

# **Customs Trade Facilitation and Enforcement Act of 2012**

## **Summary of Provisions**

### ***Title I – Customs Facilitation***

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

Section 101: Codifies the establishment of U.S. Customs and Border Protection (CBP) and position of Commissioner; outlines and adds greater specificity to the Commissioner's duties.

Section 102: Includes several provisions to highlight and better coordinate the customs revenue functions of CBP:

1. Codifies the position of Deputy Commissioner, to be appointed by the President and confirmed by the Senate and to report directly to the Commissioner, with requirement for ten years of trade experience and enumerates the duties of the position.
2. Elevates and codifies the position of Trade Advocate, appointed by the Commissioner, as the business community's single point of contact to advocate for trade facilitation and enforcement and to assist in resolving conflict with the agency and among the ports.
3. Aligns CBP's trade resources by moving the import specialist function at the ports to the Office of International Trade (from the Office of Field Operations) to centralize trade policy, targeting, and the classification and valuation of imported goods and to improve consistency in the implementation of trade facilitation and enforcement measures.
4. Establishes an interagency board to ensure consistency of CBP rulemakings and other significant actions with U.S. international trade obligations.

Section 103: Requires CBP to establish a separate budget request for commercial operations of the agency to include those trade functions identified in Sec. 402(b) of the Homeland Security Act of 2002.

Sections 104 - 108: Conforming amendments.

Section 109: Requires the CBP Commissioner and Immigration and Customs Enforcement (ICE) Director 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 110: Amends the Homeland Security Act 2002 to designate and dedicate five Treasury full time employees for the purposes of Customs revenue oversight.

Section 111: Requires 30 days' Congressional notification prior to significant changes to organization, functions, numbers of employees, and ports of entry.

Section 112: Provides authorization for CBP's commercial trade functions of \$1.8 billion for FY 2013, \$1.817 billion for FY 2014, and \$1.83 billion for FY 2015; raises the overtime cap from

\$25,000 to \$35,000 so that CBP can better use existing resources to meet the growing level of trade; allows CBP to apply towards strengthening the agency's commercial operations any savings resulting from the consolidation of functions.

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

Section 121: Requires the President ICE to establish a separate budget requests for the commercial trade enforcement functions of ICE.

Section 122: Provides authorization for ICE's commercial trade enforcement of \$86 million for FY 2013, \$88.15 million for FY 2014, and \$90.2 million for FY 2015.

### ***Subtitle C – Joint Strategic Plan***

Sec 131: Requires CBP and ICE to create a joint strategic plan containing a comprehensive multi-year plan for facilitating trade and enforcing U.S. customs and trade laws with respect to Customs Priority Trade Issues (PTIs), which include agriculture, antidumping and countervailing duties, import safety, intellectual property, penalties, revenue, textiles, and trade agreements; requires annual reporting of performance measures to the House Committee on Ways and Means and the Senate Finance Committee, including specific ICE and CBP coordinated efforts to support and enforce U.S. trade laws.

## ***TITLE II -Customs Facilitation, Trade Enforcement, and Transparency***

### ***Subtitle A - Customs Facilitation and Transparency***

Section 201: Provides the House Committee on Ways and Means and the Senate Finance Committee with 30 days' notification before CBP initiates or enters into a mutual recognition agreement relating to supply chain or customs revenue functions.

Section 202: Codifies and expands the role of the Commercial Customs Advisory Committee (COAC), which is made up of 20 members representing the trade community and advises and provides recommendations to the Secretaries of the Treasury and Homeland Security on CBP's commercial operations, including modernization and streamlining of cargo processing.

Section 203: Authorizes the Automated Commercial Environment (ACE) computer system, which covers all U.S. imports; requires a report from CBP on its objectives, plans, and deadlines for implementing ACE priorities before funding changes are considered; requires a GAO report evaluating the cost and effectiveness of CBP's efforts to complete ACE development, establishment, and implementation, as well as the benefits of ACE.

Section 204: Sets requirements and a March 31, 2013, deadline for the 48 agencies with border responsibilities that now participate in the International Trade Data System (ITDS) to enter into a memorandum of understanding or take other action to provide for electronic information-sharing

so that all U.S. government import requirements are fulfilled at one “window,” reducing costs for business and government as well as improving risk assessment.

### ***Subtitle B – Trade Enforcement***

#### ***Chapter 1 - Commercial Risk Assessment Targeting***

Section 211: Establishes a Commercial Targeting Division in CBP; codifies targeting and analysis groups for each of the Primary Trade Issues (PTI) entities established in section 131, with each group required to develop specific targeted risk assessment methodologies and performance standards as well as provide enforcement alerts to the ports of entry for cargo inspection; allows advance trade data now used for security purposes to be also used for commercial risk assessment targeting.

Section 212: Codifies the establishment of Centers of Excellence and Expertise (CEEs) within CBP to facilitate legitimate trade through increasing specific industry knowledge and uniformity of cargo clearance procedures, in areas such as electronics, autos/aerospace, and petroleum.

Section 213: Requires the DHS Inspector General to conduct periodic reviews of CBP’s revenue protection and enforcement measures, focusing in particular on collection of revenue from antidumping and countervailing duties, assessment and collection of penalties, and adequacy of policies regarding in-bond movements of cargo.

Section 214: Requires the Secretaries of Treasury and Homeland Security to report on CBP improvements to internal controls over merchandise moving in-bond.

Section 215: Requires a GAO study to measure CBP’s effectiveness in trade enforcement activities (in particular the eight Primary Trade Issues in section 211).

