directs authorized appropriations of \$25,000,000 to the Secretary of the Treasury in fiscal years 2014 through 2018 to operationalize ITDS.

**Section 207(c)** requires a Government Accountability Office Report no later than June 30, 2015 to the Committees and the Senate and House Appropriations Committees evaluating the development and maintenance of ITDS and assessing the participation of other Federal agencies.

## **SECTION 208: ELECTRONIC SUBMISSION OF PUBLIC COMMENTS**

**Section 208** requires the Commissioner to provide: (1) for the electronic submission and posting of all public comments solicited by CBP on CBP's website; and (2) for the posting of public comments associated with any CBP rulemaking on the official government website for federal regulations.

## **Subtitle B – Trade Enforcement**

### **Chapter 1 – Commercial Targeting**

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

**Section 211(a)** requires the Secretary of Homeland Security to establish and maintain a Commercial Targeting Division (CTD) within CBP’s Office of Trade. The CTD shall be comprised of headquarters staff led by an Executive Director, and individual National Targeting and Analysis Groups (NTAGs) led by Directors reporting to the Executive Director. The CTD shall develop and conduct commercial targeting with respect to cargo destined for the United States.

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

**Section 211(c)** requires the CTD to establish methodologies for assessing the risk that imports may violate customs and trade laws and for issuing Trade Alerts when the CTD determines cargo may violate such laws. The CTD should assess the risk of cargo based on all information available to CBP through the Automated Targeting System, ACE, the Automated Commercial System, the Automated Entry System, ITDS, and TECS (formerly known as the “Treasury Enforcement Communications System”) or any successor systems and publicly available information. The CTD should also use information provided by private sector entities and coordinate targeting efforts with other Federal agencies.

**Section 211(d)** authorizes the Executive Director of the CTD and NTAG Directors to issue Trade Alerts to port directors within OFO when such person determines cargo may violate customs and trade laws. The Trade Alert may direct further inspection or physical examination or testing of merchandise by the port personnel if certain risk-assessment thresholds are met. A port director may determine not to carry out the direction of the Trade Alerts if the port director finds such determination is justified by security interests and the port director notifies the Trade Facilitation and Trade Enforcement Division of such determination. The Division must compile an annual report of all determinations by port directors to override Trade Alerts and include an evaluation of the utilization of Trade Alerts, and that report must be submitted to the Committees not later than December 31 each year.

**Section 211(e)** repeals section 343(a)(3) of the Trade Act of 2002, which prohibits the use of mandatory advance information collected by CBP for commercial enforcement purposes and also requires that the use of such advance information for commercial enforcement does not subject the information providers to additional penalties.



## **SECTION 212: ANNUAL ILLEGAL DRUG CONTROL LAW ENFORCEMENT STRATEGY**

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

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

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

**Section 123(c)** requires the Commissioner and Director to, within 90 days of submitting the report, develop or update a strategy to enforce the drug control laws identified and address the violations estimated and to provide a confidential report to the Chair and Ranking Member of the Committees that outlines such strategy.

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

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

**Section 213** requires the Inspector General of DHS to submit a report to Committees that assesses CBP's effectiveness with respect to (1) revenue protection; (2) measuring accountability and performance related to revenue protection; (3) number of entries resulting in the underpayment of duties owed and a summary of the actions taken to address the underpayment; and (4) the effectiveness of CBP's training efforts with respect to duty collection.

## **SECTION 214: REPORT ON SECURITY AND REVENUE MEASURES WITH RESPECT TO MERCHANDISE TRANSPORTED IN BOND**

**Section 214(a)** requires the Secretaries of Treasury and Homeland Security to submit to the Senate Finance and House Ways and Means Committees joint annual reports in 2014, 2015, and 2016 that detail efforts taken to ensure the secure transportation of merchandise in bond through the United States.

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

## **SECTION 215: IMPORTER OF RECORD PROGRAM**

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

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

**Section 215(c)** requires the Commissioner to the Committees with a report on the importer of record program within one year of the date of enactment of this Act.

