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EXAMINING TRADE ENFORCEMENT AND ENTRY OF MERCHANDISE AT U.S. PORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS

OF THE

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EXAMINING TRADE ENFORCEMENT AND ENTRY OF MERCHANDISE AT U.S. PORTS

TUESDAY, MAY 21, 2024

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITIVENESS,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:31 p.m., in Room SD–215, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the subcommittee) presiding.

Present: Senators Cardin, Cortez Masto, Grassley, and Cornyn.

Also present: Republican staff: Laura Atcheson, Senior Counsel for Senator Cornyn; Sophie Foley, Legislative Assistant for Senator Cornyn; and Donald Stevens, Counsel for Senator Cornyn.

OPENING STATEMENT OF HON. THOMAS R. CARPER, A U.S. SENATOR FROM DELAWARE, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS, COMMITTEE ON FINANCE

Senator CARPER. Good afternoon, everybody. It is our pleasure to call this hearing before the Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness to order. I want to especially thank my friend, our colleague, Senator Cornyn and his team for the work that they've done with majority staff to help us prepare for and plan for this hearing.

I thank everyone who is here in attendance. I know you have a lot going on, but we are delighted that you are able to work this in. We look forward to a number of things, actually. We look forward to hearing the expertise that our witnesses have to offer, and we very much want to thank you for your service to our country, but also for joining us here today to testify.

I want to thank our chairman, Ron Wyden. I want to thank Mike Crapo, our ranking member, and the Finance Committee staff for your policy expertise and for allowing us to borrow this beautiful committee hearing room for the next couple of hours.

Today's hearing provides us with an important opportunity to examine U.S. Customs and Border Protection policies and procedures for goods entering the United States, and this hearing also provides us with a forum to discuss the ways in which the policies laid out by Congress can work to improve port operations while enhancing our supply chains.

Trade, as we all know, is an essential part of our economy. I am told that last year in 2023, the United States—get this, the United States exported over $3 trillion in goods and services—$3 trillion last year around the globe, while importing nearly $4 trillion worth of goods in the same year.

And thanks to this exchange of products and services that come through more than 300 ports of entry across the U.S.—land, air, and sea—our daily lives are enhanced by access to goods from not just across the border in other States, but all around the world. In fact, trade facilitation is a little bit like a puzzle: strong port operations and resilient supply chains must fit together seamlessly to bring goods to the United States.

And when it comes to port operations, most Americans may not realize that there are literally thousands of employees who work every day to ensure that our ports are safe and that they are secure. It takes considerable coordination by the U.S. Customs and Border Protection inspectors, as well as specialized workers and longshoreman, like one of our witnesses here today, in order to hold our international trading partners accountable to the rules of the road. For example, when the goods come through the Port of Wilmington, not far from my home, it is the folks who I just mentioned who are doing the due diligence to make sure that a shipping container does not contain counterfeit products.

Some of these rules of the road are set by the Congress through laws like the bipartisan Trade Facilitation and Trade Enforcement Act, and by the bipartisan Uyghur Forced Labor Prevention Act, both of which are designed to ensure that our trading partners are paying their fair share of duties on the goods that are coming into the United States. And it is our port workers, like those at the Port of Houston—some of your folks—who thoroughly inspect the goods that arrive in the U.S. for illegal contraband like fentanyl, or clothing made with forced labor, before approving them to move on to their next destination.

Ultimately, all of these responsibilities shared by port employees work hand in hand to enhance our economy and our national security. We also have to ensure that the other piece of the puzzle—that would be our supply chains—is sufficiently strong in the face of pressure that life throws at us. For example, during the COVID–19 pandemic, supply chain resiliency was tested, maybe like never before. The pandemic exposed many unprecedented challenges, like bottlenecks and delays for medical products, that still affect us even to today.

And with the tragic collapse of the Francis Scott Key Bridge nearly 2 months ago, as our colleague Ben Cardin knows, our supply chains had to quickly adapt to a single but vital port of entry not operating at all. Thankfully, we were able to divert key imports like automobiles, sugar, and farm equipment from Baltimore to nearby seaports. But the accident has put a magnifying glass on the questions about preparedness of our Nation's ports—and by extension, our Nation's supply chains—for emergency situations like this one.

I will say this to our witnesses: my colleagues and I like to quote Albert Einstein. Einstein said any number of things that are memorable, but the one that I use, probably every day, is that "in adversity lies opportunity." I think he really nailed it. In adversity lies opportunity. That was true when he said it first, and it is true here today. Despite recent adversity, today we have an opportunity to learn from our witnesses' firsthand accounts of what is working and what is not working when it comes to implementing trade laws, like the ones I mentioned just a minute ago, and port operations.

We also have an opportunity at today's hearing to better understand how we can and should invest in the long-term resiliency and security of our supply chains. And in doing so, we can prevent future product shortages, shore up the ability to access lifesaving products, and reduce the impacts of unpredictable situations on American families.

There's an old African proverb that goes something like this: "If you want to go fast, go alone; if you want to go far, go together." And throughout this hearing, I urge our colleagues on this committee to join Senator Cornyn and me and our staffs in thinking about how we can go farther and faster together. It is a shared responsibility of Congress, of port workers, the Office of the U.S. Trade Representative, and global trade-governing partners to work together to protect the people that we serve while implementing the safety and security of global trade.

So once more, I want to thank our colleagues. I especially want to thank our ranking member and the members of our staffs, who have been working and preparing for this hearing for not just days or weeks, but actually months, as it turns out. And we appreciate the witnesses appearing before us.

And with that, I am going to turn it over to our ranking member, Senator Cornyn, for any comments he would like to make.

Thank you.

[The prepared statement of Senator Carper appears in the appendix.]

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM TEXAS

Senator CORNYN. Thank you, Mr. Chairman. I know how enthusiastic you are about today's hearing and the subject matter we are going to discuss, because you called me on Saturday to encourage more of our members to attend the hearing. But as usually happens here in the Senate, most of our members have multiple, overlapping commitments, but that does not detract at all from the importance of this and the bipartisan support that this topic enjoys.

We know that trade is critical to promoting our economic security, and it is important to improving the lives of all Americans. And that is especially true in my home State of Texas. Texas is home to 30 air, land, and sea ports of entry, more than any other State in the Nation, and I think that would put us right at about 10 percent of all of the air, land, and sea ports in the country. Included in that list are three of the five busiest land ports of entry, and the number one inland port in terms of total volume along the U.S.-Mexico border.

To put this further in perspective, about half of all U.S.-Mexico trade moves through a Texas port of entry. Texas fuels America's economic growth, but I continue to hear about growing challenges at our ports. U.S. Customs and Border Protection has the thankless job of facilitating legitimate trade and travel while enforcing our trade and immigration laws. In recent years, the surge in illegal immigration along the southern border has led to the temporary shutdown of passenger and rail crossings, because they have simply been overwhelmed. Such delays caused by the ongoing border crisis have resulted in an overall loss of commerce, which is costly to both businesses and consumers.

In addition to hindering legitimate trade and travel, these challenges also make it hard to keep unlawful imports, such as products made with forced labor, counterfeits, and drugs like fentanyl, from entering the United States. That's why I introduced the CATCH Fentanyl Act, which requires CBP to analyze and test new technologies at the ports of entry to determine which ones are the most effective, efficient, and affordable.

But this is obviously only one piece of the broader changes that are needed to keep up with the changing global trade environment. Our ports of entry are understaffed, yet the workload continues to grow. We owe a great deal to the men and women who serve in our ports of entry day in and day out. Last year, CBP processed more than $5 trillion in combined imports and exports and nearly 37 billion imported cargo containers at U.S. ports of entry.

While this continued growth is an overall positive for our economy, we are simply not staffed and equipped to deal with the volume. Evolving supply chains—which you mentioned—new players entering the marketplace, and the growing volume of commerce across our borders, all present unique challenges for CBP and its industry partners.

I am eager to hear from today's witnesses about the best ways they recommend for us to meet those challenges. We also need to find new ways to increase efficiencies at our ports of entry. Trusted Trader programs, for example, are one way to accomplish this goal, as they allow CBP officers to focus on higher-risk goods and travelers. We should work to enhance and expand these programs where it makes sense, and I introduced legislation with Chairman Carper to do just that. But the CTPAT Pilot Program Act of 2023 requires DHS to create a pilot program to assess the value of allowing third-party logistics providers to participate in the program.

There are many other opportunities to strengthen U.S. trade by implementing much-needed changes at America's ports, and I look forward to hearing from these witnesses to figure out how we might ease the burden on legitimate trade and travel while increasing compliance and enforcing our trade laws.

Thank you very much.

[The prepared statement of Senator Cornyn appears in the appendix.]

Senator CARPER. Senator Cornyn, thank you so much, and thanks to you again and your staff for helping us prepare for this. And several thanks to other members of the committee who are here. And those who are not—we are just in the middle of a vote on the Senate floor, and I am sure we will be joined by others as they meet their responsibilities, and we are looking forward to their participation.

I am going to introduce our first witness, Mr. John Pickel. And John Pickel is the senior director of international supply chain policy at the National Foreign Trade Council. In his role, Mr. Pickel promotes efficient and resilient supply chains by advancing policies to prevent illicit trade while implementing Customs best practices and upholding human and labor rights. Previously, Mr. Pickel served as the Principal Director of Trade and Economic Competitiveness in the Department of Homeland Security. Prior to that, he served in several different roles in the U.S. Customs and Border Protection for, I believe, over a decade. Is that right; over a decade? All right.

Well, Mr. Pickel, welcome, and the floor is yours. Thanks; please proceed.

STATEMENT OF JOHN PICKEL, SENIOR DIRECTOR, INTERNATIONAL SUPPLY CHAIN POLICY, NATIONAL FOREIGN TRADE COUNCIL, WASHINGTON DC

Mr. PICKEL. Good afternoon, Chairman Carper, Ranking Member Cornyn, and members of the subcommittee. Thank you for the opportunity to discuss trade enforcement and entry of merchandise at U.S. ports.

As you all know, the importation and export of cargo at 327 air, land, and maritime ports nationwide enables our national and economic security by underpinning American jobs, ensures adequate supply of inputs for domestic manufacturers, and increases the purchasing power of U.S. consumers.

While all ports are different, each relies on various government and private entities performing their role to continue the flow of supply chains. Importantly, U.S. Customs and Border Protection is the primary Federal agency charged with enforcing U.S. trade laws and facilitating the flow of legitimate cargo. Last fiscal year, CBP processed over $5 trillion in imports and exports to collect revenue, and with 47 other agencies that regulate imports, enforced over 500 U.S. laws.

Before ships, planes, and trucks arrive at ports, CBP receives information from various parties in the supply chain to evaluate risk. Most importers and shipments comply with U.S. laws, resulting in about 80 percent of inbound shipments being released before they physically arrive. In cases where incomplete or false information is received, CBP would benefit from the adoption of technology like artificial intelligence that can objectively validate data that drives risk assessment.

Data informs CBP processes and should be collected from the right party at the right time in the entry process. Data requirements should be developed in partnership with industry to address well-defined needs without slowing supply chains or increasing transaction costs. Modernizing CBP's authorities, processes, and systems in a comprehensive way should balance enforcement capabilities and facilitation principles to enable resilient supply chains.

Recent supply chain challenges have shown that ports are where we focus attention during system failures. Improved efficiencies can be found in embracing trade facilitation principles. A Third Way report found that improving trade facilitation would save the U.S.

economy $88 billion in export costs and create about 1 million jobs across every State in the country.

My written statement goes into more detail, but here are a few facilitation opportunities. Trusted Trader programs are mutually beneficial to government and industry, but the cost of partnership is high for participants. Partnership benefits should be evaluated on an ongoing basis in consultation with businesses. Further, CBP should consider innovative ways to create new Trusted Trader programs that reflect current supply chain and business practices.

Duty-free treatment of low-value shipments, or *de minimis*, facilitate supply chains while still subjecting shipments to enforcement of U.S. laws. All *de minimis* shipments are required to have the data that CBP uses for enforcement, and 80 percent of *de minimis* shipments include even more data through ongoing pilot programs.

Congress stated the economic benefits of *de minimis* when raising the threshold in 2016. In fact, American exports benefit from *de minimis* policies in 89 countries, where they would otherwise face significantly higher tariffs than products coming to the U.S. Those standards could roll back if the U.S. signals lack of commitment in this area. Restricting *de minimis* domestically would bog CBP down in collecting minimal revenue at a loss, rather than targeting, detaining, inspecting, and seizing actual noncompliant shipments.

Entry requirements across the U.S. Government should be entirely digital and not require duplicative filing or data. Current systems for data intake and sharing need to be updated to maximize digital payments and adopt downtime procedures that do not revert to paper entry forms. Agility in this area requires a governance structure that creates clear decision-making authority to resolve inconstancies and duplication across agencies, dedicated resourcing, and an ongoing mandate to continually smooth the path of imports and exports.

Responsible members of industry remain committed to working with CBP and other government agencies to create clear, compliant standards; address supply chain vulnerabilities; and address risks, like forced labor and intellectual property theft, at the source. Mitigating the root causes of these risks rather than solely through border enforcement is more effective in preventing violations from actually occurring and removes stress from the port environment.

Supply chains are long, frequently complicated, and subject to external stress. The NFTC and our members look forward to working with this committee and others to reinvigorate public-private partnerships that can result in meaningful systems updates that reduce pressure on the flow of goods through our ports.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Pickel appears in the appendix.]

Senator CARPER. Mr. Pickel, thank you very much for your opening statement, for getting us started.

And our second witness is James H. Paylor, Jr., assistant general organizer of the International Longshoremen's Association.

The International Longshoremen's Association is the labor union that represents the longshore workers on the east coast of the United States. And over the last 5 decades, Mr. Paylor, a thirdgeneration longshoreman, has established an impressive career. For much of this time he has assumed the leadership positions within his union, shaping its direction and championing the rights of its members.

Mr. Paylor, welcome; you have the floor.

STATEMENT OF JAMES H. PAYLOR, JR., ASSISTANT GENERAL ORGANIZER, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, POCONO PINES, PA

Mr. PAYLOR. Good afternoon, Chairman Carper, Ranking Member Cornyn, and distinguished members of the subcommittee. Thank you for the opportunity to appear to discuss trade and commerce at our Nation's ports. That ends my prepared statement [smiling].

I was a longshoreman starting in 1973, and as you pointed out, I followed my father, who followed his father onto the waterfront. In 1973, I worked in the hold of a vessel, loading and unloading. The longshore industry consists of three classifications, all longshoreman, which are: the loading and unloading of vessels and barges; the facilitating of receiving and delivery of cargo, which we refer to as clerks and checkers; and then the maintenance division of the International Longshoremen's Association, which does a multitude of job functions while on the terminal.

When I became ship's carpenter, I was assigned a responsibility of working directly with Customs back in 1973 and into 1974. That job at that time—actually, I was working side by side with the Customs inspector, who would identify the cargo, and we would travel with the inspector in different locations of the terminal, and then open the cases or packaging for anything—from apples to zebras is what I always say. They've all been on the waterfront.

