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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR
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November 8, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, D.C. 20528

Mr. Troy Miller
Office of the Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, D.C.

Dear Secretary Mayorkas and Acting Commissioner Miller:

We write to request information about the U.S. Customs and Border Protection's (CBP) current and prospective use of artificial intelligence (AI) tools to support its trade mission. We are encouraged with CBP's public support for "Responsible AI" and its commitment to "develop[ing] and employ[ing] best practices for maximizing reliability, security, and the accuracy of AI design, development, and use."¹ With effective policies in place, CBP can leverage AI to more efficiently conduct trade enforcement and trade facilitation activities. However, if the risks posed by AI are not managed, these tools could result in unsafe or otherwise harmful outcomes for the American people.

For example, with respect to trade enforcement and facilitation, AI can assist CBP officers in detecting anomalies in customs documentation or physical screening. In testimony to Congress, the U.S. Department of Homeland Security stated CBP is using advanced machine learning models to attempt to stop fentanyl and other dangerous drugs from entering the United States. Similarly, AI models could be deployed to identify and target illicit operations abroad, identify goods produced with forced labor before they reach our borders, and maintain and improve the integrity of our supply chains. By directing CBP resources to riskier shipments, deployment of AI systems could better facilitate the flow of legitimate trade into and out of our ports for American importers and exporters.

However, without proper guardrails, CBP's use of AI could result in trade facilitation and enforcement systems that are ultimately less effective. For example, the leak of sensitive business data through a breach of one of CBP's AI vendors could create serious competition and

¹ March 24, 2023. *Artificial Intelligence to Harness Key Insights at CBP*.
<https://www.cbp.gov/newsroom/spotlights/artificial-intelligence-harness-key-insights-cbp#:~:text=People%20are%20at%20the%20core,dignity%2C%20rights%2C%20and%20freedoms>.

intellectual property problems for companies across the board. As stated in the White House Office of Science Technology and Policy *Blueprint for An AI Bill of Rights*, AI tools deployed with good intentions across the country were later proven unsafe, ineffective, or biased.

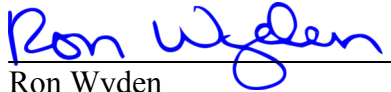
As Chairman and Ranking Member of the Senate Committee on Finance, we are tasked with oversight of trade enforcement and facilitation efforts, including CBP's development and adoption of technological innovations such as AI. To that end, we request that you respond to the following questions in writing by December 8, 2023 to further our understanding of how CBP is using AI tools:

1. Please describe the specific AI systems or tools utilized by CBP within the past three years and those that are being considered for future use. Within your response, please include CBP's use of AI for trade enforcement and trade facilitation activities as follows:
 - a. Cargo screening at shipping terminals, rail crossings, and land borders
 - b. Small package screening at express carrier and postal facilities
 - c. Screening at land borders
 - d. Compliance with Uyghur Forced Labor Prevention Act (UFLPA)
 - e. Compliance with antidumping and countervailing duty orders, including circumvention of such orders
 - f. Identification of errors or fraud in customs entries
 - g. Any other relevant activities
2. Please provide an organizational chart of where and how CBP's AI technologies management fits into the Agency.
3. Please describe how CBP identifies appropriate AI systems or tools, including with respect to considerations such as security, efficacy, validity, reliability, and bias.
 - a. Has CBP ever stopped or altered use of a particular AI tool in response to concerns with its efficacy or impact? If yes, please provide details about the decision.
4. Does CBP require that the AI it employs with respect to its trade mission:
 - a. Be tested or audited for security, efficacy, validity, reliability, and bias prior to deployment and on an ongoing basis?
 - i. If yes, are these audits performed by an independent third-party? If so, whom?
 - ii. If not, why not?
 - b. Be accompanied by validation studies or audits from vendors during the procurement process?
 - c. Be reviewed retrospectively to assess efficacy, reliability, bias, and legal concerns regarding use?
5. Does CBP perform cost-benefit analyses prior to each new implementation of AI?

6. Does CBP perform cost-benefit analyses within a reasonable interval after each new implementation of AI?
7. Does CBP provide notice of AI use and explanations to impacted importers and exporters? Does CBP allow impacted importers and exporters to challenge a decision that is based on the output of AI?
8. Does CBP provide guidance on best practices for data sharing, legal discovery, and evidentiary obligations to offices or departments using AI tools?
9. How does CBP protect data in the U.S. from the risks associated with the use of AI?
10. What gaps or barriers, if any, inhibit or impede CBP's initiatives to safely integrate AI technologies into its program integrity efforts?
 - a. What steps, if any, should Congress consider taking to address these hurdles?

Thank you for your attention to this important matter. We stand ready to assist as needed.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Michael D. Crapo
United States Senator
Ranking Member, Committee
on Finance