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

## **Chapter 2 – Import Health and Safety**

### **SECTION 221: INTERAGENCY IMPORT SAFETY WORKING GROUP**

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

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

**Section 221(c)** requires the Working Group to (1) consult on the development of a joint import safety rapid response plan required under section 222; (2) evaluate federal government and agency resources, plans, and practices to ensure the safety of U.S. imports and the expeditious entry of such merchandise; (3) review the engagement and cooperation of foreign governments and foreign manufacturers; (4) identify best practices, in consultation with the private sector, to assist U.S. importers in ensuring import health and safety of imported merchandise; (4) identify best practices to improve Federal, state, and local coordination in responding to import health and safety threats; and (5) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

## **SECTION 222: JOINT IMPORT SAFETY RAPID RESPONSE PLAN**

**Section 222(a)** requires the Secretary of Homeland Security, in consultation with the Working Group, to develop and review a joint import safety rapid response plan (Plan) that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers.

**Section 222(b)** sets forth the contents of the report, which must define (1) the responsibilities of CBP and other Federal agencies in responding to an import health and safety threat; (2) the protocols and practices used in responding to such threats; (3) the mitigation measures CBP must take when responding to such threats after the incident to ensure the resumption of the entry of merchandise into the United States; and (4) exercises CBP should take with Federal, State, and local agencies as well as the private sector to simulate responses to such threats.

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

## **SECTION 223: TRAINING**

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

### **CHAPTER 3—Import-related Protection of Intellectual Property Rights**

#### **SUBCHAPTER A: NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER**

### **SECTION 231: NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER**

**Section 231(a)** establishes within ICE the National Intellectual Property Rights Coordination Center (Coordination Center), which shall be headed by an Assistant Director.

**Section 231(b)** assigns the Assistant Director certain duties, including (1) coordinating the investigation of sources of merchandise that infringes intellectual property rights (IPR); (2) coordinating training with other domestic and international law enforcement agencies to improve IPR enforcement; (3) coordinating, with the U.S. Customs and Border Protection, U.S. activities to prevent the importation or exportation of IPR infringing merchandise; (4) supporting the international interdiction of merchandise destined for the U.S. that infringe IPR; (5) collecting and integrating information regarding infringements; (6) developing a single platform to receive information regarding infringement of IPR and creating a database of such; (7) disseminating information regarding infringement of IPR to other Federal agencies; (8) developing risk-based alert systems to be shared with CBP; and (9) coordinating with U.S. Attorneys' offices to investigate and prosecute IPR crime.

**Section 231(c)** requires the Assistant Director to coordinate with federal, state, local and international law enforcement, intellectual property, and trade agencies, as appropriate, in carrying out the Coordination Center's duties.

**Section 231(d)** requires the Assistant Director to (1) conduct outreach to the private sector to determine trends in and methods of infringing IPR; and (2) coordinate public and private-sector efforts to combat the infringement of IPR.

## **SUBCHAPTER B: AMENDMENTS TO THE TARIFF ACT OF 1930**

### **SECTION 241: PROVISION TO RIGHTS OWNERS OF INFORMATION ABOUT AND SAMPLES OF MERCHANDISE SUSPECTED OF INFRINGING TRADEMARKS AND COPYRIGHTS**

**Section 241** amends the Tariff Act of 1930 by authorizing and directing CBP to share information with rights holders to help quickly ascertain whether a suspect good crossing the U.S. border at a port of entry violates copyright or trademark, except in such cases as would compromise an ongoing law enforcement investigation or national security.

### **SECTION 242: ENFORCEMENT BY THE U.S. CUSTOMS AND BORDER PROTECTION AGENCY OF WORKS FOR WHICH A COPYRIGHT REGISTRATION IS PENDING**

**Section 242** directs the Secretary of Homeland Security to establish a process for the enforcement of copyrights for which the owner has submitted an application for registration with the Copyright Office of the Library of Congress to the same extent and in the same manner as if the copyright were registered with the Copyright Office, including the sharing of information as described in Section 241 above.

## **SECTION 243: SEIZURE OF CIRCUMVENTION DEVICES**

**Section 243** directs the Commissioner to publish on the Internet website of the U.S. Customs and Border Protection Agency, information permitting the identification of seized merchandise which is a circumvention device as defined under 17 USC 1201(a)(2) or (b)(1) except in such cases as would compromise an ongoing law enforcement investigation or national security. It also permits certain rightsholders to apply for additional information regarding the seized merchandise; and provides for the expedited disclosure of such information in certain cases.