They would do what was said earlier in your opening statements, where they would check the origin of the cargo and make sure that the U.S. trade laws were in compliance with that cargo, and they would also be checking for, actually, insects and, in a lot of cases, drugs. When we found situations that were suspicious, many times we would leave the Customs inspectors to perform the rest of their inspection, and then when they were complete, we would come back into the location and resecure all the packaging onto the cargoes that were being inspected. We would then turn in a billing process that included a bill of lading for the cargo, the type of cargo, and the type of inspection that we would provide, and then Steve, our terminal operator, would bill the shipper for that cargo.

That changed. Once containerization came into play, it changed the whole inspection process, where each location or terminal had to designate a portion of the port facility to accommodate the movement of the containers that would be brought to a docking facility where the Customs inspector then would identify the container and instruct us to open the container—which was cutting a safety security seal—and then open the container. And then the Customs inspector would also determine how much inspection had to be done out of that existing container. That went on for days at a time and is still part of the process today. Once we unpackaged the product, they would do the investigation, and then we would repackage it and put it back into the same container and add a new security seal to it that was recorded for delivery.

The other part of the inspections that were done at the terminal back then were actually inspection on imported meat, where thousands of loose boxes would come into the port. There would be meat inspection rooms with the MID, or the Meat Inspection Division of the USDA, and we would open the meat boxes, actually cut 2-inch slabs out of the frozen meat, and put them into a thawing tank, which would then be deposited onto a tray for inspection. That was a pretty normal process, okay?

Then another event came—September 11th—and everything changed again. And what we realized on September 11th was, as we stated earlier, Customs did not have enough inspectors to staff all the different locations, especially with the higher level of scrutiny that was being performed at each terminal.

They came up with the term of Centralized Examination Stations. Instead of manning all the port facilities, have the facilities send the containers to the Central Examination Station. The impact was, we lost many jobs as a result of that, and the people who were replacing our jobs at the remote area were working for a lot less than the family-sustaining wages that we got. That was the economics.

The most important piece was, we were taking containers off the terminal and driving those containers through our neighborhoods, up onto our highways, sometimes through our sporting event facilities, crossing rivers and bridges, to go to this remote area. So, the higher level of risk was transferred from the port out into our communities.

We were concerned about it. We are still concerned about that being an issue. We have a very good relationship with Customs inspectors, and we expect to continue with that. And we look forward to enforcing whatever policy rules that have been enforced, which we were not part of. My recommendation would be that when there is a policy change, that the ports themselves also educate the port workers to make sure that they are working in conjunction with the Customs inspectors as we move forward.

The other thing I would recommend: consistent enforcement for the port is an economic issue that also becomes an issue of safety when those who have sinister minds are looking to breach whatever securities we do have. If it is not being done consistently in port, they would find it out.

So, I appreciate the opportunity and would be glad to answer any questions.

[The prepared statement of Mr. Paylor appears in the appendix.]

Senator CARPER. Thank you. You just gave us the shortest prepared statement.

Mr. PAYLOR. What was that?

Senator CARPER. I think you delivered the shortest prepared statement that we have had before this committee in quite a while, but a very fulsome off-the-cuff statement that we very much appreciate. And we thank you for sharing that with us and look forward to having a chance to ask you some questions.

Our next witness, our final witness, is Mr. John Drake, vice president—it's a job I always wanted but never landed—for transportation infrastructure and supply chain policy at the U.S. Chamber of Commerce. In his role, Mr. Drake represents the business community on transportation and infrastructure and supply chain issues. He is also, I am told, a Commercial Customs Operations Advisory Committee member. Is that true?

Mr. DRAKE. Yes, sir.

Senator CARPER. All right—advising the U.S. Customs and Border Protection on trade.

Previously, Mr. Drake was a senior appointee at the Department of Transportation and worked on Capitol Hill for over 10 years. In what capacity?

Mr. DRAKE. So, two of note. I was professional staff for the Senate Commerce Committee, and then also professional staff for the House Transportation Committee.

Senator CARPER. All right; thank you. With that having been said, welcome aboard, and you have the floor. Thanks for joining us.

STATEMENT OF JOHN DRAKE, VICE PRESIDENT, TRANSPORTATION, INFRASTRUCTURE, AND SUPPLY CHAIN POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. DRAKE. Well, thank you, Chairman Carper, Ranking Member Cornyn, Senator Cortez Masto, Senator Grassley, and members of the subcommittee. As the chairman said, my name is John Drake, and I want to thank you for the opportunity to testify at today's hearing on U.S. trade enforcement and entry of merchandise on behalf of the United States Chamber of Commerce.

Look, international trade is critical to our Nation's economy and way of life. Ports are fundamental to this trade, including the 328 international land, air, and sea ports throughout the United States that have a U.S. Customs and Border Protection presence. The operations of these ports, and moving goods efficiently, is of significant importance to the business community. Delays, congestion, and inefficient operations add costs to businesses and consumers, ultimately making goods more expensive and our economy less competitive.

It does not feel that long ago when we were in the depths of the COVID pandemic and many Americans were facing delays in everything from toilet paper to products that required semiconductor chips, and pictures of long lines of ocean vessels waiting to enter the ports of LA and Long Beach dominated the news. We have come a long way since those days, but we have not returned to normal in any sense of the word. Instead, today we are in a new normal of significant and seemingly daily supply chain challenges.

To start, I think many things that are really sort of top-of-mind for a lot of policymakers include: the shipping diversions caused by the Red Sea crisis, the war in Ukraine, and the collapse of the Francis Scott Key Bridge in Baltimore. We also face labor challenges. For one, we have a shortage of truck drivers, rail workers, longshoremen, pilots, mechanics, and other necessary supply chain and logistics workers.

We also face disruptions stemming from contract negotiations including the UAW strike in 2023, the Class I freight railroads negotiations, the ILWU in the west coast port terminals last year, and the Teamsters and UPS negotiations. Right now, we are also tracking negotiations that are happening between the ILA and the U.S. Maritime Alliance, renewing labor contracts set to expire at the end of this September.

We also face a difficult situation at our southern border. Migrant surges are disruptive, with CBP increasingly diverting resources and performing short-term closures of key commercial ports to help process migrants.

Make no mistake, these events are intended to illustrate that businesses today are managing multiple C-suite level disruptions at once that create their own set of challenges. As a CEO of a prominent shipping company recently said, we were accustomed to managing a "black swan" event once every couple years. Today, we deal with one every week.

There are silver linings, though. For one, there is a greater awareness and focus on the resilience and efficiency of America's supply chains, including its ports of entries. This is helping elevate discussions here in Washington, DC and in other places around data and the opportunities to improve the overall performance of our supply chains, where any friction can lead to impacts on customer choice, price, and economic development. That is why we are grateful for this hearing.

But it is clear that we are in a very different world than just a few years ago. As such, we have several recommendations for this committee. First, we urge you to consider changes to CBP statutory authorities in a holistic context. Trade is interconnected. There are significant concerns around threats like forced labor, fentanyl, and counterfeits, among many other challenges, and this deserves our attention.

But part of confronting these challenges means looking at the entire universe of CBP's tools and authorities. Making a change in one part of CBP's authorities can result in unintended consequences to other parts of our trade laws that will have unintended and potentially negative consequences on our businesses and consumers.

Second, this committee should consider a comprehensive Customs modernization effort that balances the equally important goals of enforcing U.S. Customs laws with trade facilitation, which will enhance the resiliency of our supply chains and also promote economic securities—important goals, both. That is why the Chamber is helping lead a coalition of businesses and trade associations to help inform any update to CBP trade authorities.

Finally, there are legislative opportunities out there as well. We urge Congress to pass Senators Peters's and Cornyn's Securing America's Ports of Entry Act of 2023. CBP staffing, as Senator Cornyn noted, has not kept pace with demand generated by the tripling of goods entering the U.S. in the last 25 years.

While CBP will need to look at tools beyond staffing to keep pace with trade demands, staffing is important, and this legislation will help CBP reduce the lengthy wait times; help stop the flow of illicit goods, illicit drugs, and other contraband; and facilitate new economic opportunities throughout the U.S.

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

[The prepared statement of Mr. Drake appears in the appendix.]

Senator CARPER. Thanks; thanks so much for that statement, and also for being with us today. I am going to yield to Senator Grassley for the first questions.

Go ahead, Senator Grassley. Again, welcome.

Senator GRASSLEY. I thank my colleague for your courtesy of letting me go ahead so I can meet with the Waterloo Chamber of Commerce; they are down.

Mr. Pickel, I want to talk about the Uyghur Forced Labor Prevention Act—and several companies have been listed. Most recently, Homeland Security listed 26 textile companies. Do you think that this act has been effective in changing companies' behavior, whether it be U.S. companies importing products from China, or Chinese companies exporting to the United States?

Mr. PICKEL. Thanks for the question, Senator. I would say, from my time in government and my time in the private sector, I have seen a level of attention to the issue of forced labor that I did not experience before the UFLPA was enacted into law. Are there still issues that need to be ironed out in terms of how industry and government are working together to fully implement every provision of the UFLPA? Absolutely. I think there is a lot of work that can be done in terms of understanding how certain technologies can be used and how due diligence standards can be clarified to make sure that we have the best shot at making sure that we are keeping forced labor out of the country.

I do think the UFLPA—the provisions that envision getting at the root causes of forced labor, the diplomatic engagement, as well as using our trade negotiating and trade engagements to actually address those conditions—is a far more sustainable approach than relying almost entirely on border enforcement, which should be more of a backstop and less of a single point of failure.

Senator GRASSLEY. Do you think it works effectively from third countries—you know, transitioning from China to other countries to come to the United States? Is that a problem?

Mr. PICKEL. Sure, transshipment. So transshipment is potentially an issue of all forms of trade law compliance; forced labor is no exception to that. Forced labor is challenging because in many instances, Customs and Border Protection has to evaluate many tiers back in the supply chain where, if they are looking at counterfeits or they are looking at some other type of violation, they are looking at the goods as they are presented to them, as they exist right in front of them, so it is a different dynamic. They are having to go further back in the process.

Transshipment is not necessarily always an illicit practice, but to the extent that it is used to mask where products are coming from, it can present a challenge. Ultimately, CBP needs to have better visibility into the risks that exist around the world, something that other agencies should be contributing more to, in my view, so that CBP can share that information with their trusted trade partners.

Senator GRASSLEY. Thank you.

Mr. Drake, since the enactment of the Trade Facilitation and Trade Enforcement Act, there has been discussion about the effective level of the *de minimis* threshold. I supported the passage of that act, and I still consider myself a free trader; however, I believe that continuous abuses of this threshold must be addressed. Do you think that there is a more effective level Congress could set in the *de minimis* threshold in order to prevent abuses such as bulk importation of counterfeits?

Mr. DRAKE. So, we have found that the $800 level has been very successful, and it has allowed CBP to target its limited enforcement resources to where they are best appropriate. That being said, we recognize that the trade environment has changed significantly over the last 25 years. There are concerns out there that CBP is not collecting certain types of data that would help further refine its enforcement mission, but we would argue that that is true for not just *de minimis* shipments, but all up and down the trade environments—so, formal entry and informal entry, et cetera.

We have been supportive of CBP looking to expand the data it is collecting from new parties in the Customs space like warehouses, fulfillment centers, et cetera, but we think that more can be done, and we do think that efforts to single out *de minimis* are inappropriate, and I think we would say that a comprehensive review of the data that CBP is collecting at all levels of trade is a more appropriate focus for Congress's attention.

Senator GRASSLEY. Okay.

Mr. Pickel, I am going to have a question in writing, because my time is up, so I will ask you to answer that in writing. Thank you very much.

Senator CARPER. Senator Grassley, thank you so much. How long were you the chairman of this committee? How many years did you serve on this committee?

Senator GRASSLEY. All but 4 of the 44 years I have been in the Senate.

Senator CARPER. So you are sort of a newcomer, huh? [Laughter.]

Senator GRASSLEY. That was from 1986 to 1990, when we did not have enough Republicans, because I was way down there. Never thought I would ever get to the top.

Senator CARPER. Yes, but you did. How long did you serve as chair for this committee?

Senator GRASSLEY. Six years in the House and 44 here, I guess would add up to 50, right?

Senator CARPER. That is pretty impressive. Good years, 50 good years; thank you. Thanks so much for helping us kick this off.

I think we are going to take a turn to Senator Cortez Masto and then maybe to Senator Cornyn if he is ready.

Go ahead; welcome. We are glad you are here.

Senator CORTEZ MASTO. Thank you, Mr. Chair. I understand from Senator Grassley there's hope for me, because I am down at the end. So at some point in time, I am assuming there is hope for me. [Laughter.]

Senator CARPER. You will be here faster than you think. And if I can make it, you can too, believe me.

Senator CORTEZ MASTO. Thank you. Thank you for this discussion. Gentlemen, thank you for being here.

One of the things I want to talk about is U.S. Foreign-Trade Zones, which in Nevada is an important area for so many of our businesses. I am hearing from our businesses and from our Las Vegas Foreign-Trade Zone that Customs and Border Protection struggles to maintain adequate staff to respond to the needs of those Foreign-Trade Zones in a timely manner.

And I'm curious, Mr. Pickel and Mr. Drake, has this been your experience as well, or are you seeing businesses having those same challenges?

Mr. PICKEL. I would start by offering that I think this is one symptom of what has been alluded to today, which is that U.S. Customs and Border Protection has had ongoing and pretty pervasive staffing shortages, going back to before I started working there in 2011.

Senator CORTEZ MASTO. Nationally, not just at the southern border, but nationally, everywhere across the country?

Mr. PICKEL. Yes, Senator; yes. And so I think compounding that challenge is that there are some FTZs in the country—I am not sure about the FTZs or subzones in your State—but they can exist up to 60 miles or 90-minutes drive time away from the ports of entry, so I know that that is particularly challenging for some ports, that are staffed at one or two or three CBP officers, to be able to get out to those ports.

They do try to adopt additional types of oversight—whether it is closed-circuit videos or different types of compliance programs, weekly reports that are generated by the FTZs that show their inventory control, and so forth—but in terms of the actual physical presence there, I would tie that back to the nationwide staffing shortage and the systemic challenges with that distance.

Senator CORTEZ MASTO. And I appreciate that.

You know, I was down, a couple months ago, at the Nogales Port of Entry in the Tucson Sector, and I understand that port alone—just talking with the Customs agents there who work there, the men and women—it handles $30 billion in trade each year, just in those two ports of entry. But I also know what you are saying is that they are understaffed and overwhelmed, not just with the immigration that is happening, but the trade, the increasing trade that they see.

And really, that is one of the reasons why I supported the bipartisan border security act, the James Lankford, Kyrsten Sinema, and Chris Murphy legislation that was put together, because in that legislation—based on what I was hearing firsthand at the border, particularly the Tucson Sector—it provides additional resources for U.S. Customs and Border Protection, among other things: additional resources to hire U.S. Customs and Border Security personnel, and money, almost a billion dollars, to expand border security and operational capacity. And it is what I am hearing in my State; it is what I saw at the border.

And I suspect, and I may be wrong, but, Mr. Drake, it is my understanding that the U.S. Chamber supported this legislation when it first came out. I suspect it is for that reason: to provide additional resources that are necessary for our Customs and Border Protection, is that correct?

Mr. DRAKE. That is correct. I think we see the failure to act on immigration reform as a missed opportunity. I think we would say that a lot of the challenges that CBP is experiencing at the southern border are in part because the immigration laws are out of date, but we do think that border security is an important area we need to focus on to fix this problem.

Senator CORTEZ MASTO. Yes, thank you; I appreciate that.

