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

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About National Foreign Trade Council

NFTC is the premier association for leadership and expertise on international trade and tax policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues together and to foster trust with governments to improve policy outcomes in the U.S. and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers, and shared global prosperity.

Overview

Supply chains have been challenged by inadequate supply of equipment like chassis and containers, disputes between labor and port management, logistical inefficiencies that clogged ports with empty containers, and shortages of services like truck drivers. During the pandemic, disruptions that were once unfathomable became commonplace as deliveries were delayed, vessels were stacked off the coast, and everyday needs like medications were scarce.

The scale of disruptions during the pandemic showed that supply chains are inherently nimble, particularly when industry and government collaborate to find ways over, around, or through obstacles. In some cases, resilience added significant costs that many businesses are not able to absorb. That sense of shared commitment and government-industry collaboration, which thrived during the pandemic, is equally important now in mitigating impacts of geopolitical tension, economic pressures, and infrastructure failures.

Supply chain pressures are felt most acutely at ports of entry, making them the focus of efforts to untangle supply chains. However, many of the processes that play out at ports of entry begin

long before a vessel arrives in Houston, a truck crosses a land border in Laredo or Detroit, or a plane carrying express packages or international mail lands at JFK or LAX. There is a missed opportunity to address supply chain issues before they reach a port of entry.

Consumers drive demand in international trade and businesses structure supply chains to meet those needs. Partnership between government and industry to develop policies and regulations that anticipate and respond to supply chain challenges would promote resilience and avoid requirements that could snarl supply chains. Industry should be seen as an ally that can partner with government agencies to ensure the facilitation of entry of legitimate goods to the U.S. economy as well as the enforcement of laws that prevent the entry of illicit and dangerous items.

Customs Processes at Ports of Entry

U.S. Customs and Border Protection (CBP) is the primary federal agency charged with facilitating the entry of legitimate goods into the American economy and taking appropriate law enforcement action to address illicit shipments.

CBP is the largest U.S. federal law enforcement agency, with over 65,000 employees. While that organization has responsibilities in other policy areas, this statement will focus on its trade mission. At 328 ports of entry across the country, CBP processed over \$5 trillion in combined imports and exports in Fiscal Year 2023. This includes 36.6 million cargo containers, 190 million express shipments, 81 million international mail shipments, and over a billion de minimis shipments.¹

While CBP has a consistent presence at all air, land, and maritime ports of entry, they also coordinate with nearly 50 federal agencies to enforce approximately 500 trade laws.² In FY 22, CBP collected \$111.8 billion in duty, taxes and fees and seized over 46,000 shipments.³

Early in my tenure at CBP, someone told me “if you have seen one port, you have seen one port.” Maritime ports work differently from northern border land ports, which are different from airports and southern border land ports. Even within a single port, merchandise can arrive by different means. At airports, for example, passengers bring back items that need to be declared and are subject to duty, express consignment carriers transport high volumes of packages in their own planes, international mail arrives on commercial passenger flights, and all manner of shipments arrive through non-express air cargo carriers. These examples are not exhaustive, but meant to give a sense of the diversity in port processes. No matter the port or manner of entry, CBP screens shipments of all values and receives trade data to inform revenue collection operations and security information to evaluate risks and ensure all trade laws are followed.

¹ https://www.dhs.gov/sites/default/files/2024-03/2024_0311_fy_2025_budget_in_brief.pdf

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<https://www.cbp.gov/newsroom/stats/trade#:~:text=CBP%20is%20responsible%20for%20enforcing,imports%20and%20unfair%20trade%20practices.>

³ <https://www.cbp.gov/newsroom/stats/trade>

Importance of Data and Cargo Processing Digitization

The *effective* use of cargo information by CBP and other federal agencies is fundamental for effective enforcement at U.S. ports that does not slow the movement of trade that fuels the American economy. Whether cargo is arriving at our ports by air, land, or sea, various parties file information with CBP before cargo arrives at the port, providing trade and security data that serves as the basis of risk across various fields. While a small number of shipments or “entries” are selected for various types of examinations or other additional scrutiny, most of the cargo is “released” before it actually arrives at the port. This data also allows other government agencies to execute their respective authorities. In order for all of this to work smoothly and efficiently, systems that collect and share this information and share it with appropriate government and private sector entities need to be constantly upgraded.

Because data elements are provided by various “filers” throughout the entry process and rely on transaction documents throughout the supply chain, the government should use innovative approaches to objectively validate this data. Industry has worked closely with CBP and other agencies to identify the best way to provide data that addresses well-defined enforcement gaps.