## **SUBCHAPTER C: OTHER MATTERS**

### **SECTION 251: DEFINITION OF INTELLECTUAL PROPERTY RIGHTS**

**Section 251** describes the term “intellectual property rights” as used in Subchapter C.

### **SECTION 252: JOINT STRATEGIC PLAN FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**Section 252** requires the Commissioner and Director to include in the joint strategic plan on trade facilitation and enforcement required under section 131 the following: (1) a description of DHS’s IPR enforcement efforts; (2) a list of the top 10 ports, by volume and value, where CBP seized IPR infringing goods in the preceding two years; and (3) a recommendation of the optimal allocation of personnel to ensure CBP and ICE are effectively enforcing IPR.

### **SECTION 253: PERSONNEL DEDICATED TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**Section 253(a)** requires the Commissioner to ensure sufficient personnel are assigned throughout CBP with responsibility to enforce IPR with respect to U.S. imports.

**Section 253(b)(1)** requires the Commissioner to assign at least three full-time employees of the U.S. Customs and Border Protection Agency to the Coordination Center established under section 231.

**Section 253(b)(2)** requires the Commissioner to ensure that sufficient personnel are assigned to U.S. ports of entry to carry out the directives of the Coordination Center established under section 231.

### **SECTION 254: TRAINING WITH RESPECT TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**Section 254(a)** requires the Commissioner to effectively train CBP port personnel to detect and identify IPR infringing imported goods.

**Section 254(b)** requires the Commissioner to work with the private sector to identify opportunities for collaboration with respect to training for officers of the agency to enforce IPR.

**Section 254(c)** requires the Commissioner to consult with private sector entities to identify technologies which can cost-effectively identify infringing merchandise, and to provide for cost-effective training for CBP officers with regard to the use of such technologies.

**Section 254(d)** permits CBP to receive donations of technology to improve IPR enforcement.

#### **SECTION 255: INFORMATION FOR TRAVELERS REGARDING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS**

**Section 255(a)** requires the Secretary of Homeland Security to develop and implement an educational campaign for travelers entering or departing the United States on the legal, economic, and public health and safety implications of importing IPR infringing goods into the United States.

**Section 255(b)** requires the Commissioner to ensure that all versions of Form 6059B of the CBP, or a successor form, include a written warning to inform travelers arriving in the United States that importation of merchandise that infringes IPR may subject travelers to civil or criminal penalties and may pose serious risks to health and safety.

#### **SECTION 256: INTERNATIONAL COOPERATION AND INFORMATION SHARING**

**Section 256** requires the Secretary of Homeland Security to coordinate with competent foreign law enforcement agencies to enhance IPR enforcement, including by information sharing and technical assistance, and requires the Commissioner and the ICE Director to lead interagency efforts to collaborate with law enforcement and customs authorities of foreign countries.

#### **SECTION 257: SENSE OF CONGRESS REGARDING RECORDATION PROCESS**

**Section 257** expresses the sense of Congress that the Commissioner should work with the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office of the U.S. Department of Commerce and the Register of Copyrights of the Library of Congress to create a system under which a trademark or a copyright may be recorded with CBP upon the issuance of a trademark or registration of a copyright, respectively.

## **SECTION 258: REPORT ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.**

**Section 258** requires the Commissioner and the ICE Director to jointly submit to the Committees a report that contains: (1) information regarding the number, and a description of, certain efforts to investigate and prosecute IPR infringements; (2) an estimate of the average time required by the Office of Trade of the U.S. Customs and Border Protection Agency to respond to a request from port personnel for advice with respect to whether merchandise detained by the Agency infringed IPR, distinguished by types of IPR infringed; (3) a summary of the outreach efforts of the U.S. Customs and Border Protection Agency and the U.S. Immigration and Customs Enforcement Agency with respect to interdiction, investigation and information sharing between certain agencies related to the infringement of IPR, collaboration with the private sector, and coordination with foreign governments; (4) a summary of the efforts of the U.S. Customs and Border Protection Agency and the U.S. Immigration and Customs Enforcement Agency to address the challenges with respect to the enforcement of intellectual property rights presented by Internet commerce and the transit of small packages and an identification of the volume, value, and type of merchandise seized for infringing intellectual property rights as a result of such efforts; and (5) a summary of training relating to the enforcement of intellectual property rights conducted under section 254 and expenditures for such training.

### **Chapter 4 – Coordination of Trade Enforcement Priorities**

## **SECTION 261: ESTABLISHMENT OF PRIORITY TRADE ENFORCEMENT COORDINATION CENTERS**

**Section 261** permits the Secretary of Homeland Security establish in ICE additional enforcement coordination centers to address priority trade enforcement issues modeled after the National Intellectual Property Rights Coordination Center.