One of the other things I was hearing from my businesses is that there are just a lot of duplicative data requirements, rather than a streamlined entry or export process. Is that true as well, of what you are hearing and seeing? I am just curious. Mr. Drake, we can start with you.

Mr. DRAKE. It is, I think, duplicative. And also, I think another area where the business community is concerned is that oftentimes the data that is being asked to be collected isn't necessarily tied to a specific goal in the enforcement regime. So, this data that you are asking us to provide to CBP, for example, is this tied to screening for fentanyl or screening for counterfeits? You know, maybe it is. I think what we would argue is CBP has not always been the best at articulating that clear connection and how that data collection ask would meet those revised goals.

Senator CORTEZ MASTO. Thank you.

Mr. Pickel?

Mr. PICKEL. I would just add that I mentioned in my statement that there are 47 different Federal agencies that work with CBP to regulate the importation of products. Each one of those agencies has their own unique entry requirements and their own ways of approaching their regulatory responsibilities. So, to the extent that information can be shared better among those agencies and then there could be more of a cohesive governance structure around how data is collected—there is an automated system that collects this data, and to the extent that there were more of a decision-making structure to de-conflict and de-duplicate those data requirements, that would definitely smooth the experience in sort of the digital data input process.

Senator CORTEZ MASTO. Thank you. And I suspect that is why you called for the codification of the Border Interagency Executive Council, one of the reasons. Is that right?

Mr. PICKEL. Yes.

Senator CORTEZ MASTO. Thank you; my time is up. I appreciate that.

Senator CORNYN [presiding]. Thank you, Senator Cortez Masto.

Gentlemen, the Congress appropriated $380 million in Fiscal Year 2024 for Non-Intrusive Inspection equipment additionally for DHS's fentanyl initiative, including $32 million for expanded lab capacity under the fentanyl initiative that provided funding for an increase of 2,000 border agents, bringing the total funding level to 22,000 agents and 150 new CBP officers who work at the ports of entry.

Now, I realize that none of that has been implemented yet, but Congress has been generous, I think even by Washington, DC standards, to try to respond to the needs of being shorthanded at the border. Mr. Pickel, Mr. Drake, do you have any other suggestions for things we need to do to meet the resource problems at the border? Mr. Pickel first.

Mr. PICKEL. Sure; thanks for the question, Senator. I would say that, as I said, CBP has been in a pervasive staffing shortage. I think with respect to the trade responsibilities, which obviously are one facet of a very complicated job for the agency, it is very important to look for creative ways to use innovation.

We talked a little bit about data, the use of data and the way that CBP gets that before cargo actually arrives at a land port, an airport, a sea port. And being able to do more to evaluate risk using that data—using technology like artificial intelligence to be able to validate that data using an objective source—would really help CBP be able to identify risk more readily, rather than sort of continuously needing more and more and more officers.

So, the adoption of AI, I think, is one example. So, to put it in the context of NII at a land border port, if AI were able to compare a static image of a truck coming through a port compared to the way that that truck came across the port the last five times to see anomalies, AI technology could do that much quicker than the naked eye of a CBP officer.

Senator CORNYN. Just to press the issue a little bit, if AI can help us detect infractions and problems at the border, you are still going to need CBP agents to follow up on that, right, and be the enforcement and compliance action?

Mr. PICKEL. Yes.

Senator CORNYN. Okay, so we are not talking about displacing the flesh-and-blood human beings?

Mr. PICKEL. No, I do not think that process will be entirely automated, but I think that the idea is that you are taking the CBP officers and putting them in the roles that you need a person to do and letting the technology compare the data points across time. So the CBP officer would still do the inspection, they would still make sure that all the other entry requirements are being met.

Senator CORNYN. And, Mr. Drake, just to add to that question, would the Trusted Trader programs—because, if you go to the border, for example, they have a lot of people that basically have already been inspected, not at the border, but before they get to the border, and then they have secure containers or other facilities that obviate the need to duplicate that at the border. Are those the sorts of things that you think will help?

Mr. DRAKE. Absolutely. And I think they have been very successful up until now. I think with the legislation that you are considering, as well as if Congress were to look at these programs more fully, I think our recommendation there is to continue to make sure that the advantages that are bestowed upon participants in those programs meet or exceed the administrative aspects, and that there is a strong dialog that is happening between the Federal Government and the private sector to make sure that what is being asked of the private sector is understood and is discussed ahead of time.

Senator CORNYN. Let me come back to you again, Mr. Drake. We talked a little bit—you alluded in your opening statement to the disruption in legitimate trade and travel as a result of the migrant surge across the border. And of course, we know that so many personnel have to be relocated to try to deal with processing migrants and the like, but in particular, CBP has suspended rail crossings in Eagle Pass, TX multiple times, as you know, during the migrant surges, so they were shifted over to assist border control. Do you happen to know what percentage of rail traffic between the United States and Mexico the Eagle Pass rail crossing accounts for?

Mr. DRAKE. That is a good question, Senator. So, Eagle Pass is a significantly important rail crossing between the U.S. and Mexico; my understanding is the most important rail crossing right now. And certainly, I believe it handles the majority of rail traffic between the U.S. and Mexico itself.

Senator CORNYN. My notes here indicate that Borderplex Alliance estimates it to be about 45 percent. Does that sound about right?

Mr. DRAKE. That sounds about right; yes, sir.

Senator CORNYN. Okay. Union Pacific Railroad estimated a daily overall impact of over $200 million to the U.S. economy for the closure. Does that sound about right?

Mr. DRAKE. I think it was a little bit higher. You are talking about the closure that happened back in December? Yes, my understanding is the number was around $205 to $210 million.

Senator CORNYN. And, Mr. Pickel, what are the economic impacts downstream when you have these sorts of problems at the border in suspending rail crossings, for example? What are the economic impacts? And do these impact supply chain resilience?

Mr. PICKEL. Yes, of course. So, in addition to the impacts that the rail processing operations had, there were also several instances where the Bridge of the Americas out in El Paso was shut down, the cargo facilities there, and I think there is sort of a macro impact in terms of encouraging the movement of manufacturing facilities back to the Western Hemisphere from areas like Southeast Asia, and realizing that there could be potentially fragile border situations that would prevent those products from coming into the United States.

And the potential downstream economic impacts that you referred to are that those products are going to be manufactured further away. There are people who work in distribution centers. There are people who stock shelves who are waiting for those products to come, and of course consumers. I mean, these situations can lead to product shortages for consumers, potential work stoppages in extreme situations, and also rethinking of investment, if there seem to be persistent risks.

Senator CORNYN. Well, because my State, Texas, is ground zero for a lot of these problems, we are perhaps more acquainted with the challenges that the current crisis at the border presents, but, Mr. Drake, I seem to remember a poster by the U.S. Chamber of Commerce that talks about where the jobs that are created by the binational trade are distributed, and I am sure those include the State of Maryland and the State of Nevada, the State of Delaware, virtually all 50 States. So there is a huge economic impact across the entire country when those supply chains are disrupted or because of bottlenecks associated with shortages of CBP and other inspection facilities.

My time is up.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

I am going to talk about uncertainties and catastrophic events that affect the supply chain. I know, Mr. Drake, you mentioned the Port of Baltimore with the Francis Scott Key Bridge that collapsed when the *Dali* struck it, totally closing the Port of Baltimore, the third busiest port in our country. And I want to start off by saying there was incredible cooperation to deal with all aspects of that catastrophic event, from the Federal Government, State Government, local government, private sector, all working together. And today, the port is opened months earlier than we thought possible. There has been help to the businesses whose supply chains were disrupted. There has been some help for the workers as well as small businesses, et cetera.

So I want to start off by saying there was a really unified response, but there are challenges here. The Port of Baltimore does about $80 billion of business a year. We are number one in roll-on/roll-off cargo. And during the early stages when the bridge was knocked down, I met with a lot of the business owners and the labor people, and they were puzzled, because it was difficult for a small business operator of a trucking company to take their trucking company and go to another port and get business because of the protocols of the port and all the politics involved there. There were challenges with the workers at the port as to whether they could transfer some of their work to other places. That was also a turf problem that we had to deal with.

We had shippers that needed alternative supply routes, and we worked to get that done, but there was some concern that it might not return to the Port of Baltimore, and that might be the price for alternative routes. So there were trades there that did not seem to be consistent policy. And do we need to rethink how we can have a more seamless national system? Because unpredictable, catastrophic events seem to be occurring more frequently these days, do we need to have a better understanding as to how we can work together in a unified way to make sure we protect supply chains, but also protect a community that goes through an unpredictable event?

Mr. Drake, you look anxious to answer.

Mr. DRAKE. So I will tell you, as of the last 4 or 5 years, the business community is getting exceptionally better at responding to catastrophic events. This is one of those situations where, as you said, the response has been over the top, and the fact that this terrible thing happened, six people lost their lives, and yet local government, State Government, the business community, the Federal Government, and Congress came together to solve this—and as you noted, we are well ahead of where we thought we were going to be at this point.

That being said, we have a bridge that we have to replace quickly, because I think the business community it not going to be able to wait forever. We work very closely with the Maryland Chamber of Commerce in helping its response efforts. We know that for people who work in Baltimore, a 30-minute commute now is 2 hours each way or 3 hours each way. That is not sustainable, and if it is going to take 4-plus years to get a bridge rebuilt, you wonder how long people will wait.

And that bridge is not just critical for people who are going to and from work, but it is also critical for supply chains, right? It does add cost.

Senator CARDIN. Let me just underscore that point. There were, I think, 34,000 vehicles that crossed that bridge. There are three crossings in the Port of Baltimore on the north-south corridor. Two are tunnels; one was the Francis Scott Key Bridge. Many of the containers could not go through the tunnels because of the cargo that they contained. The delays are—it could be an hour delay, with the detours. That affects costs and supply, you are exactly right. We are now experiencing tremendous traffic problems because the port is open. We are happy the port is open, but there is gridlock now. And you are right: patience will run thin.

So I very much appreciate your statement. We have got to get moving on that quickly. One of the reasons why our delegation, bipartisan delegation, thinks it is urgent that we pass the bill that allows for the 100-percent State reimbursement—which is what we do during these catastrophic events now—is that we want to start the construction phase as quickly as possible. And to start the construction phase, that bill has to be passed for it to be 100 percent Federal share. It is not the time limit, which many of my colleagues think; it is when you start the construction phase, you have to have that law in place.

So, Mr. Chairman, I am just making a plea to my colleagues: we have to get that bill done as quickly as possible so it is not the reason for the delay on the work being done to replace the bridge. And, Mr. Drake, I appreciate you bringing that up, because it does affect supply chain. It is beyond just the Port of Baltimore; it is an efficiency issue, there is a frustration issue, and the response to date has been great. It is going to take a while to get that bridge replaced, but we do not want to see unnecessary delays. So thank you.

Mr. DRAKE. Yes, and, Senator, we would love to work with you on that legislation.

Senator CARDIN. Thank you; thank you.

The chairman of the Environment and Public Works Committee came back, so I will repeat it all again. It is urgent that we get—the Chamber of Commerce is agreeing with me—that we get that bill passed.

Senator CARPER. Repetition is good.

Senator CARDIN. We cannot start the construction phase until that bill is done, and it is affecting the supply chain in our port. Just wanted to make that point.

Senator CARPER. Senator Cardin, thank you; just thanks for being a great friend and a great colleague on this committee. And we serve—we sit next to each other on two different committees, and he finds it hard to get away from me. He lives just down the road, not too far away. All right; thanks, pal.

I have a question here, Mr. Pickel. I might be wrong, but I think when Bob Dole was in the U.S. Senate, he may have served on the Finance Committee. I am not sure of that, but he may have served on the Finance Committee, which would mean he had sat literally right here.

His wife, Elizabeth Dole, was quite an accomplished person, the Cabinet Secretary in, I think one of the Bush cabinets, and she was nominated to be a Cabinet Secretary. And you may know this, when people are nominated for a Cabinet position, it is not uncommon for them to be introduced at the committee, before the committee of jurisdiction, by their home State Senator, or one of their home State Senators.

And when Elizabeth Dole was nominated to be a Cabinet Secretary many moons ago, her home State Senator showed up to introduce Elizabeth Dole. And I do not have the words, exactly, but I think he said to his colleagues that day, "I regret that I have but one wife to give for my country." "I regret that I have but one wife to give to my country." [Laughter.] I love Bob Dole, Bob Dole and Elizabeth. He is deceased, sadly, but Bob Dole and I are both veterans—different wars, but great sense of humor, great service.

I understand that you may have a spouse who has not been nominated to be a Cabinet Secretary, but to serve in some other capacity, maybe even in the U.S. Senate where we serve. And take just a minute and explain to us—well, this is not her confirmation hearing, but what is the nature of her responsibilities in the Senate? I am told she is quite a gift from your family.

Mr. PICKEL. Yes, my wife Megan is the first woman to serve as the Journal Clerk of the U.S. Senate.

Senator CARPER. Say that one more time.

Mr. PICKEL. Sure; my wife Megan is the first woman to serve as the Journal Clerk of the U.S. Senate.

Senator CARPER. Explain what that means.

Mr. PICKEL. She sits on the Senate floor and captures the official records of the Senate's proceedings.

Senator CARPER. Pretty scary, huh? [Laughter.] Usually not. Thank you for sharing your wife with all of us.

Mr. PICKEL. Yes; my pleasure.

Senator CARPER. Mr. Paylor, are you up for another question? I thought you would be. In your testimony, I believe you mentioned the close relationship that many longshoremen have with Customs and Border Protection agents at ports across the country.

My question for you, Mr. Paylor: could you just take a few minutes for us and discuss differences between the work that longshoremen perform and the work that Customs and Border Protection agents perform at the ports, and how both groups work together to make sure that goods that move through these ports are thoroughly inspected?

Mr. PAYLOR. Thank you, Mr. Chairman. If I can, I would like to applaud Senator Cardin's understanding of the impact of the Francis Scott Key Bridge on the Port of Baltimore. I think he outlined it very well.

But to answer your question, the relationship that we have had goes back to even before my time. Starting in 1973, my father performed the work of assisting Customs way before I was even on the waterfront. But that relationship developed into the friendship, and it was based on mutual respect for the labor that was performed before containerization, which was much more burdensome back then than it is today, where more skill is required to handle all the containers versus the old style of cargo or freight, which was boxed, cased, and loose at the time. So I think the relationship that grew was the understanding of the skill that we provided to perform the labor that was needed for them to have the ability to assist as much cargo as possible with the manning that they had available at the terminals where we were working.

And they were spread thin, where they were working at container terminals. Most ports are multifaceted and are, as some finger piers still remain today—which were used pretty frequently back in the 1970s and the 1980s. That, once again, all changed through containerization, but that relationship still exists today, and it is one of respect.

And the people who work side by side with the Customs inspectors at the terminals are usually return employees who are there day to day. And in a casual labor industry, sometimes that is not the case at all facilities. But they developed those relationships and have an understanding, and it helps the process be expedited, to get as much cargo done or inspected in an 8-hour period and sometimes longer, by virtue of each other understanding the relationship and the responsibilities that both the inspectors have and our people have who facilitate the handling of the cargo while they are inspecting.

