



**Hearing Before the United States Senate Committee on Finance
Subcommittee on International Trade, Customs, and Global Competitiveness**

“Examining U.S. Trade Enforcement and Entry of Merchandise”

Written Testimony of

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May 21, 2024

Chairman Carper, Ranking Member Cornyn, and members of the subcommittee, my name is John Drake, and I am the Vice President of Transportation, Infrastructure, and Supply Chain Policy for the U.S. Chamber of Commerce. Thank you for the opportunity to testify at today’s hearing regarding U.S. Trade Enforcement and Entry of Merchandise.

Ports Are Top Concern to U.S. Businesses

International trade plays a critical role in the American economy and way of life. Ports are critical to this trade, including the 328 international land, air, and sea ports throughout the United States that include operations by the U.S. Customs and Border Protection.¹ The operation of these ports — and their ability to move goods efficiently as freight grows — is of top concern to the U.S. Chamber. Delays, congestion, and

¹ “At Ports of Entry,” U.S. Customs and Border Protection, <https://www.cbp.gov/border-security/ports-entry>.

inefficient operations at ports adds costs to U.S. businesses and consumers and makes our economy less competitive.

This point was dramatically seared into the public's consciousness during the West Coast port crisis beginning in 2020. This COVID-19 pandemic-era "demand surge" arose to a very substantial degree from U.S. government outlays to state and local governments, households, and businesses. Congressional appropriations — signed into law in the Trump and Biden Administrations — provided more than \$6 trillion in emergency supplemental funding to address the pandemic. Partly as a result, U.S. spending on durable goods was an astonishing 25% higher in 2021 than two years earlier. This was an unprecedented surge in demand, and while production of goods ranging from semiconductors to home goods actually expanded briskly, industry simply could not keep up with the breakneck expansion in demand fueled by government outlays. Economists also note that when U.S. consumers made a dramatic shift in spending from services to goods, with many of these goods purchased on e-commerce platforms.

The resulting record import volumes were further complicated by factories, port terminals and other operations impacted worldwide due to sporadic shutdowns in response to infection outbreaks, putting pressure on every link in the supply chain — especially the West Coast ports. The most visible aspect of these bottlenecks was the record number of ships backed up off the ports of Los Angeles and Long Beach. On November 16, a record 86 container ships were at anchor or loitering offshore waiting for a berth assignment. For reference, from 2018 to 2019, the number of ships at anchor or loitering was typically zero— arriving ships proceeded directly into port to offload cargo.

We have come a long way since those days, but there remain significant supply chain challenges confronting the business community, including the forced shipping diversions from the Red Sea crisis, the war in Ukraine, and the Francis Scott Key bridge collapse in Baltimore, Maryland that is forcing short-term shifts in trade routes by carriers and shippers. Additionally, the business community is facing labor challenges that include a shortage of truck drivers, rail workers, and pilots, as well as numerous contract negotiations over the past few years that either resulted in a strike – as in the case of the recent United Auto Workers action earlier this year – or near strikes – including the Class I freight railroads and their rail unions that resulted in Congress intervening to stop a strike (2022); the contract negotiations between the West Coast port terminals and the International Longshoremen and Warehouse Union (2023); and the Teamsters and UPS (2024). Finally, the business community is facing challenges at our southern border as migrant flows have forced the U.S. Customs and Border Protection (CBP) to divert resources and perform short-term closures of certain commercial ports of entry in order to assist in the processing of migrants. Each of these events forces a business to divert limited time and resources to developing contingency plans, negotiate new shipping routes, or take on higher costs of delivering their products to their customers.

Today, the business community is closely watching the unfolding negotiations on a new Master contract between the International Longshoremen's Association, representing approximately 85,000 members, and the United States Maritime Alliance, representing the employers of the East and Gulf Coast port terminals. While we have some time before the expiration of the current contract on September 30, 2024, the reality is the business community is wary and if they believe these negotiations are stalling then shippers will start diverting cargo away from these ports in anticipation of potential labor disruptions. That said, we urge both sides to

continue negotiating in good faith to maintain consistent and reliable service levels until the completion of a new contract.

Make no mistake, the accumulation of these events is creating an enormously difficult operating environment for the business community. Indeed, one of our member company CEOs recently stated that “we were accustomed to managing a ‘black swan’ event once every couple of years. Now, we are dealing with one every week.”