## **TITLE III – EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS**

**Section 301** sets forth that the title may be cited as the “Enforcing Orders and Reducing Customs Evasion Act of 2013.”

**Section 302(a)** amends the Tariff Act of 1930 by creating a set of procedures for investigating allegations of evasion of antidumping and countervailing duty orders, under newly created section 517 by inserting the following provisions:

## **SECTION 517 – PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS**

**Section 517(a)** lists the definitions for the section, including for the Administering Authority, Commissioner of U.S. Customs and Border Protection, covered merchandise, entry, and antidumping and countervailing duty evasion – including exceptions for clerical errors.

**Section 517(b)** requires the Commissioner to initiate an investigation within 10 business days of receipt of a proper allegation or referral that reasonably suggests that merchandise covered by an AD/CVD order is entering the United States through evasion. The Commissioner may accept allegations by U.S. producers of, or further processors of merchandise that is like or most similar to, merchandise covered by the AD/CVD order who allege that such covered merchandise is entering the United States through evasion. Referrals of evasion also may be submitted to the Commissioner by other Federal agencies. The Commissioner may consolidate multiple allegations. If during the course of conducting an investigation the Commissioner has reason to suspect that covered merchandise may pose a health or safety risk, the Commissioner is required to provide appropriate information to other Federal agencies.

**Section 517(c)** requires the Commissioner to make a determination not later than 270 calendar days after the date of initiation of an evasion investigation with respect to whether there is substantial evidence that the merchandise under investigation was entered into the United States through evasion. The section authorizes the Commissioner to request information from the U.S. producer making the allegation, as well as the importer, foreign producer, and foreign exporter of the alleged covered merchandise. The Commissioner may also request information from the government of the foreign country from which the alleged covered merchandise was exported. The bill provides that the Commissioner may make an adverse inference if the importer, exporter, or producer of the merchandise under investigation, or the U.S. producer making the allegation, did not act to the best of its ability to provide information requested by the Commissioner. The bill further requires the Commissioner, no later than five business days after making a determination, to notify the U.S. producer who made an allegation that initiated an evasion investigation of the determination.

**Section 517(d)** requires that if the Commissioner makes an affirmative determination of evasion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise that is the subject of the allegation entered between the date of initiation and the date of the determination; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; (3) notify Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; (4) require importers of such covered merchandise to post cash deposits and require CBP to assess duties on the covered merchandise as directed by Commerce; and (5) take such additional enforcement measures as the Commissioner deems appropriate, including modifying CBP's procedures for identifying future evasion, requiring a deposit of estimated duties on future entries, and referring the matter to ICE for civil or criminal investigation. The section also requires the Department of Commerce to promptly provide the Commissioner with cash deposit rates and antidumping and countervailing duty rates, and establishes a special rule for cases in which the producer or exporter is unknown.



**Section 517(e)** requires the Commissioner to determine within 90 calendar days of initiation of an evasion investigation whether there is a reasonable suspicion that entries of covered merchandise that are the subject of the allegation were entered through evasion. If the Commissioner decides there is a reasonable suspicion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise entered after the date of initiation; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; and (3) take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring a single transaction bond or posting cash deposits with respect to entries of covered merchandise. If the Commissioner determines that the merchandise being investigated poses a health or safety risk, CBP may notify the appropriate Federal agencies of that risk.

**Section 517(f)** provides a period of 30 business days for the U.S. producer who made the allegation of evasion or the importer of the covered merchandise alleged to have entered the merchandise subject to the evasion determination to request de novo administrative review by the Commissioner after notification of a determination.

**Section 517(g)** establishes that judicial review shall be available to the party alleging evasion or the party found to have entered merchandise subject to the investigation through evasion of any administrative review of the evasion determination by CBP.

**Section 517(h)** sets out a rule of construction with respect to other civil and criminal proceedings so that no determination under subsection (c) or action taken by the Commissioner pursuant to the section shall be construed to limit the authority to carry out, or the scope of, any other proceeding or investigation pursuant to any other provision of Federal or State law.

**Section 302(b)** includes a conforming amendment.

**Section 302(c)** provides the effect date of the section is 180 days after the date of enactment.

**Section 302(d)** provides that the Secretary of the Treasury shall prescribe such regulations as may be necessary to implement the bill within 180 days of enactment.