Senator CARPER. I am going to just follow up and ask if any other witness wants to comment on what we are talking about here. But, Mr. Paylor, can you just discuss with us briefly how staff from other partner government agencies stationed at U.S. ports—like Food and Drug Administration, like the Coast Guard—work with longshoremen at these ports?

Mr. PAYLOR. Yes; the USDA is a perfect example, which is a division of the CBP. And when you have food products—like in your own port, we have bananas that are the staple or the anchor business of the Port of Wilmington, and we have a lot of stone fruit that comes from other locations in South America and Central America and all places from around the globe.

So USDA plays a very integral part in making sure that that cargo is to be inspected for the quality of the fruit, making sure that there are no insects in there that would be harmful to our environment. So it is something that happens on a regular basis, a daily basis, and provides a lot of overtime. So once again, those relationships that we develop with CBP inspectors are the same that we develop with the USDA inspectors.

Senator CARPER. Thank you.

A question, if I could, for Mr. Pickel. The COVID–19 pandemic and Russia's war in Ukraine—senseless war in Ukraine, I would say—have jumbled supply chains and disrupted the global economy in many ways; unprecedented ways, I think. And in your testimony I think you mentioned that in order to build stronger and more resilient supply chains across all sectors, companies must work with the Federal Government to anticipate supply chain challenges and do their fair share to ensure that goods entering the United States are safe for our consumers.

My question: would you please take a few moments to share with us how different industries can work with the Federal Government to share information and build more resilient supply chains in an effort to prevent the supply chain bottlenecks and shortages that Americans have become all too familiar with?

Mr. PICKEL. Thanks for that question. I think it is a very important one, and one that is not entirely new in the context of port operations, in some of the agencies that we have talked about already today, certainly with CBP.

Many of the sort of best innovations from a process standpoint that I have seen CBP adopt—and some of the partner government agencies—come as a direct result of having not only formal but informal consultations, engagement, with private industry. Much of that is done through the Commercial Customs Operations Advisory Committee that is established in statute and that Mr. Drake, my fellow panelist, serves on.

I would say that it is important to also have conversations on an ad hoc basis as well to really identify what are some of the pressing concerns that industry is seeing, and challenges that CBP is seeing, and how those issues can be resolved, but also to look forward and say, what is the next wave of emerging challenges that we are going to be facing? Particularly because many Federal agencies sort of operate in a silo, right—they are performing their responsibilities at a port of entry or within a process. So, in many instances, industry can help to sort of see across the supply chain that may be regulated by multiple different agencies and help find where there may be innovations that they can borrow from other agencies as well.

So I would say the simple answer to your question is to talk to each other, to really stay in constant communication. You know, one example I would give is the Air Cargo Advance Screening Program, where CBP identified challenges in the air cargo environment in terms of getting data in enough time to able to screen packages that were coming to the U.S. on aircraft. And, for lack of a better phrase, industry and CBP officials kind of locked themselves in a room and said, "We have to figure this out." And they did; they figured out a construct that is the operative requirement now for security filings related to air cargo.

So I think that constant communication and collaboration is the most important component.

Senator CARPER. All right; thank you for that. Anybody else want to comment on that question? Anybody? Gentlemen? Mr. Paylor, Mr. Drake, anything? No? Okay.

I have another question, Mr. Drake, for you, involving examining data collected and shared at U.S. ports. And having access to accurate and reliable data is a critical component for sound decisionmaking, as you know, and anticipating new challenges. In your testimony, Mr. Drake, you discussed how the data that Customs and Border Protection collect can be used to potentially improve port operations, specifically at land ports.

Here is my question: can you please take a few minutes to discuss how Customs and Border Protection might improve the ways in which they use and share data collected at U.S. ports, as well as any recommendations that you have for members of this committee to ensure the data is made available?

Mr. DRAKE. Thank you, Senator, for the question. I think two recommendations—and I think this was referenced earlier on in the hearing. But the first is, CBP does collect significant data. Oftentimes that data is good and helpful, but they need to do a better job of sharing that data with the 47 other Federal agencies that have a role in helping safeguard what is coming into our country. Those PGAs oftentimes will not get that data, and sometimes when they do get that data, they are operating on it in different ways or with a different set of priorities than CBP.

We think it is absolutely critical that Congress intervene. And this is something the administration can do, but we think that it would benefit from congressional support, which would set priorities on making sure that NHTSA, USDA, EPA, other agencies that have a role in making sure that we are not getting counterfeits, we are not getting invasive species, or other bad stuff coming in, that they are doing their job as well.

I think the second recommendation that we would have is that CBP, we believe, could do a better job of sharing the data it is collecting with the private industry. The private industry is always going to be the front line of every sort of trade problem that we see, and they want to make sure that they are making the best decisions possible.

A really good area for that is if CBP provided more specific information to the business community to help the business community understand if they are doing business with the right folks or if they should be shifting to a different supplier, a different carrier, et cetera.

Senator CARPER. All right. I am going to follow up that question with another one. Would you also, for us, just please discuss the role of the private sector in ensuring that Customs and Border Inspection has accurate data about the goods that are moving through our ports and how these relationships might be further strengthened?

Mr. DRAKE. Yes. So CBP's success is always going to be based on the data it is collecting, and oftentimes that data is the first part of the shipment that happens, right? If the good is at the port and CBP does not have any data on that good, they are going to have a very difficult time evaluating what that product is and if it needs to be intervened or not.

We would say that it is absolutely critical that the data that the private sector is providing—excuse me, let me take a step back. We would say that CBP is, in all cases, collecting the data on all parties it needs to be collecting today. So, the huge explosion of e-commerce in this Nation, right—you have a variety of new players who are in the trade space who were not there 15, 20 years ago.

Senator CARPER. For example?

Mr. DRAKE. For example, warehouses, fulfillment centers, e-commerce platforms. Those players are not the traditional express carriers that have been operating under CBP authority for decades. They are not necessarily, in all cases, providing data to CBP, and we would argue that, in a lot of cases, they should be. It is going to help CBP's enforcement mission, but it also is going to level the playing field.

Senator CARPER. Okay; thank you.

Mr. Paylor, are you up for another question? Good. As we all know, a friend, Ben Cardin, was just here, and I am sure he covered this, but I am going to revisit it. And if I am covering some ground that has already been covered, I apologize. But as we all know, on March 26th, tragedy struck as the Francis Scott Key Bridge in Baltimore collapsed after being hit by a malfunctioning cargo ship; six individuals tragically lost their lives.

As a result, the Port of Baltimore had to initially stop all cargo ships from moving in and out of the port in order to clear the debris and carefully remove parts of the collapsed bridge. The Port of Baltimore is an economic powerhouse. We think our port in Delaware is a powerhouse, a rail powerhouse, and we are good, but the Port of Baltimore is even more so.

But the Port of Baltimore employs thousands of people from the region, including some from Delaware and Pennsylvania as well as Maryland, and its initial closure and now gradual opening have had ripple effects across sectors. My question for you, Mr. Paylor, is, could you please discuss with us how the initial closure and gradual reopening of the Port of Baltimore have impacted members of the International Longshoremen's Association, them and their families?

Mr. PAYLOR. Yes; thank you, Mr. Chairman. It is a very important question, and I think it is one that cannot be answered at this point completely, and that is because the assessment is still growing and trying to be understood. But the accident that caused the shutting down of the terminal had a direct effect on 1,800 members of International Longshoremen's Association. There are a few different locals in Baltimore; the majority of those people have been out of work completely.

And even with the support of unemployment insurance that mitigates some of their losses, when you have people who are working pretty regularly—as you pointed out, the level of containers and railroad products that go through the port generates not just a lot of man hours for our members, but also for people who are not union members, or are members of other unions, truck drivers—that filters down to the mom and pop stores that are right outside work complexes, to the local banks that are being impacted.

But when you have 1,800 people who are now out of work and not collecting their income, the wages are only a part of the impact. When you lose 2 months of your income, how do you pay your mortgage, how do you pay your car payment, and how do you make things feasible when you are looking at that debt you are accumulating?

The other thing that has to be taken into consideration in our industry is that making eligibility for your medical benefits is based on a yearly situation. It is all hours accumulated for a year of service for next year's coverage, so we do not even know what the impact of that is going to be at this point, but it is serious when your members lose health benefits. Hopefully there is a system in place that could help mitigate that also, but once again, still it has not been identified.

I think the important piece that was said just a minute ago, which is a little deeper thinking, is now that they have lost significant cargo, container cargo and railroad, the good news is, for the supply chain, they have moved to adjacent ports, which could have been the Port of Wilmington, DE; the Port of Norfolk, VA; and as far south as Savannah and as far north as New York. But what will be the mystery that nobody has an answer for is, how much of that cargo will return? If they can only process a certain number of vessels and cargo, based on it being open but restricted, that could cause problems that are more long-term if carriers or shippers decide they would have to go to a different port.

Then you have the situation where one port's pain is another port's gain, where port authorities are always highly competitive against one another, so the opportunity to take advantage of one's pain to provide cheaper rates, possibly, to the shippers or to the carriers in order to attract cargo that has not been able to be serviced in the Port of Baltimore is another unknown, and I do not think we have a full understanding of what the impact will be.

And once again, the fact that it was an accident upsets the supply chain to the highest level, when it gets back to the whole purpose behind Customs inspections, now that people see what can be done by an accident, what would happen in any competing port or the same port if it was done intentionally by some type of terroristic action?

Senator CARPER. Okay. I think you have, in part, answered the next question I am going to ask, but I am going to ask it anyway. And you just think about it, and any response you have, go ahead and let us have that, and then we will pick on somebody else. But could you also please discuss with us how port workers had to shift their operations, and how shipping companies adapted to this emergency situation in Baltimore?

Mr. PAYLOR. Yes. Well, let me speak for labor. The good news is, having the unity of the International Longshoremen's Association, which works in all the same competitive ports, there was the unity we shared with the Ports of Norfolk, for example, Philadelphia, Delaware. They all offered the unemployed people from the Port of Baltimore to come to their ports and help them provide the service to the cargo that left Baltimore to go to those other respective ports. So it was good.

Unfortunately, the logistics of travel made it impossible in some cases. The other one is that there are contracts in place in other locations where the contract, and the benefits especially, are proprietary to the employees who work in those respective ports, so by traveling, even if it was practical, the credit that would be needed for your cumulative hours for benefits was something that we found impossible. And then there were some employees who were really willing to work out and help the industry and help the U.S. economy, and there were others who wanted to take advantage of the fact that that cargo had to go somewhere.

So you had both the good and the bad that comes along with an issue like that. I like to believe that the unity that we shared was a full example of solidarity, and I do believe that the majority of employers who could, have offered help, that it was all good intentions and not what I said: taking advantage of the opportunity to become the new competitor for the Port of Baltimore.

Senator CARPER. All right; thank you. Thank you for those responses.

The next question—it is going to be a question for all three of you, but we will start with Mr. Drake and then over to Mr. Pickel, and then back to Mr. Paylor. Mr. Drake, the question concerns preparedness for future emergencies at U.S. ports.

We would like to think there will never be an emergency or something as dire or even worse than what has been experienced in Baltimore, but we all know that is probably not realistic. So my question is, as I mentioned in my opening statement, the collapse of the Francis Scott Key Bridge raised questions about the preparedness of our Nation's ports, and by extension our Nation's supply chains, for future emergency situations.

My question, Mr. Drake, for you first: how can the Federal Government better ensure that all U.S. ports are better prepared to address future emergency situations similar to that which we have witnessed in Baltimore?

Mr. DRAKE. Thank you for the question. So, it is helpful that everyone—you, the Congress, the business community—is thinking about these issues much more regularly than they were before. That is certainly helpful.

You know, I would argue that if we were to experience a repeat of the west coast port crisis that we had in 2020, we would likely be in the exact same situation that we were back then. Not a whole lot has changed at that level to prevent the pile-up, for lack of a better term, that we saw back in 2020, from repeating itself.

That being said, it is critical that the conversations between the private sector and those who are working the ports—everyone from the workers to the carriers to the shippers to the local governments—are staying in close contact. The Federal Government is helping to inform those discussions as well. You know, there is a new program at the Department of Transportation called the FLOW effort. This is a public-private partnership where the private industry will share data with the DOT, and the DOT will aggregate that data and share it back with the private sector.

Where this was exceptionally helpful was in the immediate aftermath of the collapse of the Francis Scott Key Bridge. DOT was able to provide data in real time and help the private community understand where they should go next to begin the diversification away from the Port of Baltimore and identify other ports that could handle that traffic. We need more efforts like that to prepare us for the next emergency.

Senator CARPER. All right; thank you.

Same question, if I could.

Mr. PICKEL. We have to acknowledge sort of a core limiting factor in how the Federal Government responds to port vulnerabilities and supply chain conditions in general, right? Ports are not owned by the Federal Government, supply chains are not owned by the Federal Government, but obviously they can have influence on how those resources are used, right?

So I think with that sort of understanding, looking at how the Federal Government can continue to be a convener of sorts—this was a great silver lining that came out of the west coast port congestion dynamic that John just referenced, where you had industry and all different government agencies getting on these pretty prolific Zoom calls, where there were 200 screens of individuals who were talking about how to address different conditions that were contributing to port congestion, and having the ability to have agility within each of those areas of responsibility across the different agencies, as well as the many different private actors who performed their responsibilities within the port boundaries.

I think, from a Federal Government standpoint, the key word here is agility—the ability for Federal agencies that operate within port boundaries to be able to shift their resources, and if cargo is relocating to an adjacent port, being able to move personnel there to absorb the additional capacity that is being taken on, or the additional volume, I should say, as well as how to create a resumption plan.

So, we have talked a lot about CBP, but other DHS agencies have responsibilities within the port boundaries: the Transportation Security Administration, they oversee the transportation program for truck drivers to be able to maneuver around ports; the Coast Guard, they handle port security, they have port security plans that are in place that should take into account how ports resume their operations.

So I think they can be that sort of cohesive nature between all these disparate organizations that operate within a port and link back to the broader supply chains, but I think coming at it from a perspective that, as I said earlier, they do not own the infrastructure or the supply chain itself.

Senator CARPER. All right: thank you.

Mr. Paylor, same question; let me just repeat it. How can the Federal Government better ensure that all domestic ports are prepared——

Mr. PAYLOR. I understand the question, Mr. Chairman, and I should yield to the two gentlemen who are more qualified, but I would like to give you a labor perspective on it.

Senator CARPER. We never yield to our colleagues, even when they are more qualified. [Laughter.]

Mr. PAYLOR. But anyway, I have three thoughts on it. One is consistent enforcement, which may not be practical with so many ports and so many different facilities, and Customs having their own procedural ways of doing things a little bit differently State to State, port to port. But one of the things I learned just in the last week, looking at a few things based on the questions that Olivia was running by me—and I just did a very unprofessional question and answer for a number of different ports. And one of them is a very simple, but very significant layer of security, and that is called a seal that goes onto the container from the port where it originated or from the manufacturer—that could have been in China, Singapore, or anywhere else.

That container then goes to the port that is going to be loading it onto a vessel, and all the paperwork should have that security seal, which is usually a very large number identification, on it. That container goes onto the vessel, and then when it comes into the United States, that should be looked at as one of the first layers of security, to make sure that container was not opened en route and therefore tampered with.

And that is where I see one of the inconsistencies of something that looks small but that is significant. That should be done when there is a change of custody of the container, when it is being shipped to a port in the United States, and then again when it is being shipped out of the terminal and put onto our public roads.