One of the “silver linings” of the COVID-19 pandemic was greater awareness and focus on the resilience and efficiency of America’s sea ports, where any friction can lead to impacts on consumer choice, price, and ultimately economic development. Unfortunately, the lack of a reliable, consistent, and comparable operational performance data across different ports is proving to be a major challenge to stimulating improvement in the efficiency of ports.

While modern ports collect data for performance purposes, the quality, consistency, and availability of data, the definitions employed, and the capacity and willingness of the organizations to collect and transmit data to a collating body have all precluded the development of a robust comparable measures to assess performance across ports and time. The introduction of new technologies, increased digitalization, and the willingness on the part of industry stakeholders to work collectively toward systemwide improvements have now provided the opportunity to measure and compare container port performance in a robust and reliable manner.

This issue cuts into the long-term competitiveness of our seaports, essentially the “productivity” of these ports, or how quickly they can load and unload ships. A

high level of productivity means containers and goods move quickly through ports, helping keep transportation costs low and getting products to store shelves quickly.

Unfortunately, our ports rank as some of the least productive in the world. The World Bank Group and IHS Markit recently [ranked the top ports in the world](#) and the U.S. had only one port (Wilmington, NC at #44) in the top 50. Our two most important ports — Los Angeles and Long Beach — ranked #336 and #346, respectively (and just behind the Port of Houston at #335). Cutting the performance gap will mean modernizing our ports the way the rest of the world has already done — in part through automation. With trade volumes expected to continue growing this is especially important. Many of our ports are already at capacity and cannot handle any more traffic without degradation in service levels. Without improvements from automation and other changes, our less-competitive ports will hurt the competitiveness of U.S. businesses. But these steps can only be done in partnership with our port workers.

Another “silver lining” of the COVID-19 pandemic has been an increased willingness to utilize data in public-private partnerships to improve the agility of supply chains. A good example of this is the U.S. Department of Transportation’s Freight Logistics Optimization Works (FLOW), a public-private partnership among industry and government that is a forward-looking, integrated view of supply chain conditions in the United States. FLOW data helps forecast how current capacity and throughput will fare against future demand, helping participating companies anticipate changes in supply chain throughput and take proactive step to mitigate previously unanticipated delays. The FLOW program was especially valuable in the wake of the Francis Scott Key bridge collapse, which provided participating members

forward-looking data on bookings as far as 60 days ahead, and where there were opportunities to move cargo with little to no obstacles.²

Congress Should Not “Pull the Thread” on Trade Law

U.S. Customs and Border Protection (CBP) is the primary federal law enforcement agency tasked with screening imports and making sure they comply with U.S. law.³ CBP employs a risk-based approach that segments importers into higher and lower risk pools allowing the agency to focus its resources on higher-risk imports, while expediting lower-risk flows. CBP uses multiple factors to identify high-risk shipments, including data transmitted at multiple points of the import process, beginning before goods are loaded in foreign ports and continuing long after the time goods have been admitted into the United States. Additionally, CBP works with 47 other federal agencies (“partner government agencies” or “PGAs”) to enable they perform their responsibilities in administering the law.⁴

Volumes of shipments can shift quickly based on the agile nature of supply chains and how businesses serve their customers. CBP and others are acknowledging that the sheer volume of *de minimis* shipments is overwhelming the agency’s limited resources and the data submitted to CBP on these shipments is insufficient to properly identify high-risk shipments. But these claims are misleading, and CBP has publicly refuted claims that *de minimis* is a loophole and that the agency doesn’t

² “How supply chains used FLOW after the Baltimore bridge collapse”, By Colin Campbell, Larry Avila, and Alejandra Salgado, *Supply Chain Dive*, May 15, 2024.
<https://www.supplychainedive.com/news/flow-baltimore-bridge-collapse-response-supply-chains-home-depot-ch-robinson-its-logistics/715992/>

³ <https://www.cbp.gov/border-security/ports-entry>

⁴ CBP, “Partner Government Agencies Supporting the Border Interagency Executive Council”
<https://www.cbp.gov/newsroom/photo-gallery/photo-library/partner-government-agencies-supporting-border-interagency>

screen *de minimis* shipments. In addition, CPB has clarified that it uses the same targeting logic for large and small entries.⁵