**Section 302(e)** establishes the application of the section to Canada and Mexico.

## **SECTION 303 ANNUAL REPORT ON PREVENTION AND INVESTIGATION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS**

**Section 303(a)** requires the Commissioner to submit to the Committees an annual report on the Commissioner's efforts to deter evasion of antidumping and countervailing duty orders.

**Section 303(b)** provides the contents of the report which shall include for the preceding calendar year regarding CBP's efforts to investigate and counter antidumping and countervailing duty evasion.

**Section 303(c)** requires the Commissioner to make available a public summary of the report required in subsection (a) with aggregated and more general information provided.

**Section 303(d)** includes additional definition references.

## TITLE IV – MISCELLANEOUS PROVISIONS

### **SECTION 401: CONSULTATION ON TRADE AND CUSTOMS REVENUE FUNCTIONS**

**Section 401** amends section 401(c) of the SAFE Port Act to require the Secretary to consult with the business community at least 30 days after proposing and 30 days before finalizing any policies, initiatives, or actions that will have an impact on CBP’s trade and customs revenue functions. The Commissioner must also notify Committees at least 60 days before proposing and thirty days before finalizing any policies, initiatives, negotiating positions, or actions that will have an impact on CBP’s trade and customs revenue functions or negotiating positions.

### **SECTION 402: DRAWBACK SIMPLIFICATION**

**Section 402(a)** amends section 313 of the Tariff Act of 1930 as follows:

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

**Section 313(b)** sets forth the eligibility requirements for claiming a refund of duties, taxes, and fees imposed under Federal law paid on imported merchandise and provides that a person may claim “drawback” if the person files a claim for drawback with respect to qualified imported and exported merchandise. If drawback is claimed on imported merchandise based on exported or destroyed merchandise, the exported or destroyed merchandise cannot be the basis for any other drawback claim, except that credit may be provided for claims covering components or ingredients of the exported merchandise or destroyed merchandise.

**Section 313(c)** provides that a person may claim drawback if the person: (1) imports the merchandise on which the claim is based or obtains the authorization of the importer to claim the drawback; and (2) exports or destroys the merchandise to claim drawback with respect to imported merchandise or obtains the authorization of the exporter or destroyer to claim the drawback. Any person claiming or authorizing drawback shall be jointly and severally liable for the full amount of the drawback claim made or authorized by the importer.

**Section 313(d)** provides that imported merchandise may form the basis of a drawback claim if: (1) all applicable duties, taxes, and fees have been paid on the imported merchandise and (2) the imported merchandise is entered or withdrawn from warehouse for consumption.

**Section 313(e)** provides that exported merchandise may form the basis of a drawback claim if it is: (1) the imported merchandise; (2) merchandise that is substituted for the imported merchandise; (3) merchandise into which the imported merchandise is incorporated; or (4) merchandise that is substituted for merchandise into which the importer merchandise or substitute merchandise is incorporated. If drawback is claimed on imported merchandise or substitute merchandise incorporated into other merchandise, the person making the drawback claim shall submit a bill of materials or formula that includes the imported merchandise or substitute merchandise, regardless of the number of times the imported merchandise or substitute merchandise is incorporated into such other merchandise.

**Section 313(f)** sets forth requirements for destroyed merchandise if the destroyed merchandise is any of the following: (1) (a) imported merchandise, (b) merchandise that is substituted for the imported merchandise, (c) merchandise into which the imported merchandise or substitute merchandise is incorporated or (d) merchandise that is substituted for merchandise into which the imported merchandise or substitute merchandise is incorporated; and (2) not exported because of its destruction and was not used in the United States before its destruction. Merchandise is not considered used if the merchandise was (1) sold at retail by the importer or another person that received the merchandise from the importer under a certificate of delivery and (2) subsequently returned to and accepted by the importer or other person receiving the merchandise.

**Section 313(g)** sets forth the general requirement for substitution merchandise if the merchandise can be substituted for other merchandise classifiable under the same 8-digit HTS subheading number during the 5-year period beginning on the date on which the merchandise was imported. The Schedule B number may be used for purposes of determining whether the merchandise is or has been classified under the same 8-digit HTS subheading number as other merchandise, regardless of whether the Schedule B number encompasses more than one 8-digit HTS subheading number. Merchandise that is classifiable under any heading or subheading of the HTS may be substituted for other merchandise if the merchandise is classifiable under the same 8-digit HTS subheading number as the other merchandise under the HTS as in effect on January 2000. In special cases, drawback may be refunded for merchandise that was classified under the same eight-digit HTS subheading number before January 1, 2000, or in the case of wine, if it is classified under a closely related eight-digit HTS subheading number. Current law is maintained with respect to substitution drawback for imports of ethyl alcohol or a mixture of ethyl alcohol.