The other thing I think that is necessary, and I think Mr. Drake alluded to, is that the private operators are sometimes your first line of defense, and I agree with that, but really the first line of defense is the people who board that vessel every day and are familiar with the things that we are talking about right now, and are concerned. Those are the same people who are from our industry. When there was a global disruption on supply chain, President Daggett instructed our people that this is what we do under all circumstances—we have done it during wars, and now we are dealing with the war of the pandemic—we show up, and we go to work.

So what I think should be done is, there should be orientation for all port facilities, for all workers, to make sure they clearly understand the importance of what is being done, with the people who work side by side with CBP, but with CBP themselves, so it is not looked at as a secondary or auxiliary work, but it is a primary function for Homeland Security purposes, and for the safety of the people who work at the port.

And I think that the way of funding something like that, that is so different—it is my understanding that the harbor maintenance tax has accumulated and it has a fund sitting there with not a lot of draw on it, and I think that would be a way of funding that.

The third thing that I would suggest is that when you are looking at the applications that are being made—whether it is TIFIA, or PIDP, or the TIGER grants that are used for port modifications—I think when those applications are being made to modify an existing port or for the purpose of funding the development of a new port, it should be required and a prerequisite that an inspection facility is part of and developed into that facility before receiving any public moneys, because it is something that has to be controlled at our ports and not taken out onto our public streets.

Senator CARPER. Okay; thank you. We have at least maybe one or two more questions, if you all are up for that. Again, thanks for joining us today.

With respect to Customs Trade Partnership Against Terrorism compliance—this would be a question probably for you, Mr. Pickel, and maybe for Mr. Drake.

The Customs Trade Partnership Against Terrorism—we are big on acronyms around here. I am not, but there is an acronym for Customs Trade Partnership Against Terrorism, and it is CTPAT. And it is a program that is a public/private-sector partnership and represents one layer of Customs and Border Protection's multilayered cargo enforcement strategy.

This program asks trading partners to implement stricter security procedures throughout their supply chains, and in return their goods or cargo are screened more quickly. Last year for the second time, the CTPAT Pilot Program Act, which Senator Cornyn and I introduced, passed by unanimous consent in the Senate, which means nobody voted against it. And we are very pleased with that.

The legislation would create a pilot program to strengthen CTPAT and aims to reduce cargo congestion at ports of entry while strengthening our national security. I believe that is a win-win situation.

Question for Mr. Pickel and for Mr. Drake: could each of you please describe for us how our international trading partners and companies in the private sector might benefit from the Customs Trade Partnership Against Terrorism program? Please, go ahead.

Mr. PICKEL. Thank you, sir. I would say, for importers who are bringing products to the United States, there are really two fronts where they potentially benefit from participation in CTPAT. The first is, as you noted, they receive fewer Customs inspections because they are vetted partners. When they are selected for inspection, they are given front-of-the-line privileges, as we say. They are inspected first.

I will note that the CTPAT program is required to review benefits that are provided to its members on a regular basis and consult with industry when adjusting those benefits. So that is a very important process to go through as well.

CTPAT is part of a global construct called the Authorized Economic Operator concept. And so, other countries have reciprocal programs, and CBP actually will review those programs of other countries as well and provide reciprocal treatments to members of 18 other countries' AEO programs. So there really is a global impact when we talk about lessening some of the stress for those parties who have taken on additional responsibility to vet, on the security side in particular.

The CTPAT sort of brings into scope both trade compliance principles as well as security compliance principles. When you get into the international context, the mutual recognition arrangements—not agreements, arrangements; there is an important distinction there—are focused more on the security side of things, so there is definitely a safety emphasis there.

Senator CARPER. All right; thank you.

Mr. Drake, same question.

Mr. DRAKE. I think Mr. Pickel answered it very well, and I would align myself entirely with his remarks.

Senator CARPER. Okay.

Well, first of all, you have done an admirable job on an important, sometimes not easily described issue, and you have done more than justice to it, I think.

I want to say to our staffs—Senator Cornyn's staff on the minority and our staff on the majority—I want to thank them very much for choosing you. Out of the thousands of witnesses we could have brought forward, you rose to the top. We are grateful for that.

I have a question I would like to ask. When we have a panel with diverse points of view, and complementary but different kinds of backgrounds, one of the questions I would like to ask—I am always looking for consensus. When people watch the news, they follow the news, they think all we do is fight down here, that we hate each other. And we not only do not fight, we actually work together, and for the most part we have decent relationships.

But I have said a million times in this room, bipartisan solutions are lasting solutions, and I am always looking for how we find consensus on difficult issues. So let me just ask for each—we will start, Mr. Drake, with you, and then Mr. Paylor and then Mr. Pickel. My question would be, where is there consensus amongst the three of you? Where do you think there is consensus in what you said and heard that you would leave and say, of all that we have heard you give to us today, these are the areas where there is a real consensus? And it is important that you not ignore that consensus, but actually grab it; seize the day.

And so I am going to ask Mr. Drake, where are some areas where you think there is consensus that we should not look that gift horse in the mouth?

Mr. DRAKE. In the trades, when we are talking ports of entry in particular, first and foremost I think is, we all agree that ports are absolutely fundamental to our economic competitiveness, but also to our communities, to the people who work there and the businesses that support them. And I think there is broad consensus that we are absolutely aligned, that we do not want to do anything that would undermine the strength of our ports or the people who work there, and we also want to make sure that we are looking at their long-term success.

So I think if we can start there—and recognizing that there are always going to be principle differences or principle disagreements between my organization and Mr. Paylor's organization and Mr. Pickel's organization—I still believe that that fundamental recognition and agreement can help guide a whole variety of consensus and bipartisan agreements on a whole variety of things regardless of what we are talking about: immigration reform, port security, and the like.

Senator CARPER. All right; thank you for that.

Mr. Paylor, areas of consensus, please?

Mr. PAYLOR. Yes, Mr. Chairman, I agree that I think the consensus is that everybody has the same goal of protecting the interests of the United States and the people who we all represent. As a survivor of September 11th—I shared this just the other day, that if somebody had asked me on September 10th did I ever think that what happened on September 11th would have happened, I would have said on September 10th, no way that that would ever happen, and it did.

And I feel the same way about the ports now having that experience, that the ports are secure, for the most part. I think inconsistency creates some problems, sometimes bureaucracy interferes with consistency, but I think that with the longshoreman who is actually the one up here working with the Customs inspector who is trained to perform the policies that you create up here with the different governmental agencies and independent agencies, I think that the goal is the same.

So how do you streamline what we have learned through mistakes, and how do we get the people to be consistent with the bottom line? What are the right procedures? And they will change from time to time. But I think as long as there is the willingness of groups that are sitting at this table and the bipartisan support that you require to get policies done, I think that we are on the right path.

We do not criticize Customs and Border inspectors at this point. We know that they are all hardworking men and women, and we are glad to work alongside them. But I think education for all levels, from the private sector to the public sector—which is your port authorities, and including labor, whether it is union or in other cases, other unions—I think they all have to have the same understanding of how our ports work.

Senator CARPER. Great; thank you.

Mr. Pickel, what are a couple of the areas of consensus that you would lift up for the consideration of our members of this committee and their staffs? A lot of people are watching this by television and watching it remotely, but are there some areas that you would lift up for us?

Mr. PICKEL. Well, let me just note that it is difficult to be the third person answering when two fantastic answers preceded me.

Senator CARPER. You know what we say when that happens? We have a way of saying, I would like to take the words of my colleague and embrace them, and there are ways that we can do that; you can too.

Mr. PICKEL. Absolutely. So I think I would highlight—I would agree with what my copanelists have said. I think one thing I would observe is that the element of partnership that exists at ports, and the mutual respect for the importance of roles that so many different actors play, really underpins the importance of the port environment. But also, just as consumers, as parents, as existing in society, I mean we have all known what it is like to go to a local store and it is difficult to find a particular product that you need if your child is sick, for example, and how we can use the power of international trade and secure supply chains, resilient supply chains, not only to create employment opportunities and sort of share the ability to supply ourselves and the rest of the world with things that we all need, but also to access those critical supplies.

So for example, I think the Medical Supply Chain Resilience Act was something I was hoping to highlight with Senator Tillis, but I know you and he cosponsored that legislation. Perfect example of ways to engage with our trading partners to make sure that we have access to medical supplies with our most trusted allies. I think that is a great example of looking for ways to expand those partnerships to overcome the vulnerabilities that, quite frankly, are not going anywhere.

I think I also heard here today that we do not think that there is going to be a return to prepandemic normalcy, so really embracing the opportunities where they exist and capitalizing on those systemic strengths within the global international trade system——

Senator CARPER. All right; thanks for that.

I think there may be one other question I would like to ask each of you, and it is: if you were sitting where I am sitting, and if you had the opportunity to figure out, maybe a question that should have been asked that you were not asked, what might be a question that you would like to see asked of this panel. And if you wanted to answer that question, you could do that as well. But what do you think maybe we could have asked, should have asked, and have not asked?

Go ahead, Mr. Drake; you want to take a shot at that? There is no right or wrong answer; it is not a pass/fail.

Mr. DRAKE. You know, there have been a lot of, I think, good questions and discussion during the course of this hearing. This is a really challenging environment right now, when you look at the supply chain issues before us. And I think from my vantage point, the most important thing is just to know that you all are continuing to show up and ask questions.

So I do not know if I necessarily have a specific question that I would say that this committee should be asking of us. I think instead what I would encourage, or what I would urge, is that the committee continue doing these types of discussions, these types of hearings, to hear about these issues, because I do not think that the challenge that we discussed today about the growth of e-commerce, the growing trade volumes that are expected to be coming to our ports, they are not going away, and sitting and doing nothing is simply not a solution. And I think at some point Congress is going to have to come forth and take a hard look at these authorities and these laws and see if there is a willingness and an interest to update them for today's trade environment.

Senator CARPER. Thank you, sir.

Mr. Paylor, please; same question. Do you know a question that you think could be asked, should be asked, that has not been?

Mr. PAYLOR. I do not know if I can frame it that way, because I think that this experience has been great, and the questions that have been asked are right on to some of the concerns I had coming in here. I think that what I would offer is that, I was in Sydney, Canada, and a member of Parliament asked me why did I come from the United States to promote port development, where they were going to put a container facility in Sydney, Canada? And I explained to them, you have the public sector that provides the true asset, which is the land on your harbors, then you have the private investor that gets involved and puts the money up for the capital improvement themselves. Why would you not want to include labor—who I was representing at the time—into that discussion in order to make sure that the people who are going to be working and protecting your investment, protecting your asset, are being involved?

So I would just say that labor does not belong up there unless it is elected through our constitution, but I do believe that having labor from the longshore industry involved would be a total asset on a regular, ongoing basis when enforcing consistency place to place.

Senator CARPER. All right; thank you.

Anyone else? Please.

Mr. PICKEL. I would just add, I think something that we have talked about in our own ways throughout this exchange today is how can we use existing resources, existing authorities, existing sort of latent specialization, to address the challenges that we see today, as well as to be able to see what challenges may be 5, 10, 15 steps down the road.

I think that this is a difficult area to do that because jurisdictions, both within Congress as well as across Federal agencies, are a bit dispersed when we talk about supply chains; certainly not when we talk about Customs authorities and other areas, but I think really honing in on what the specific elements are that kind of combine to really promote supply chain resilience would benefit from being mapped out with other agencies, and not limited to Customs and Treasury and so forth.

Senator CARPER. Good; thank you.

Before we close—I spent a lot of years of my life in the Navy. I was a naval flight officer—last Vietnam veteran here serving in the U.S. Senate—and spent a lot of time in airplanes. We have a big Air Force base in Dover that most Americans have heard of, in some cases for tragic reasons, because it is the last resting place, if you will, for the fallen heroes that are brought to Dover before they are reunited with their families. But we also have huge C–5 aircraft, C–17s, and I was describing it the other day at an event. The Dover Air Force base is the air bridge, a big part of the air bridge, between our country and Ukraine, playing an extraordinarily valuable role in that capacity.

I came out of the Navy, and I ended up moving to Delaware and got myself an MBA and went to work in what was the Division of Economic Development for only about 6 months. And the Democrats did not have anybody to run for State Treasurer; nobody wanted to run. We had the worst credit rating in the country. We were tied for dead last with Puerto Rico, and they were embarrassed to be in our company. But nobody wanted to run. I raised my hand—I had been in Delaware for not even a year or more—and so they let me run.

But I have never forgot what I learned in the 6 months that I worked in the Delaware Division of Economic Development. And one of the things that I have taken with me all of these years is that government does not create jobs. Sometimes we as politicians, we feel like we create jobs. I was told recently, when I was Governor for 8 years, more jobs were created in those 8 years than in any 8-year period in history in the State of Delaware, and obviously I did not create one of them.

What I sought to do as Governor of our State was help create a nurturing environment—a nurturing environment for job creation. What does that include? Access to capital for folks who want to start a business or grow a business; it includes workforce. And when I visit employers up and down the State of Delaware—I do that every week—I ask three questions: how are you doing; how are we doing, our congressional delegation, the Federal Government, how are we doing; what can we do to help?

What I hear from almost everybody in the workforce is, we need people to come to work, people who are trainable, who will come and do a day's work for a day's pay.

In terms of what is important in job creation: access to energy, and as we go further into the future, access to energy that is clean energy that will help us not only provide our energy needs, but also help us successfully combat the climate crisis that is real, of course, every day.

Intellectual property—in Delaware we have more companies incorporated in Delaware, I think, than any other State in the country, and one of the reasons why they do that has something to do with protection of intellectual property. That is important to them, as you might imagine.

And another issue is transportation, the ability to get goods and services where they need to go and when they need to go in a cost-efficient way. For some people, those issues are not all that interesting, but if we care about jobs for our children, our grandchildren, we had better be interested in them, and we had better be interested in our ports.

When I was privileged to serve as Governor of Delaware, a fellow came, my Deputy Chief of Staff—his name is John Carney; he is now the Governor of Delaware. But he was my Deputy Chief of Staff, and he came to me one day and he said, "The State of Delaware should buy the Port of Wilmington." I said, "Really?" And he said, "It is owned by the city of Wilmington, and it does not have any money to invest in the port. The city could use revenues, and if we were to buy the Port of Wilmington, the city would have the revenues they need." The State was awash at the time in money, and we could use some of the State's money to take a kind of tired, dilapidated port and actually make it shine, and that is what we did, and that is what we have continued to do.

As it turns out, a lot of people think all that is not that important, who we sell the stuff we produce to around the world or vice versa. Actually, it is hugely important. We like to think the markets of the U.S. are more vast than they are, but most of the markets that we sell to are outside of our Nation, and a lot of goods go by ships.

I said earlier, I spent a lot of my young life in an airplane, and it is important what we do with airplanes, like at Dover Air Force Base. But it is what we do in ships, in waterways, that at the end of the day is really the 800-pound gorilla in all of this.

So, I think you gave us some good ideas that I think we will follow up on, some good ideas we can work on together with our colleagues. I like to say "everything I do, I know I can do better," and I think we can always do a better job with respect to the way that we are sending, selling, shipping our goods, our services to other countries around the world, and receiving theirs in return.

And with that, in closing, I want to just express my thanks to Senator Cornyn and his staff, and I want to express my thanks to the majority staff for working together in an almost seamless way to bring us all together for what I think has been an informative hearing on the entry of merchandise into our U.S. ports.