Section 216: Requires CBP to establish key performance measures and requires reports to Congress on modernization, facilitation, and trade enforcement functions, in consultation with the Committees on Ways and Means and Finance, with respect to the implementation of ACE, drawback modernization, in-bond merchandise movement, collection of AD/CVD duties, expedited clearance of cargo, and Centers for Excellence and Expertise.

Section 217: Requires the Commissioner of CBP and the Director of ICE to co-develop and provide educational seminars for CBP port personnel and ICE agents to provide instructions on collection of antidumping and countervailing duties, textile transshipment, IPR protection, and enforcement of child labor laws, for the purpose of improving trade fraud prevention and detection techniques.

#### ***Chapter 2 – Importer Requirements***

Section 221: Requires the DHS and CBP to strengthen internal controls and develop criteria for assigning importer-of-record numbers, establishing an accurate database of importer of record numbers, and improving the accuracy of existing numbers.

Section 222: Requires Customs brokers to collect information on the identity of importers, with penalties for failure to comply.

Section 223: Provides CBP with the authority to strengthen internal controls over “new importers” to ensure collection of revenue through risk-based bonding for duties, fees, and penalties.

Section 224: Requires CBP to collect additional information and levy financial requirements on “nonresident importers” to increase revenue protection.

Section 225: Creates an interagency committee to establish a certified importer program by December 30, 2014, to provide facilitation benefits that could reduce the costs associated with the movement of highly compliant cargo for importers certified as the most compliant; requires progress reports.

### ***Chapter 3 – Import-Related Protection of Intellectual Property Rights***

Section 231: Provides CBP with the authority to provide IPR rights holders with samples and related information for the sole purpose of determining if imported products are counterfeit; also provides CBP with enhanced bonding authority to strengthen enforcement of copyrights.

## ***TITLE III- Prevention of Evasion of Antidumping and Countervailing Duty Orders***

Section 301: Short title – “Preventing Recurring Trade Evasion and Circumvention Act.”

Section 302: Definitions.

Section 303: Provides that the provisions apply to Canada and Mexico.

### ***Subtitle A - Actions Relating to Enforcement of Trade Remedy Laws***

Section 311: Establishes the Trade Remedy Law Enforcement Division within CBP’s Office of International Trade, dedicated to preventing and investigating trade remedy evasion and directing CBP activity concerning evasion. This division would coordinate information exchange and cooperation between CBP, ICE, and other agencies regarding evasion. It would also serve as the primary contact point for evasion allegations and would be required to provide parties updates on the status and outcome of investigations or other activities resulting from allegations. The division would contain a National Targeting and Analysis Group dedicated to identifying potentially evading imports and alerting relevant ports.

Section 312: Directs CBP to exercise all existing information collection authorities to identify evasion; authorizes CBP to issue questionnaires to collect information on alleged evasion and to apply an adverse inference against a party that does not provide the requested information.

Section 313: Authorizes increased data sharing between CBP, the Department of Commerce, and the U.S. International Trade Commission for enforcement actions against evasion.

Section 314: Directs CBP to enter into agreements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion.

Section 315: Establishes as a negotiating objective for future trade agreements the creation of arrangements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion.

### ***Subtitle B – Other Matters***

Section 321: Directs CBP to assign sufficient personnel responsible for preventing and investigating evasion and requires that such personnel are adequately trained.

Section 322: Requires CBP to submit an annual report to Congress providing a detailed description of CBP evasion policies and activities.

Section 323: Terminates the ability of new shippers to post bonds during Department of Commerce new shipper antidumping and countervailing duty reviews and establishes criteria for identifying bona fide sales by a new shipper.

## ***TITLE IV - Miscellaneous Provisions***

Section 401: Adds committing or conspiring to commit an act of terrorism to the list of offenses as grounds for removal of a broker license.

Section 402: Raises the informal entry amount from \$1,000 to \$2,500 and *de minimis* amounts from \$200 to \$800 to reduce paperwork burdens and facilitate the movement of cargo, especially by express air.

Section 403: Requires airlines to remit all air passenger fees that are required to be collected, not merely those that have actually been collected, consistent with a recent court decision.

Section 404: Initiates drawback modernization by allowing use of eight-digit Harmonized Tariff System (HTS) classifications for determining eligibility for certain types of drawback claims; makes most time-frames for filing drawback claims consistent; and requires GAO to report on drawback, including determining the revenue impact of moving to eight-digit HTS classification for determining eligibility for claims for unused drawback.

Section 405: Amends Chapter 98 of the Harmonized Tariff Schedule (HTS) of the United States by: (1) reducing record-keeping burden on goods returned to the United States without improvement abroad so that duties are not assessed twice (HTS 9801); and (2) modernizing existing inventory management rules concerning by subtracting the value of U.S. components

assembled into the final product that will be entered into U.S. commerce for articles exported and returned after being improved abroad (HTS 9802).

### ***TITLE V - Other Trade Agencies***

Section 501: Authorizes appropriations for the U.S. International Trade Commission at \$82.8 million for FY 2013, \$86.8 million for FY 2014, and \$88.9 million for FY 2015.

Section 502: Authorizes appropriations for the United States Trade Representative at \$51.3 million for fiscal year 2013; establishes reporting requirements for USTR-led interagency programs, including the Interagency Trade Enforcement Center, and for USTR's budgetary and staffing requirements in USTR's Annual Report and in conjunction with other reports USTR is already required to submit to Congress.