That said, sometimes more data is just more data. One example of this principle is the use of Harmonized Tariff Schedule (HTS) classification for shipments that already provide detailed descriptions. Correctly classifying products adds considerable transaction costs to the entry process and is only operative when determining the amount of duties owed. There has been discussion over the years about the enforcement value of HTS codes but, in my view, they do not increase capabilities beyond duty assessment. In addition to added costs and potential time delays for industry, government agencies can be overwhelmed by an influx of surplus data that makes the “haystack” larger, thus making it harder for their processes to focus on relevant information.

The effective collection of data from the right parties at the right time in the customs entry process, and using innovative, digitally enabled methods to validate that data, promotes compliance and effective enforcement of customs authorities and trade facilitation.

Importance of Trade Facilitation and Adoption of Technology

As I discussed before the full Finance Committee last February, trade facilitation measures support resilient supply chains, promotes economic competitiveness and underpins 40 million American jobs that rely on international trade⁴. A report by Third Way found that reducing administrative burdens throughout our supply chain has the potential to save the United States \$88 billion in export costs and create just under 1 million jobs nationwide across every state in the country.⁵

⁴ Trade Partnership Worldwide LLC. (2020) Trade and American Jobs The Impact of Trade on U.S. and State-Level Employment: 2020 Update

https://tradepartnership.com/wpcontent/uploads/2020/10/Trade_and_American_Jobs_2020.pdf

⁵ Horowitz, Gabe (2022) Reducing the Red Tape Around Supply Chains. Third Way
<http://thirdway.imgix.net/pdfs/reducing-the-red-tape-around-supply-chains.pdf>

Trade facilitation principles should be seen as the low-hanging fruit when looking for logistics and entry efficiency at ports in the U.S., and their adoption should be encouraged among our trading partners. Effective trusted trader, de minimis, and process automation programs speed the flow of trade. They are tested and proven ways to promote resilience and enable enforcement and are consistent with how CBP currently implements U.S. trade laws.

Trusted Trader Programs

Trusted Trader Programs are beneficial to the government and industry. Through participation in these programs, actors engaged in international trade demonstrate a high level of compliance with legal entry requirements through a significant initial assessment of business practices and recurring validations. Participants must comply with minimum security criteria, or otherwise be subject to suspension or removal from the program.

Participating in and maintaining eligibility for this program is expensive, so Congress has mandated that these programs, including CBP's Customs-Trade Partnership Against Terrorism (CTPAT), provide commercially significant benefits for program participants.⁶ In addition to efficiency gains for industry and government in the U.S., mutual recognition of similar programs around the world encourages best practices and improves efficiency of cross border movements. Mutual recognition of Authorized Economic Operator programs is a mutually-beneficial construct to industry and governments and should be expanded as a supply chain resilience best practice.

As the name of CTPAT implies, the program has traditionally been focused on ensuring high levels of security related compliance among potential participants. In recent years, however, the trade-focused Importer Self Assessment has been folded into CTPAT and trade-related minimum security criteria, notably around forced labor, have been incorporated.

CTPAT should be continually refreshed to expand its benefits for membership, in consultation with industry, to encourage membership among companies that will experience costly barriers to participation. Further, CBP should consider opportunities in creating additional trusted trader programs (outside of the CTPAT umbrella) to encourage participation by new segments of the trade community.

Facilitative Treatment for low-value shipments

American businesses and consumers benefit from a strong de minimis policy, as Congress intended when increasing the value threshold for duty free treatment to \$800 in 2016.⁷ This fixture of U.S. customs law empowers small businesses to source inputs for products that will become American exports. It increases the purchasing power of low-income consumers who would otherwise be disproportionately affected by the combination of inflation and the increased costs of tariffs. De minimis also allows customs officers to enforce U.S. laws without requiring the completion of cumbersome processes related to duty calculation. CBP currently receives data that enables enforcement of U.S. laws in de minimis shipments. As a baseline, manifest

⁶ See 19 USC 4311(b)

⁷ See P.L. 114-125, Sec. 901(130 STAT. 147)

data for de minimis shipments provides information about the sender, recipient, value, country of origin, detailed product description, and more to inform risk assessment. More data was received on almost 80% of de minimis shipments so far this year through the Entry Type 86 test and 321 data pilot.⁸

Compliance rates in de minimis shipments are on par or better than other environments when put in the context of overall volume. For example, over 90% of fentanyl is seized on the southwest land border.⁹

American leadership in encouraging other countries to adopt a meaningful de minimis standard also promotes the competitiveness of U.S. exports. Almost 90 countries around the world provide duty free treatment for low-value goods.¹⁰ Efforts to degrade our strong de minimis policy are being noticed by other governments, which would be more likely to reduce or eliminate their de minimis standards. As a result, U.S. exports would be subject to customs duties when entering those economies. This would create a race to the bottom that increases the end cost to consumers and reduces the competitiveness of American businesses in the global economy.