We thank you as well for joining us today and for discussing the importance of trade enforcement and trade facilitation at the U.S. ports across our country.

For Senators who wish to submit their questions for the record—we call those QFRs, questions for the record—those questions are due from our members in 7 days, a week from today, and we are going to ask our witnesses to respond to those in 24 hours. Just kidding. We are going to ask you to respond in 45 days—that is a long time—45 days to respond to the questions for the record that you might receive from all of us.

And one of my favorite parts of hearings—I chair the Committee on Environment and Public Works. We helped write the bipartisan infrastructure bill. We are just about to report out a major water resource development act—the election is tomorrow. We work on all kinds of issues, recycling, you name it. We get into all kinds of stuff, and occasionally, at the end of those hearings, I will want to make a unanimous consent request. And when you ask for unanimous consent, that you want to get something down into the record, and if none of my colleagues are still in the room, if they have left and gone to other hearings or they are on the floor voting, I love asking unanimous consent to do stuff when nobody is in the room, because there is nobody there to object.

So, if there is no objection, we are going to adjourn. And as you leave, go with our thanks, and I hope you will give us a chance to follow up and explore some of what has been discussed today.

Thank you very much. And with that, this hearing is adjourned.

Thank you.

[Whereupon, at 4:26 p.m., the hearing was concluded.]

A P P E N D I X

Additional Material Submitted for the Record

Prepared Statement of Hon. Thomas R. Carper, a U.S. Senator From Delaware

Good afternoon. It's my pleasure to call to order today's hearing before the Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness.

Thank you to our ranking member, Senator Cornyn, and his team for working with my staff and me to plan this hearing. We look forward to hearing the expertise that our witnesses have to offer, and I want to thank them for joining us to testify today.

I also want to thank Chairman Ron Wyden, Ranking Member Mike Crapo, and the Finance Committee staff for your policy expertise and for allowing us to borrow the committee hearing room for the next couple hours.

Today's hearing provides us with an important opportunity to examine U.S. Customs and Border Protection policies and procedures for goods entering the United States. This hearing also provides us with a forum to discuss the ways in which the policies laid out by Congress can work to improve port operations while enhancing our supply chains.

Trade is an essential part of the American economy. In 2023, the United States exported over $3 trillion in goods and services around the globe, while importing nearly $4 trillion worth of goods in the same year. And thanks to this exchange of products and services that come through the more than 300 ports of entry across U.S. land, air, and sea, our daily lives are enhanced by access to goods from around the world.

Effective trade facilitation is like a puzzle. Strong port operations and resilient supply chains must fit together seamlessly to bring goods to the United States.

When it comes to port operations, most Americans may not realize that there are thousands of employees working every day to ensure that our imports are safe and secure. It takes considerable coordination by U.S. Customs and Border Protection inspectors, as well as specialized workers and longshoremen, like one of our witnesses here today, in order to hold our international trading partners accountable to the rules of the road. For example, when goods come through the Port of Wilmington, it is the folks I just mentioned who are doing the due diligence to make sure that a shipping container does not contain counterfeit products.

Some of these rules of the road are set by Congress through laws like the bipartisan Trade Facilitation and Trade Enforcement Act and the bipartisan Uyghur Forced Labor Prevention Act, both of which are designed to ensure that our trading partners are paying their fair share of duties on the goods coming into the United States.

And it is our port workers, like those at the Port of Houston, who thoroughly inspect the goods that arrive in the U.S. for illegal contraband, like fentanyl or clothing made with forced labor, before approving them to move on to their next destination. Ultimately, all of these responsibilities, shared by port employees, work hand in hand to enhance our economy and our national security.

We also have to ensure that the other piece of the puzzle—our supply chains—are sufficiently strong to face the pressures that life throws at us. For example, during the COVID–19 pandemic, supply chain resiliency was tested like never before.

The pandemic exposed many unprecedented challenges, like bottlenecks and delays for medical products, that still affect us today. And with the tragic collapse of the Francis Scott Key Bridge nearly 2 months ago, our supply chains had to quickly adapt to a single, but vital port of entry not operating at all.

Thankfully, we were able to divert key imports like automobiles, sugar, and farm equipment from Baltimore to nearby seaports. But the accident put a magnifying glass on questions about the preparedness of our Nations' ports and, by extension, our Nation's supply chains, for emergency situations like this one.

As many of my colleagues can attest, I often like to quote Albert Einstein: "In adversity lies opportunity." Despite recent adversity, today we have an opportunity to learn from our witnesses' firsthand accounts of what's working and what's not working when it comes to implementing trade laws—like the ones I mentioned earlier—in port operations.

We also have an opportunity at today's hearing to better understand how we can and should invest in the long-term resiliency and security of our supply chains. In doing so, we can prevent future product shortages, shore up our ability to access lifesaving products, and reduce the impact of unpredictable situations on American families.

There is an old African proverb that goes something like this: "If you want to go fast, go alone. If you want to go far, go together."

Throughout this hearing, I urge our colleagues on this committee to join Senator Cornyn and me in thinking about how we can go further and faster together. It is the shared responsibility of Congress, port workers, the Office of the U.S. Trade Representative, and global trade-governing bodies to work together to protect the people we serve, while improving the safety and security of global trade.

Once more, let me thank our ranking member, all of our colleagues on this committee and our staffs, as well as the witnesses appearing before us today.

Prepared Statement of Hon. John Cornyn, a U.S. Senator From Texas

Thank you, Mr. Chairman, and thank you to our witnesses for joining us today.

Trade is critical to promoting economic security and improving the lives of all Americans, and it is especially important to my home State of Texas. Texas is home to over 30 air, land, and sea ports of entry—more than any other State in the Nation. Included in that list are three of the five busiest land ports of entry and the number one inland port, in terms of total volume, along the entire U.S.-Mexico border.

To further put this in perspective, about half of all U.S.-Mexico trade moves through a Texas port of entry. Texas fuels America's economic growth, but I continue to hear about growing challenges at our ports.

U.S. Customs and Border Protection (CBP) has the thankless job of facilitating legitimate trade and travel while enforcing both trade and immigration laws. In recent years, the surge in illegal migration along the southern border has led to the temporary shutdown of passenger and rail crossings. Such delays caused by the ongoing border crisis have resulted in an overall loss of commerce, which is costly to both businesses and consumers.

In addition to hindering legitimate trade and travel, these challenges also make it hard to keep unlawful imports such as products made with forced labor, counterfeits, and deadly drugs like fentanyl from entering the United States. This is why I introduced the CATCH Fentanyl Act, which requires CBP to analyze and test new technologies at land ports of entry to determine which ones are most effective, efficient, and affordable.

But this is only one piece of the broader changes that are needed to keep up with the changing global trade environment. Ports of entry across the U.S. are understaffed, yet the workload continues to grow. We owe a great deal to the men and women who serve at our ports of entry day in and day out.

Last year, CBP processed over $5 trillion in combined imports and exports, and nearly 37 million imported cargo containers at U.S. ports of entry. While this continued growth is an overall positive for our economy, we aren't equipped with the resources to maintain it.

Evolving supply chains, new players entering the marketplace, and the growing volume of commerce crossing our borders all present unique challenges for CBP and its industry partners. I'm eager to hear more from today's witnesses about the best ways to meet those challenges.

We also need to find ways to increase efficiencies across ports of entry. Trusted trader programs are one way to accomplish this goal as they allow CBP officers to focus on higher-risk goods and travelers. We should work to enhance and expand these programs where it makes sense, and I introduced legislation with Chairman Carper to do just that.

The CTPAT Pilot Program Act of 2023 requires DHS to create a pilot program to assess the value of allowing additional third-party logistics providers to participate in the program. There are many opportunities to strengthen U.S. trade by implementing much-needed changes at America's ports.

I look forward to hearing from today's witnesses on how Congress might help ease the burden on legitimate trade and travel, while increasing compliance and enforcing our trade laws.

PREPARED STATEMENT OF JOHN DRAKE, VICE PRESIDENT, TRANSPORTATION, INFRASTRUCTURE, AND SUPPLY CHAIN POLICY, U.S. CHAMBER OF COMMERCE

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 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 percent higher in 2021 than 2 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 16th, 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, MD that is forcing short-term shifts in trade routes

[1] "At Ports of Entry," U.S. Customs and Border Protection, *https://www.cbp.gov/border-security/ports-entry*.

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 system wide 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 *(https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099051723134019182/p1758330d05f3607f09690076fedcf4e71a).*

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 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) Data[9]	Air Manifest Data[10]	Manifest Release Data[11]
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

[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.supplychaindive.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.*
[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 CFR 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 CFR 122.48b.
[10] 19 CFR 122.48a. CBP requires similar data reporting for goods arriving in other modes of transportation such as trucks arriving at the land border.

Data Collected on *de Minimis* Shipments—Continued

Air Cargo Advance Screening (ACAS) Data[9]	Air Manifest Data[10]	Manifest Release Data[11]
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
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]

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 identity,[13] 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.

[11] 19 CFR 143.23.
[12] CBP, "Privacy Impact Assessment for the E-Commerce 'Section 321' Data Pilot," September 26, 2019, pg. 3. *https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf.*
[13] *Ibid.,* pg. 3.
[14] *Ibid.,* pg. 3.

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 percent 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.

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 percent 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 balances 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 appro-

[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. October 2, 2023. *https://www.piie.com/blogs/realtime-economics/proposal-get-rid-duty-free-imports-would-punish-american-consumers-and-small-businesses.*

priate 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 ONE

June 6, 2023

The Honorable Ron Wyden
Chairman
U.S. Senate
Committee on Finance
Washington, DC 20510

The Honorable Jason Smith
Chairman
U.S. House
Committee on Ways and Means
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
U.S. Senate
Committee on Finance
Washington, DC 20510

The Honorable Richard Neal
Ranking Member
U.S. House
Committee on Ways and Means
Washington, DC 20515

Dear Chairman Wyden, Chairman Smith, Ranking Member Crapo, and Ranking Member Neal:

The undersigned organizations support your efforts to modernize the Nation's Customs laws to meet the challenges of today's trade environment. As this work continues, we strongly urge you to include the attached trade facilitation provisions into any Customs modernization legislation to protect American consumers from unsafe or harmful goods and to ensure U.S. businesses and workers can compete on a level playing field in a rapidly changing trade environment.

Trade is the lifeblood of our Nation's economy. Forty million American jobs—roughly 1 in 5—depend on trade.[1] Access to imports increases the purchasing power of the average American household by about $18,000 annually.[2] Manufacturers rely on imports of intermediate goods and raw materials, which represent more than 60 percent of all U.S. goods imported, to provide high-quality products at competitive prices.[3]

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

[1] 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/wp-content/uploads/2020/10/Trade_and_American_Jobs_2020.pdf.*

[2] Hufbauer, Gary C, and Lu, Zhiyao (Lucy) (2017). The Payoff to America from Globalization: A Fresh Look with Focus on Costs to Workers. Peterson Institute For International Economics, *https://www.piie.com/publications/policy-briefs/payoff-america-globalization-fresh-look-focus-costsworkers.*

[3] U.S. Chamber of Commerce, "The Benefits of International Trade," January 15, 2021, *https://www.uschamber.com/international/trade-agreements/the-benefits-of-international-trade.*

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.

U.S. Customs and Border Protection (CBP) sought to wrestle 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 applaud 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 we expect to be finalized after the next COAC meeting, scheduled for June 14th. 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.

As the 21CCF effort winds down, the next step is for Congress to develop a truly comprehensive Customs modernization legislative proposal. Any legislation must include a robust trade facilitation component that supports our Nation's competitiveness and provides all 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.

Therefore, as Congress works to modernize CBP's Customs authorities, we recommend that the attached priorities be included as part of a comprehensive legislative proposal. These additional proposals are necessary tools and resources to help meet the realities of today's trade landscape while also helping simplify and streamline the Customs process to make U.S. businesses more competitive in the global economy.

Sincerely,

Airlines for America

American Association of Exporters and Importers

American Trucking Associations

Autos Drive America

Cargo Airline Association

Consumer Technology Association

Foreign Trade Association

National Association of Manufacturers

National Customs Brokers and Forwarders Association of America

National Foreign Trade Council

National Retail Federation

Retail Industry Leaders Association

U.S. Chamber of Commerce

CC: Members of Senate Finance Committee
Members of House Ways and Means Committee

ATTACHMENT TWO—COALITION PRIORITIES

CUSTOMS MODERNIZATION REAUTHORIZATION PROPOSALS

The trade landscape is changing. The rise of global e-commerce, post-COVID supply-chain constraints and resiliency planning, new sourcing considerations, new players in the trade space, and the overall rethinking of trade. These changes can make global supply chains more complex as more participants and business models enter the space. These challenges, however, also present opportunities. For example, small and medium-sized businesses now can compete in the global economy in new and powerful ways.

The U.S. Customs and Border Protection's 21st Century Customs Framework (21CCF) is an important starting point to any Customs modernization discussion. We also applaud CBP's decision to involve the trade community through the Commercial Customs Operations Advisory Committee (COAC) and the 21CCF Task Force in developing the 21CCF proposal. The vast majority of the trade community is compliant with existing U.S. trade laws and shares a commitment to advancing our Nation's economic security. While work on this effort is winding down, the trade community is shifting its focus to Congress on completing work on a comprehensive Customs modernization legislative proposal. Congress should look to the 21CCF proposal as a starting point while also looking to build upon CBP's existing trade facilitation authorities and incorporate a robust trade facilitation component that supports our Nation's competitiveness and provides all 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 also improve trade facilitation, protect good actors, and provide opportunities for the trade community to engage with CBP in advancing its important trade mission.

Therefore, as Congress works to modernize CBP's Customs authorities, we outline several priorities below that are critical to any legislative effort. The 21CCF product is an important start but these additional proposals will be critical to provide CBP with the tools and resources to meet the changes of the trade landscape while also helping simplify and streamline the Customs process to make U.S. businesses more competitive—and resilient against forced labor and counterfeits—in the global economy.

TRADE FACILITATION PROPOSALS

- **A Government-Wide Policy Approach to Customs Entry Processes:** The current, fragmented approach to goods entry is unnecessarily costly and slow, with many agencies requiring duplicative information via paper-based processes. CBP's Automated Commercial Environment (ACE) established the capability for a single, intergovernmental interface; however, in practice, each Federal agency adopted or opted to continue different policies, procedures, and processes that undermined the promise and intent of ACE, resulting in shippers interacting with multiple agencies to clear goods. There should be a single, centralized policy and regulatory process that is coordinated through CBP, utilizing the Border Interagency Executive Council (BIEC) or another body that reduces the duplicative nature of the entry process while modernizing many of the current paper-based processes into a fully digital process. Regardless of the mechanism, the authority to make and drive decisions must reside within this forum and the private sector should be fully included to provide valuable insight into the impact of current and future trade developments. The initial focus of this effort should be reducing the redundant information requirements across government agencies and consolidating inspectional authorities on the border to ensure appropriate personnel are available when and where CBP is clearing shipments.
- **Continue to Facilitate Entries Under Regulations:** Congress should expand the United States' global leadership in implementing the Trade Facilitation Agreement by amending 19 U.S.C. 1498 to grant the Secretaries the ability through rulemaking to adjust for inflation for entries under regulations. Finally, Congress should codify the parties granted the right to make entry as currently defined under Customs regulations.
- **Fight Forced Labor Through Better Information Sharing:** Forced labor is abhorrent and has no place in supply chains. Congress should consider the following proposals to mitigate forced labor:
    - Require public disclosure of a sanitized (*e.g.,* non-classified) version of the Department of State's and the United States Trade Representative's diplomatic strategies to address root causes of forced labor.
    - Empower the Forced Labor Enforcement Task Force created under the United States-Mexico-Canada Free Trade Agreement (USMCA) to execute its mission to coordinate a government-wide strategy.