For example, the agency collects significant data on *de minimis* shipments – with broad authority to expand these collection requirements under existing law.⁶ By way of example, the table below illustrates the data CBP collects from *de minimis* shipments arriving into the United States via express air transportation, and are also found under CBP’s existing regulations.⁷ Additionally, CBP is currently conducting a program called the Section 321 data pilot to evaluate new data requirements to help with oversight of *de minimis* shipments.⁸

Data Collected On *De Minimis* Shipments

Air Cargo Advance Screening (ACAS) Data⁹	Air Manifest Data¹⁰	Manifest Release Data¹¹
Shipper Name	Air Waybill Number/Master and House Airway Bill Number(s) as applicable	Value
Shipper Address	Trip/Flight Number Carrier Code	Country of Origin
Consignee Name	Airport of Arrival	Shipper Name, Address, and Country
Consignee Address	Airport of Origin	Ultimate Consignee Name and Address
Cargo Description	Scheduled Date of Arrival	Specific Description of the Merchandise
Airway Bill Number	Total Quantity	Quantity

⁵ International Trade Today, April 25, 2023

⁶ “Section 321 Data Pilot.” *Federal Register* 84:35405 (July 23, 2019), pg. 35406.

⁷ International mail shipments are subject to a different set of CBP regulations. See 19 C.F.R. Part 145, subpart G. CBP’s shortcomings in implementing these requirements were the subject of a recent OIG report found here: <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-56-Sep23-Redacted.pdf>

⁸ “Section 321 Data Pilot.” *Federal Register* 84:35405 (July 23, 2019), pg. 35405.

⁹ 19 C.F.R. 122.48b

¹⁰ 19 C.F.R. 122.48a. CBP requires similar data reporting for goods arriving in other modes of transportation such as trucks arriving at the land border.

¹¹ 19 C.F.R. 143.23

Total Quantity	Total Weight	Shipping Weight
Total Weight	Precise Cargo Description	
	Shipper name and Address	
	Consignee Name and Address	
	Flight Departure Message	
	Weight Code*	
	Entry Type*	
	Entry Number*	
	Currency of Value*	
	Bond Type (Carrier)*	

* ACE Customs Automated Manifest Interface Requirements (CAMIR)

Taken together, *de minimis* is an important pillar of trade facilitation allows U.S. businesses to remain competitive internationally while allowing CBP to balance its critical law enforcement responsibilities with its resources.

CBP Must Focus on Addressing the Most Serious Trade Vulnerabilities

CBP’s Section 321 Data Pilot is part of a larger — and more urgent — effort by the agency to update its oversight capabilities in the face of larger changes in the trade environment over the last several years.

During this time, numerous new business models like marketplaces, consolidators, and fulfillment centers have entered the trade environment and are importing more goods into the United States. Most of these businesses have “previously operated outside the customs clearance process,” according to CBP and the agency lacks the data to track transactions by these new businesses because many of them did not exist until recently.¹²

¹² CBP, “Privacy Impact Assessment for the E-Commerce ‘Section 321’ Data Pilot,” Sept. 26, 2019, pg. 3, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf>

Indeed, CBP acknowledges that the data it collects on all entry types — *de minimis*, informal, and formal — often fails to answer key questions about an import, such as the seller’s identity¹³, and the traditionally regulated parties, like carriers, often “are unlikely to possess all of the information relating to a shipment’s supply chain.”¹⁴ Simply put, the data CBP collects is out of step with certain aspects of today’s new trade environment. As noted above, CBP is currently testing solutions to this data issue, which the agency can resolve under its current authorities.

Further, CBP’s enforcement data shows that about half of all seizures of counterfeit and pirated goods by value are in the express and international mail environments, while the other 50% are in ocean, rail and other modes that carry relatively fewer low-value shipments. In other words, *de minimis* shipments do not attract more counterfeit or pirated goods than other trade channels; nor does *de minimis* impede CBP’s ability to effect seizures.

Taken together, this shows that the issues that allow illicit goods to enter the U.S. are present across *all* types of entry. At the same time, eliminating *de minimis* would create substantial new challenges for CBP and U.S. consumers and businesses, including additional costs to CBP, more processing time due to the additional volume of goods moving through informal and formal entries, and increase inflationary pressures on costs for consumers.¹⁵ Eliminating *de minimis* would draw critically needed resources away from the more effective path of focusing on shipments using tried and true risk-based methodologies.