There are several opportunities to build on the current de minimis policy. First, CBP should adopt meaningful technology tools that use public-facing, proprietary, and law enforcement information to validate cargo data provided across all values and ways that they arrive in the U.S. Second, a whole of government approach should be adopted to improve information sharing. In the same way that CBP uses data to identify risk, the ability of 47 partner government agencies to execute their regulatory missions would be enhanced by sharing data more widely and more efficiently. Third, Congress should require CBP to issue findings and seek feedback on next steps related to the Entry Type 86 and 321 Data that have been a test and pilot, respectively, since 2019.¹¹

Digitization of Border Processes

The U.S. government set the standard for digitizing border procedures, including participation of the many federal agencies with various authorities related to imports, large and small, that arrive at our ports around the clock. While the creation of a digital system for the input of data has created efficiencies for industry and government, improvements still need to be made. CBP is expected to develop functionality labeled as ACE 2.0 in 2026.¹² This process should incorporate the functionality needs of industry users as well as other government agencies.

⁸ See <https://www.cbp.gov/trade/basic-import-export/e-commerce>

⁹ See <https://abcnews.go.com/Politics/border-officials-seizing-lot-fentanyl-complicated-problem-solve/story?id=105255151>

¹⁰ See <https://www.trade.gov/de-minimis-value>

¹¹ See <https://www.federalregister.gov/documents/2019/07/23/2019-15625/section-321-data-pilot> and <https://www.federalregister.gov/documents/2019/08/13/2019-17243/test-concerning-entry-of-section-321-low-valued-shipments-through-automated-commercial-environment>

¹² See <https://www.cbp.gov/trade/innovation/envisioning-ace-20>

This process would benefit from governance improvements that provide clear decision making authority, priorities, resourcing, and private sector coordination responsibilities. This could be accomplished through codification of the Border Interagency Executive Council – which was established to serve as a coordination body.¹³ This structure would be a helpful tool in response to supply chain disruptions like cyber events and port congestion. Finally, Congress should provide clear direction to CBP and other agencies that regulate cross-border trade on the business standards and best practices they should be incorporating into current and future systems. For example, updated systems should accept electronic payments and downtime procedures should be developed by all federal agencies to prohibit reliance on the filing of paper forms.

Clear Compliance Standards

Global supply chains can be challenged by new compliance programs that must address increasingly diverse legal standards and policy prescriptions. As U.S. trade laws and those of our trading partners adopt new laws and requirements on imports in areas such as environment, labor, and others, compliance efforts would greatly benefit from clear standards on how to demonstrate compliance. These mandates frequently require more precise visibility into supply chains, including tracing back to raw materials in some cases. When developing these statutory and regulatory constructs, governments should collaborate to develop a shared understanding of how to best demonstrate compliance. This interaction should also include consideration of how to address identified risks before cargo arrives at U.S. ports.

Prioritize Addressing Risk at the Source

Reliance on border enforcement to address risks puts additional stress on ports, government resources, and the ability of industry to effectively move goods across borders. An example of this principle is forced labor prohibitions. Forced labor is abhorrent and has no place in supply chains. Keeping items made using forced labor out of supply chains is a shared objective of government agencies and responsible industry. Border enforcement is an important element of forced labor enforcement, but these measures must be supported by a clear government effort to engage trade partners through direct diplomatic channels. The U.S. Government has a responsibility to work with our trading partners to strengthen governance around their domestic labor standards, identify forced labor products being transshipped, and facilitate the sharing of information between governments that improves the targeting of illicit activity. Further, U.S. federal agencies should develop mechanisms for sharing information about known risks with industry to better inform sourcing decisions. Diplomatic engagement was envisioned by the Uyghur Forced Labor Prevention Act and various information sharing constructs could be used to share resulting assessments with supply chain professionals, especially trusted traders, to achieve this objective. Similarly, working with trading partners to address intellectual property theft, at the source, would be more effective than relying entirely on border enforcement.

¹³ See Executive Order 13659, February 19, 2014

Conclusion

Supply chains are long, frequently complicated, and subject to external stress. Promoting compliance with U.S. trade laws by providing predictability and resilience is a shared objective of government and industry. Ports are dynamic and unique, with many moving pieces that frequently operate independently. Entry processes should reflect a desire to minimize pressure on the flow of goods through ports. Collaboration between government entities and industry continues to be an effective way to employ principles of risk management and trade facilitation that will advance U.S. economic security in the future. NFTC and our members look forward to working with the committee in this pursuit.