  - Encourage CBP and other government agencies to share specific information with the private sector, particularly with trusted entities, to better inform sourcing decisions and address forced labor risks earlier in the supply chain.
  - Create a "safe space" for industry to voluntarily share information with the government without fear that such exchanges will result in punitive actions or violate existing law. Other Federal agencies have established similar "safe spaces" to great effect.
  - When goods are detained or denied entry due to suspected forced labor, CBP should be required to disclose what specific component of the shipment is suspected of forced labor composition. This would expedite the submission and review of documents relevant to CBP's concern.
  - Require CBP to disclose why a shipment was denied entry to allow importers to identify and remediate areas of concern of their supply chains suspected of forced labor.

- **Timelines for Government Response:** The trade is bound by very defined timelines in most circumstances and yet there are very few timelines that bind CBP and other partner government agencies (PGAs). This can lead to uncertainty for U.S. businesses as they try to move forward with business planning, product launches, and financial certainty. The Customs modernization effort should establish reasonable timelines for CBP and other PGAs to respond to trade actions and requests, such as petitions, protests, advice, and Customs rulings. If a decision is not produced within the timeline, it should be considered an affirmative response for the trade. Holding agencies accountable to provide timely decisions should be a key part of this legislation.

- **Codify the Express Delivery Sector:** The pandemic underscored the importance of the express delivery sector as it was crucial to maintain global supply chains to transport necessary medical supplies and consumer goods as safely and efficiently as possible. U.S. importers and exporters from across industry sectors have always relied on this mode of transportation prior to the pandemic, but more so during it. However, the express delivery clearance process exists only by regulation, without specific statutory basis like other essential members of the trade community such as brokers and importers. Codifying the unique processes and procedures of the express industry in statute, as currently reflected in regulation and trade agreements, would recognize the express sector as a standard mode—like air, rail, truck, and ocean vessel—by which cargo enters the U.S. Such codification of the express delivery clearance process includes the allowance for:

  - A single submission of information, a manifest, covering all goods contained in an express shipment;
  - Expedited release of these shipments based on the minimum documentation of a single submission of information; and
  - Consolidated entries.

- **Establish Data Collection Standards:** Data is critical for CBP to perform its important trade function but there should be clear standards that guide why CBP may require the trade community to provide certain data, how it can be used, and affirmatively require the removal of duplicative data requirements across all U.S. Federal agencies. One solution is to tie CBP's data collection to the trade facilitation principles modeled after the Trade Act of 2002 (see 19 U.S.C. 1415). Congress previously took important steps to streamline and automate the appropriate level of data required to import goods into the U.S. and it should continue working with the trade community to ensure the accuracy and usefulness of required data and to create the opportunity for voluntary bidirectional information sharing. Requiring additional data at entry frequently adds transaction costs for business and therefore CBP should be able to clearly justify new data collection requirements. Government information requirements should apply equally to all delivery service providers, to include the U.S. Postal Service. In addition, with increased authority for CBP to collect data, it is important to include appropriate business confidentially protections so that confidential information does not end up in the public domain.

- **Clarify the Benefits, Opportunities, and Harmonization of Trusted Trader Programs:** Congress should direct GAO, DHS IG, or other appropriate oversight bodies to provide regular evaluations of Trusted Trader programs, like CTPAT to evaluate the benefits provided to participating organizations are commercially significant and consistent with requirements in the Trade Facilitation and Trade Enforcement Act of 2015. This evaluation should also include the codification of minimum standards of participation to provide objective measurements of participation. In addition, this evaluation should consider reducing certain fees to reflect the lower "service" demands for specific entries due to private-sector investments in Trusted Trader program participation. In addition, Trusted Traders should be seen as a reliable cadre of partners who are willing to collaborate with the government in addressing ongoing and emerging compliance challenges with an eye toward effective and efficient solutions. All U.S. Government agencies should be required to recognize this status by providing similar benefits in the entry process. Trusted Traders are given benefits through third country programs where Mutual Recognition Arrangements are in place but are not "trusted" by Federal agencies that have regulatory authority related to import requirements. Congress should require Trusted Trader recognition across that group of U.S. agencies. The study should also examine importers to pay duties in a similar manner to how corporations pay quarterly estimated taxes, which allows the importer to reconcile each quarter or at the end of the year based on what is entered into commerce versus shipments reexported, destroyed, or filed for duty drawback.

- **Limit the Use of Outdated "Redelivery" Authority:** Cargo released from ports for entry into the U.S. economy is currently subject to a 60-day "redelivery" period after release decisions are made, meaning a government agency can arbitrarily require that cargo be made available for further inspection or be subject to significant financial penalty. This does not align with modern trade practices where goods are frequently delivered directly to the end user in a short period of time after release. This authority should be limited further and reserved for security and safety concerns only.
- **Progressive Filing:** Government agencies have access to significant information about shipments before they arrive at U.S. ports for formal processing by CBP. This information allows for advanced targeting and analysis by other agencies that have regulatory responsibilities in the import process and should facilitate quicker determinations of admissibility. This goal would be well served by embracing iterative or progressive data filing to allow the best party, with access to the most current data file it at the earliest feasible time, building the data for each shipment until the arrival at the border. At such time, if an entry summary is filed, it must be certified and submitted by an importer, importer-of-record, or licensed Customs broker. This should be linked to trusted trader and authorized economic operator benefits, such as admissibility decisions that the trade can rely upon, qualification of free trade agreement qualifications, and promoting confidence in the broader construct of a secure and compliant supply chain. Essentially, Congress should direct CBP to establish a Green Lane for inbound cargo, that could have full USG release prior to arrival. This program would be in addition to the information already filed for security purposes, especially in the air environment, and apply to both imports and exports.
- **Section 301 Duty Refunds:** Many companies granted exclusions from section 301 duties are owed refunds on duties that had already been paid because exclusions were retroactive to when duties went into effect. The problem is that CBP's legal authority to process the refunds expired before these companies were able to collect refunds. In many cases, the Customs clock ran out before the exclusion was even granted—in these cases, companies never had an opportunity to get their money back. Legislative language is necessary to give CBP the one-time legal authority it needs to ensure companies can get their money back.
- **Automated Commercial Environment (ACE):** The trade community currently faces a series of challenges which ACE was designed to meet, including a lack of capability to handle and track in real time intermodal shipment transfers, insufficient functionality to allow the supply chain to efficiently handle in-bond functions, and the automation of the export process. Funding to provide the functionality to meet these needs is a critical near-term requirement. Congress should also direct CBP to develop the successor trade facilitation system (ACE 2.0) to allow for a business process model or account-based processing (*e.g.,* giving businesses the choice to file entries in a manner that makes sense for them). This successor system should have an effective governance structure that supports government-wide decision making as well

as incorporates the needs of and gathers regular feedback from industry. This system should also be optimally efficient and fully leverage current information processing technology (AI, cloud computing, et cetera).

- **Duty and Fee Structure Study:** Congress should direct a study by the Government Accountability Office or other appropriate independent authority to examine CBP's current duty and fee structure and make recommendations on a comprehensive restructuring in light of today's trade environment. The study should examine the effects of users who pay the duties and fees, especially small and medium-sized entities, as well as what duties and fees are obsolete in today's economy.
- **Support Due Process:** Congress should ensure due process for all parties involved in the trade where there is a suspected violation or noncompliance with U.S. law.
- **Visibility and Transparency:** Congress should require CBP to provide visibility parity to all currently authorized parties (to include brokers and carriers) of a shipment to allow for transparent information exchange and effective streamlining of imports.
- **Increased Resources to Fight Counterfeits:** CBP should take additional steps to help battle counterfeiting, equipping private-sector actors with better information on both good and bad actors. As a start, CBP should fully implement provisions in the Trade Facilitation and Trade Enforcement Act of 2015 to increase information sharing with the private sector to facilitate targeted enforcement. Additionally, it should simplify the process of detention and seizure of counterfeit products.
- **Enhance Information Sharing with the Private Sector:** The government should more readily share enforcement-related information with "parties of interest" to a particular transaction. Current limitations, like the Trades Secrets Act, should be revisited and revised along the lines of section 71022(d) of the Senate-passed U.S. Innovation and Competition Act of 2021. Congress should permit the sharing of information on abandoned shipments, not just those where an official enforcement action was taken.
- **Fund Ports of the Future:** Port infrastructure is not able to keep up with the volumes and needs of modern trade. Funding should be appropriated and allocated to CBP cargo processing and trade facilitation capabilities, including advanced technologies like Artificial Intelligence/Machine Learning and advanced robotic facilities including advanced Nonintrusive Imaging technologies.
- **Green Trade Benefits:** Congress should focus CBP's efforts to develop a "green trade" strategy by providing specific duty preferences and by directing the agency to develop commercially meaningful benefits for "green"-compliant imports, among other steps.

PREPARED STATEMENT OF JAMES H. PAYLOR, JR., ASSISTANT GENERAL ORGANIZER, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Good afternoon, Chairman Carper, Ranking Member Cornyn, and distinguished members of the subcommittee. Thank you for the opportunity to appear today to discuss trade and commerce at our Nation's ports.

My name is James H. Paylor, Jr., and I am currently an assistant general organizer of the International Longshoremen's Association, a labor union that represents over 65,000 longshore workers on the Atlantic and Gulf Coasts, the Great Lakes, major U.S. rivers, Puerto Rico, Eastern Canada, and the Bahamas. I have been a longshoreman since 1973 and worked primarily as a ships carpenter/maintenance worker. Longshore workers load and unload vessels and barges and perform clerical work to effectuate the receiving and delivery of cargoes. Maintenance and terminal employees perform a multitude of ancillary job functions on the terminals and piers.

As a carpenter at the terminals in Philadelphia and southern New Jersey, I assisted the Customs inspector by opening the casings, boxes, crating, or any packaging so that the inspector could confirm that the cargo was the cargo shown on the bill of lading (a listing of goods consigned to the control of the stevedore/terminal operator). The inspectors checked the country of origin to ensure that the cargo was in compliance with U.S. trade rules, looked for anything that was suspicious in the cargo and the packaging, and examined for insects and drugs. The Customs inspectors inspected various types of cargo, including breakbulk cargo, containers, and special or heavy-lift cargoes.

In particular, imported meat was and is still inspected at special facilities on or near the piers and terminals. The ILA-represented employees open a select number of boxes for the inspector to confirm that goods meet U.S. trade requirements as to the quality of meat and to ensure that no tainted meat or toxins enter the country. Once the inspector reviews the samples, ILA-represented employees repackage the meat and stamp all boxes that are USDA-approved. The longshore workers then load the cargo onto trucks for delivery. A similar process is used for imported fruit and vegetables.

Over the years, several events forced modifications to the inspection procedures of Customs and Border Protection (CBP). One such event was the implementation and continued growth of containerization. Today, much of the cargo is transported in containers. CBP examination stations have been erected at the container terminals and longshore workers assist inspectors to identify the containers that require inspection. Longshore workers also cut the security seals, open the containers and, upon the direction of the CBP inspector, remove the contents of the container and open the casing for direct inspection. The inspection includes confirming the contents' country of origin, ensuring that the contents are consistent with the information container on the manifest and identifying anything suspicious as to the product or casings, particularly to identify illegal drug importation. After the inspection, longshore workers repackage the cargo and resecure the container with a new security seal. The ILA members are very proud to work with CBP and in many cases have even developed friendships.

Another major event that caused modifications to CBP's inspection procedures was the September 11, 2001 terrorist attacks. After September 11, 2001, CBP's level of scrutiny heightened to include inspection for weapons of mass destruction. Local jargon was "Drugs, Bugs and Bombs." Because there were not enough CBP inspectors to serve ports with multiple facilities, Centralized Examination Stations (CES) were created. Many of the CES were away from the waterfront facilities so cargo was trucked from the port facilities to the CES. For example, a CES was created in Chester, PA to serve the Ports of Philadelphia and Wilmington because the location was centralized between the two ports. Although this solution solved the CBP inspector shortage, the creation of off-terminal CES had a severely negative impact on the ILA-represented workforce. When the inspections moved from the terminal, the ILA-represented employees who worked with the CBP inspectors at waterfront facilities lost their jobs. The employees who performed their functions at the CES were paid a lower hourly rate and received lower employee benefits. The creation of CES replaced family-sustaining jobs with poor working standards. In addition, the additional truck move to the CES added an additional expense to the shipper's usual delivery cost.

In addition to the economic impact on both the ILA-represented workforce and the shippers, the creation of the off-terminal CES increased the risk of relocating weapons of mass destruction and illegal drugs to another location. In the Port of Philadelphia, containers are discharged at the waterfront terminal, trucked through communities, on highways, past a sports complex, over an Interstate 95 bridge crossing to the CES in Chester, PA. If any of those containers house weapons of mass destruction, this extended transport could have disastrous effects.

CBP has done a fantastic job of implementing technology through the Vehicle and Cargo Inspection System (VACIS) non-intrusive x-ray machines that are currently being utilized at our ports and with databases that prioritize risk, CBP is certainly performing at the highest level. However, with the constantly growing cargo volumes and the necessary demand to protect our borders in the south and on all coasts, our ports are still a highly vulnerable target for future terrorist actions.

The ILA's members have been the first line of defense at our ports and have shown an unwavering commitment to our country. Most recently, when the collapse of the Francis Scott Key Bridge in Baltimore caused supply chain pressures, the longshore workers in other ports accepted the challenge and kept cargo moving.

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program, Transportation Investment Generating Economic Recovery (TIGER) grants, and Port Infrastructure Development grants have provided funding to facilitate port growth. I recommend that, in the future, to be eligible to receive one of these grants, the applicant must present a construction design that includes inspection locations at the waterfront facility. Revenue from the port maintenance taxes could also be used to educate longshore workers on the CBP procedures to enhance their understanding of the shared responsibility to ensure the safety of the ports and the country as a whole.

Finally, one of the other issues of concern is that the process of inspecting container seals to ensure that cargo has not been tampered with is not consistent from port to port. I suggest that a uniform procedure be implemented in all ports to ensure that safety is paramount in all locations.

The International Longshoremen's Association congratulates the hardworking men and woman of the U.S. Customs and Border Patrol, and I thank you for the opportunity to testify before this subcommittee.

Prepared Statement of John Pickel, Senior Director, International Supply Chain Policy, National Foreign Trade Council

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 FY22, 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.

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 trade.[4] A report by

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

[2] *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.*

[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.*

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]

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 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 percent 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 percent 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

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[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.*

[6] *See* 19 U.S.C. 4311(b).

[7] *See* Pub. L. 114–125, section 901 (130 STAT. 147).

[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*.

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.

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 do-

[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.*

[13] *See* Executive Order 13659, February 19, 2014.

mestic 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.

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.