¹³ Ibid. pg. 3

¹⁴ Ibid., pg. 3

¹⁵ Hufbauer, Gary Clyde and Hogan, Megan, “Proposal to get rid of duty-free imports would punish American consumers and small businesses.” Peterson Institute for International Economics. Oct. 2, 2023 <https://www.piie.com/blogs/realtime-economics/proposal-get-rid-duty-free-imports-would-punish-american-consumers-and>

CBP is preparing a notice of proposed rulemaking that incorporates features of the Type 86 Test and Section 321 Data Pilots that will require additional data of traders. CBP needs to issue this proposed rule, including an articulation of findings coming out of the Entry Type 86 Test and 321 Data Pilot (which combine to be 80% of *de minimis* entries), allow a sufficient public comment period to encourage robust feedback on this economically significant policy, and include a phased implementation beginning at least 270 days after the publication of the final rule to ensure the trading community and CBP have time to make the necessary adjustments to systems and procedures.

Congress Should Update Customs Law

Rather than “pull the thread” on *de minimis*, we urge Congress to consider a comprehensive customs modernization effort that balance the equally important goals of enforcing U.S. customs laws with facilitation of legitimate goods, which enhances resilient supply chains and promotes economic security – goals that government and industry share and can achieve together.

Underpinning our nation’s competitiveness are the customs laws and rules that facilitate lawful trade and protect American businesses, workers, and consumers from nefarious actors seeking to introduce unlawful goods and products into our country. The last update to the nation’s customs laws made under the Trade Facilitation and Trade Enforcement Act of 2015 included many important provisions but the trade landscape has changed dramatically since enactment of that law, including the explosive growth of global e-commerce, the emergence of many new actors (good and bad) in the trade environment, post-Covid supply-chain constraints and resiliency planning, and growing attention to supply chain transparency. Overall, many of these changes are positive, including a number that provide opportunities for small- and

medium-sized businesses to compete in the global economy like never before. However, they also create challenges for supply chains as more participants and business models enter the space.

CBP has sought to contend with the realities of this new trade environment by bringing together the trade community in developing the agency's 21st Century Customs Framework (21CCF). This was an important starting point to the customs modernization discussion, and we applauded CBP's decision to involve the Commercial Customs Operations Advisory Committee (COAC) and the trade community through the 21CCF Task Force in developing the 21CCF proposal — which was finalized last year and is currently in the interagency process. The COAC's work reflects a rich history of CBP working in partnership with the trade community to ensure U.S. trade laws consider modern business practices, reflect that most trade is lawful, and focus CBP resources on nefarious actors seeking to undercut U.S. businesses, workers, and consumer; indeed, the Trade Act of 1974 stated the administration "shall seek... and take into account" business input in setting trade policy.

But with the 21CCF effort done, Congress must now step in to develop and advance a truly comprehensive customs modernization legislative proposal. Any legislation must include a robust trade facilitation component that supports our nation's competitiveness and provides appropriate entities with the necessary tools to combat nefarious actors. Customs modernization should not only provide CBP with appropriate authority and tools to stop unlawful trade, but to facilitate lawful trade, protect good actors, and provide opportunities for the trade community to engage with CBP in advancing its important trade mission.

The Chamber is helping lead a coalition of business groups focused on developing the next customs modernization effort and I am including in my testimony a copy of our recent letter and list of recommendations.

Conclusion

Ports are a critical component of U.S. trade. In addition to the recommendations listed above, we also urge Congress to pass the bipartisan Securing America's Ports of Entry Act of 2023. The men and women of the U.S. Customs and Border Protection play a critical role in safeguarding our borders from dangerous people and materials, and in enhancing the nation's global economic competitiveness by enabling legitimate trade and travel. CBP staffing has not kept pace with demand generated by the tripling of goods entering the U.S. in the last 25 years. This bill, introduced by Senators Peters and Cornyn, would provide authorization for CBP to hire officers who work tirelessly at each port of entry to protect our national and economic security. Providing additional CBP officers at this time of growing volumes of international passengers and cargo would reduce lengthy wait times, help stop the flow of illicit drugs and other contraband, and facilitate new economic opportunities throughout the United States.

Thank you again for inviting me to participate in this hearing, and I look forward to your questions.

Attachment

Customs Modernization Coalition Cover Letter

Customs Modernization Coalition Priorities Proposals