**Section 313(h)** provides for the calculation of drawback for claims based on (1) exportation of imported or substitute merchandise; (2) destruction of imported merchandise, merchandise into which imported merchandise is incorporated, or merchandise substituted for merchandise into which imported merchandise is incorporated; (3) exportation of merchandise into which imported or substitute merchandise is incorporated or merchandise substituted for merchandise into which imported merchandise or substitute merchandise is incorporated; and (4) destruction of substitute merchandise, merchandise into which substitute merchandise is incorporated, or merchandise substituted for merchandise into which substitute merchandise is incorporated. The drawback refunded should be reduced by any amount of drawback previously refunded to a person with respect to imported merchandise.

**Section 313(i)** sets forth the filing requirements that drawback claims shall be filed electronically and no later than 5 years after the date on which the merchandise is imported or if the claim is based on merchandise imported on more than one date, the earliest date. If drawback is claimed on merchandise that is exported, the record of exportation must be entered into the automated export system of the United States or similar information contained in a record that is kept by the exporter in the ordinary course of business. The importer, exporter, or person who destroyed the merchandise must include records kept in the ordinary course of business to demonstrate that the imported merchandise was claimed. Current law is maintained with respect to vessels built for residents of a foreign country; certain agricultural products; flavoring extracts, flavors, medicines, medicinal preparations, or perfumes; and payments from the customs receipts of Puerto Rico.

**Section 402(b)** makes conforming amendments to sections 505(b), 515(a), and 508(b), of the Tariff Act of 1930.

**Section 402(c)** provides that amended section 313 shall apply to drawback claims on merchandise that enters the United States on or after the date that is 2 years from the date of enactment. A one-year transition rule is provided to allow a person to claim drawback under the prior provisions and the new provisions.

**Section 402(d)** requires the Government Accountability Office to provide the Senate Finance and House Ways and Means Committees with a report evaluating the costs to the Federal Government of administering the changes to drawback made by this section.

### **SECTION 403: PENALTIES FOR CUSTOMS BROKERS**

**Section 403(a)** amends section 641 of the Tariff Act of 1930 to add a new section that allows the Secretary of Homeland Security to impose fines, or revoke or suspend a customs broker license, if a broker has been convicted of committing or conspiring to commit an act of terrorism.

**Section 403(b)** makes technical and conforming amendments to section 641 of the Tariff Act of 1930.

### **SECTION 404: AMENDMENTS TO CHAPTER 98 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

**Section 404(a)** amends subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States by adding at the end of U.S. Note 3 (relating to articles repaired, altered, processed or otherwise changed in condition abroad) that for the purposes of 9802.00.40 and 9802.00.50, fungible articles exported from the United States may be commingled and the origin, value and classification of such articles may be accounted for using an inventory management method. The section also defines fungible and inventory management method for purposes of the section.

**Section 404(b)** amends the article description for subheading 9801.00.10 of the Harmonized Tariff Schedule of the United States relating to products of the United States returned after having been exported by inserting after the term “exported” the following, “, or any other products when returned within 3 years after having been exported”.

**Section 404(c)** amends subchapter I of chapter 98 of the Harmonized Tariff Schedule of the United States by inserting a new subheading and providing duty-free treatment for certain U.S. government property returned to the United States.

## **SECTION 405: CHARTER FLIGHTS**

**Section 405** amends section 13031 (e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to permit CBP employees to provide customs services for passengers and baggage on charter flights that arrive at U.S. ports of entry after normal operating hours, if the air carrier specifically requests the services at least four hours before the flight arrives and pays any overtime fees.

## **SECTION 406: PILOT PROGRAM TO DESIGNATE 24-HOUR COMMERCIAL PORTS OF ENTRY**

**Section 406(a)** requires the President to establish a two-year pilot program to designate certain land border crossings as commercial ports of entry that may accept merchandise entries, collect duties, and enforce customs and trade laws 24 hours a day.

**Section 406(b)** requires the President to designate after considering the criteria in section 307(c), and any input provided by the public, not less than 2 and nor more than 6 land border crossings as 24-hour commercial ports equally divided between the northern and southern border.

**Section 406(c)** establishes criteria the President shall consider including 1) the number of 24 ports already located in a state; 2) the costs associated with operating a land border crossing as a 24-hour commercial port; 3) the positive economic impact of designating the land border crossing for that community; 4) any commitment of resources by the government of Canada or Mexico; 5) the support demonstrated by the local or state government for the designation.

**Section 406(d)** requires the President to determine, not later than 2 years after the 24-hour port becomes operational, whether operating the port 24 hours a day provides a net economic benefit to the United States and to report the determination and reasons for the determination to the Committees. If the President determines that operating the port 24 hours a day does not provide a net economic benefit to the United States, the port shall cease to operate 24 hour a day on the date the President submits the report to the Senate Finance and House Ways and Means Committees.

**Section 406(e)** requires the President to provide the Committees within 90 days of a determination under subsection (d)(1) a report that: (1) compares vehicle traffic at the port before and after the 24-hour designation, (2) provides an estimate of the total value of commercial goods that crossed the port before and after the designation, and (3) provides an analysis of the effect of the designation on wait times at other ports of entry in the same state before and after the designation. The report will compare the 2-year period before the land border crossing became a 24-hour port against the 2-year period after the 24-hour began operations.

#### **SECTION 407: ELIMINATION OF CONSUMPTIVE DEMAND EXCEPTION TO PROHIBITION ON IMPORTATION OF GOODS MADE WITH CONVICT LABOR, FORCED LABOR OR INDENTURED LABOR; REPORT**

**Section 407(a)** eliminates the consumptive demand exception by amending section 307 of the Tariff Act of 1930 by inserting the following provisions:

**Section 307(a)** amends section 307 of the Tariff Act of 1930 by striking the sentence that provides a consumptive demand exception to the prohibition on importing goods made by convict, forced or indentured labor.

**Section 407(b)** requires the Commissioner to provide a report to the Committees that includes: (1) the number of instances in which merchandise was denied entry pursuant to this section during the preceding 1-year period, (2) a description of the merchandise denied entry pursuant to the section, and (3) such other information the Commissioner considers appropriate with respect to monitoring and enforcing compliance with this section.

#### **SECTION 408: HONEY TRANSSHIPMENT**

**Section 408(a)** requires the Commissioner to direct appropriate personnel and resources to address concerns that honey is being imported into the United States in violation of customs and trade laws.

**Section 408(b)** requires CBP to compile a database of the individual characteristics of foreign honey to facilitate the verification of country of origin markings, and seek to work with foreign governments, industry and the Food and Drug Administration in compiling the database.

**Section 408(c)** requires the Commissioner to submit a report to Congress within 180 days after enactment of the Act that 1) describes and assesses the limitations in existing analysis capabilities of laboratories with respect to determining the country of origin of honey, and 2) includes any recommendation of the Commissioner for improving such capabilities.

**Section 408(d)** expresses the sense of Congress that the Commissioner of Food and Drugs should promptly establish a honey national identification standard to (1) ensure that honey imports are classified appropriately for duty assessment; and (2) are denied entry to the United States if such imports pose a threat to the health or safety of consumers.

## **SECTION 409: CONTRABAND ARCHAEOLOGICAL OR ETHNOLOGICAL MATERIALS**

**Section 409(a)** requires the Commissioner to ensure that appropriate CBP personnel are trained to detect, identify, and detain imports of archaeological or ethnological materials that violate customs and trade laws.

**Section 409(b)** permits the Commissioner to accept training and support services from experts outside the Federal Government in the detection, identification, and detention of imports of such materials.

## **SECTION 410: DE MINIMIS AND ENTRY UNDER REGULATIONS**

**Section 410** amends section 321 of the Tariff Act of 1930 to permits the admission of articles valued at less than \$800 to be imported by one person on one day duty-free. The Secretary of Treasury may also prescribe regulations to permit the informal entry of merchandise when the aggregate value of the shipment is \$2500 or less.

## **SECTION 411: REPEAL OF AUTHORITY OF U.S. CUSTOMS AND BORDER PROTECTION AGENCY TO ENTER INTO CERTAIN REIMBURSABLE FEE AGREEMENTS**

**Section 411** repeals Section 560 of the Department of Homeland Security Appropriations Act, 2013 (division D of the Consolidated and Further Continuing Appropriations Act, 2013).