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The National Association of Foreign-Trade Zones (NAFTZ) appreciates the opportunity to submit comments to this hearing on "Examining Trade Enforcement and Entry of Merchandise at U.S. Ports." NAFTZ is the collective voice of all constituents of the U.S. Foreign-Trade Zone program, a vital component of the U.S. economy. The FTZ program was created by Congress in 1934 to benefit American jobs by creating physical areas within the United States that are considered outside of the U.S. commerce for customs entry purposes. After thorough vetting by the Departments of Commerce and Homeland Security, companies utilize FTZ benefits to help level the playing field for their U.S. operations where tariff inequities create an unintended advantage for foreign competitors. According to data to Congress in the latest annual FTZ Board report, there are **1,200 active FTZ operations** across the country **directly employing more than 500,000 American workers.** There is **at least 1 FTZ in every state.**

U.S. FTZs fit squarely into supply chain logistics, security and trade enforcement. U.S. FTZs must comply with specific operational, regulatory and reporting requirements including all import regulations applicable to every U.S. importer as well as additional security requirements and CBP access unique to FTZ operations. FTZs are also subject to CBP reporting when each shipment arrives at the zone. In both instances, CBP receives the same detailed data, meaning that CBP actually receives the data twice along with the same manifest reporting requirements for all goods destined for and transiting the U.S. Unlike other importers, however, the data from an FTZ is produced after physically receiving and inspecting the goods, rather than from supply chain documentation utilized prior to the goods arriving and finalized over a longer period of time.

Taken collectively, as a result of the numerous levels of reporting, FTZs provide supply chain transparency not available in other modes of importing. The NAFTZ has long advocated for FTZs to have access to *de minimis* filing to provide that transparency to low-value shipments into the U.S. since the goods would be received and inspected prior to entering the commerce, which is not the case in today's *de minimis* environment. Data received by CBP when the goods are admitted to the zone in addition to the manifest data received while the goods en route would give CBP the opportunity to inspect those goods at any time within the FTZ. This would provide incentive to keep these warehouses open in the U.S., employing American workers, rather than moving operations offshore to utilize *de minimis* and avoiding tariffs and data reporting.

CBP's regulations and the level of security required to become an FTZ also permits the storage of potentially inadmissible goods while assessment of the goods is under review. In the case of goods targeted for forced labor concerns, U.S. FTZs can help alleviate port storage constraints by offering alternative secure storage of the goods while CBP is making a determination. However, CBP has revoked this ability, citing resource and systems challenges which has not only presented an undue burden on the trade, but an undue burden on CBP.

NAFTZ is advocating for dedicated resourcing of the FTZ program supervision within CBP to address these and other needs within the program. The economic potential that spurred Congress to create the U.S. FTZ program is not being fully realized due to CBP resource constraints. According to data reported by the U.S. FTZ Board in its annual report, over the past decade, U.S. FTZ operations—both production and distribution—have increased significantly, employment has grown 35 percent, and resulting exports have increased 132 percent (236 percent from distribution and 98 percent from production), exemplifying the program's success. This critical supply tool could further be used to promote re-shoring, supply chain diversity, security and sustainability, with proper funding of CBP resources dedicated to the program.

We encourage the entire federal government to unlock the full potential of FTZs through full inclusion of these vital U.S. importers when considering trade enforcement and the merchandise entry process.

Thank you.

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Statement of Doreen P. Greenwald, National President

Chairman Carper, Ranking Member Cornyn, distinguished members of the subcommittee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents 29,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 328 air, sea, and land ports of entry across the United States and 16 Preclearance stations throughout the world.

CBP's mission at the ports of entry includes, but is not limited to, combating human smuggling, countering illicit drugs, and facilitating the lawful flow of trade and travel, to ensure our national and economic security. CBP employees at the ports of entry are the second largest collectors of revenue in the federal government, collecting almost $112 billion in duties, taxes, and fees in FY 2022. In addition, **CBP Office of Field Operations (OFO) personnel are on the frontline of illegal narcotics interdiction. CBP seizures of fentanyl have been escalating for several years, increasing by more than 200 percent over the last 2 fiscal years. In FY 2022, CBP seized approximately 14,700 pounds of fentanyl nationwide, permanently removing these drugs from the illicit supply chain,** keeping them out of our communities and denying drug trafficking organizations profits and critical operating capital.

Our air, sea and land ports of entry are in desperate need of more CBP employees to reduce wait times for international travelers and cargo shippers, improve the interdiction of illegal drugs and illicit goods, and handle the processing of migrants seeking asylum. Congress must support CBP trade enforcement personnel who save lives, save jobs and raise significant revenue every day.

According to CBP's most recent publicly released workload staffing models, **the agency needs to hire over *4,000 CBP Officers,* 250 Agriculture Specialists and at least 160 non-uniformed Trade Specialists to address staffing needs at the ports of entry.** These staffing shortages have led to longer wait times at border crossings, increased workloads, overtime for personnel and temporary duty assignments (TDYs) to southwest border ports that exacerbate staffing shortages at other ports.

Unfortunately, the final FY 2024 DHS appropriations deal only provided funding to hire 150 CBP Officers to serve at southwest border ports of entry which does not begin to meet the staffing needs at the ports of entry nationwide either to process legal international trade and travel vital to the U.S. economy or to stop deadly fentanyl and other contraband from crossing through U.S. ports of entry. Inadequate funding for these CBP employees shortchanges our economic growth and our national security.

In addition, CBP expects the staffing crisis at the ports to explode by 2028. **Acting CBP Commissioner Troy Miller testified that due to the expiration of 20-year LEO retirement coverage for CBP Officers hired prior to July 6, 2008, *the agency expects CBP Officer retirements will increase by 400 percent in 2028*. He stated that *this attrition will need to be addressed by overhiring of CBP Officers in FY 2026 and 2027* and that we will need to also**

increase funding for the Federal Law Enforcement Training Centers (FLETC) because these new hires will need to be trained.

In addition to uniformed CBP Officers responsible for trade enforcement, CBP employs non-uniformed trade personnel, including Entry Specialists, Import Specialists, Paralegal Specialists that determine and assess fines, penalties and forfeitures, Customs Auditors and Attorneys, and other trade compliance personnel. These CBP trade employees are the frontline of defense against illegal imports and contraband and enforce over 400 U.S. trade and tariff laws and regulations to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stem the flow of illegal imports, such as illicit opioids, pirated intellectual property, and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction, and laundered money.

When CBP was created in 2003, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import and antidumping and countervailing duties and ensuring importers fully comply with all applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues, and that revenue funds other federal priority programs. **CBP employees processed more than $3.35 trillion in total import value of goods and collected almost $112 billion in total revenue in Fiscal Year (FY) 2022.**

NTEU is deeply concerned with the lack of resources, both in dollars and workforce, being devoted to CBP's trade functions. Lack of sufficient focus and resources not only costs the U.S. Treasury in terms of customs duties and revenue loss, but also costs American companies in terms of lost business to unlawful imports.

Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for preventing entry of illegal transshipments, goods with falsified country of origin, goods that are misclassified, and goods produced by forced labor. CBP implements Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) through issuance of Withhold Release Orders and findings to prevent merchandise produced in whole or in part in a foreign country using forced labor from being imported into the United States, as well as the Uyghur Forced Labor Prevention Act (UFLPA) (Pub. L. 117–78), that prohibits the importation of goods into the United States manufactured wholly or in part with forced labor in the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region, or Xinjiang. Since the UFLPA went into effect through May 29, 2023, CBP stopped more than 4,000 shipments of goods valued at over $1.3 billion for enforcement action review.

In FY 2022, CBP added only 65 new positions across its trade enforcement enterprise to support UFLPA efforts. This included hiring new CBP officers, import specialists, trade analysts, auditors, intelligence analysts, investigators, attorneys, and support staff. The increased enforcement scope of the UFLPA, however, has highlighted resource gaps for CBP to sustain consistent UFLPA operations across the 328 ports of entry, 10 Centers of Excellence and Expertise, field offices, and headquarters.

According to CBP's most recent Resource Optimization Model (ROM) for Trade issued in 2021, there are 2,349 CBP revenue occupations personnel onboard, **154 positions short of the CBP revenue staff authorized by Congress.** These occupations include Import (937), Entry (395), Fines, Penalties, and Forfeiture (84) National Import (89) and International Trade Specialists (197); Customs Auditors (321), Attorneys (111) and Chemists (106).

By law, CBP must submit to Congress its Trade ROM every 2 years. It is our understanding that CBP has not yet provided its FY23 Trade ROM to Congress and NTEU urges the Committee to request CBP to provide FY23 Trade ROM to the Committees on Ways and Means and Finance as soon as possible.

Continuing staffing shortages, inequitable compensation, and lack of mission focus are the main reason experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving, or have left the agency. Further, more than 25 percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the DHS, the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (Pub. L. 107–296). This section mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions . . . performed by the United States Customs Service . . . on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (Pub. L. 109–347). Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied. CBP satisfied this statutory requirement by freezing the number of "maintenance of revenue function" positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11.

In March of 2003 when CBP stood up, there were only 984 Import Specialists on board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of "maintenance of revenue function" positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP was established. Section 412(b) of the HSA reflected Congress' concern regarding this diminishing number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fears that erosion in revenue functions would continue and be exacerbated in the future by its merger into CBP.

Even though CBP complied with the letter of Section 401(b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the "March FY 2003 Staff On-Board" numbers "maintenance of revenue function" positions, including vital trade facilitation and enforcement positions as Entry and Import Specialists, **as a staffing ceiling rather than a floor.** CBP did not even achieve that threshold number of Import Specialists positions in FY 2021. As stated in the FY 2021 ROM, the HSA threshold for import specialists is 984 positions; in FY 2021, there were only 937 positions onboard.

Despite the significant investment in forced labor trade intervention, prevention and enforcement, **the number of CBP's non-uniformed trade personnel has not materially increased since CBP was established in 2003 even though inbound trade volume multiplied 32 times between FY 2003 and FY 2023.**

***De Minimis* Entry and CBP Synthetic Opioid Interdiction**

The vast majority of all illicit drug entering the U.S. are seized by CBP at the ports of entry. Between 2013 and 2017, approximately 25,405 pounds, or 88 percent of all opioids seized by CBP, were seized at ports of entry. CBP plays a leading role in addressing the nation's opioid epidemic—a crisis that is getting worse, as the deadly chemical fentanyl is being manufactured in China and is either funneled through Mexico in regular cargo or sent by mail and express consignment operators directly to addresses in the U.S. **One of the main arteries of illicit precursor drugs to and through the U.S. to Mexico for processing is by *de minimis* shipments.**

The increase in *de minimis* shipments is linked directly to the passage of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Pub. L 114–125, which was signed into law on February 24, 2016. **In Section 321 of TFTEA, Congress significantly changed the way "low value" imports enter into the U.S. by raising the *de minimis* threshold from $200 to $800.** The *de minimis* threshold was first enacted in 1938 at $5 to avoid administrative expense to the government disproportionate to the amount of revenue realized from inspecting low value goods.

In 2015, before TFTEA, shipments valued at $200 or less were approximately 134 million. In 2016, the year after the passage of TFTEA, *de minimis* shipments increased by 65 percent to nearly 220 million. **Between 2016 and 2022, the number of *de minimis* shipments had increased to 685 million—a 410% increase in 7 years and the number of *de minimis* shipments topped one billion in 2023.**

According to CBP Acting Commissioner Troy Miller, every day, nearly 4 million low value *de minimis* shipments arrive at CBP facilities for tar-

geting, review, and potential physical examination. Once a shipment qualifies as *de minimis,* it may automatically be declared under Section 321 during import. In terms of imports, it would still require inspection (per law) but there is less paperwork involved. Because there are no duties or taxes owed at arrival, these shipments speed through the clearance process and are seldom held for inspection. And even though *de minimis* packages are low value, they pose the same potential health, safety, economic security, and forced labor risks as larger and more traditional cargo and containerized shipments. **Low value does not mean low risk.** And in actuality, these packages are not only not inspected, but their paperwork is rarely reviewed by CBP due to overwhelming volume and severe CBP understaffing at the ports.

In April, CBP Acting Commissioner Miller testified that "the small package environment skyrocketed in FY 2023 . . . with over 1 billion packages claiming *de minimis* preferences in the U.S. Currently, CBP processes approximately 4 million *de minimis* packages per day, up from 2.8 million this time last year. This poses significant challenges for all of us as bad actors exploit this explosion in volume to traffic illicit goods."

In FY 2022, the majority of CBP seizure cases originated in the *de minimis* environment, including those related to narcotics (including fentanyl), agriculture, intellectual property rights, and health and safety. ***De minimis* now represents 85% of shipments entering the U.S. and the primary mode of transportation is air (express and postal), though *de minimis* cargo coming in through ocean and truck shipments are steadily increasing.**

In September 2019, CBP began requiring the electronic filing of necessary documents for *de minimis* packages. Entry Type (ET) 86 allows CBP to "ensure regulatory requirements are met while expediting clearance." In other words, ET 86 allows CBP to electronically clear low value freight at express consignment speeds in all cargo environments, but without paying express consignment fees.

The shippers' desire to move things as fast as possible is in direct conflict with CBP's ability to conduct enforcement. The main problem is that CBP is severely understaffed in the regular cargo environment where most of ET 86 freight is being processed.

NTEU fought to increase CBP staffing at express consignment hubs where the highest volume of *de minimis* packages have been entering the U.S. over the past several years. For example, NTEU worked to more than double the CBP Officers at the Cincinnati DHL hub from 20 to 47 CBP Officers. Now more and more of *de minimis* packages are coming through regular air cargo and CBP has only three CBP Officers inspecting regular cargo at the Cincinnati airport.

Also, ET 86 packages and freight that go through cargo modes other than express consignment are not subject to the Express Consignment Carrier Facilities (ECCF) fee that reimburses CBP for costs incurred at and in support of operations at express consignment facilities.

Section 337 of the Trade Act of 2002 (Pub. L. 107–210), codified as 19 U.S.C. 58c (b)(9)(A)(ii) and (b)(9)(B), authorizes the establishment and use of the Express Consignment Carrier Facilities (ECCF) fee to fully reimburse CBP for costs incurred at and in support of operations at express consignment facilities. Congress mandated that 50 percent of ECCF fee collections (along with the inflation amounts) be paid to the Secretary of the Treasury. The balance is used to reimburse CBP for the cost of providing inspection services to express consignment operators or carriers.

The FY 2025 President's Budget includes a proposal for a *De Minimis* User Fee that would cover CBP's costs for the staff and tools needed to better identify, and seize, illicit fentanyl being shipped in small packages. There would be a $2.00 fee per non-ECCF and non-mail package lower than $800 and CBP would maintain this fee. This new $2.00 *de minimis* user fee proposed in the FY25 budget request must first be authorized by the House Ways and Means and the Senate Finance Committee.

NTEU fully supports the establishment of the $2.00 *de minimis* user fee but urge Congress to make sure that this user fee goes 100 percent to reimburse CBP for the cost of providing inspection services to ET 86 shippers—in other words fund new CBP Officers and other trade enforcement personnel to handle the increasing volume of ET 86 shipments at the ports that are seeing the dramatic increases. **Additional CBP trade enforcement staff will not only help to stop the flow of undervalued, illicit, and counterfeit shipments currently flowing into the**

U.S. but also increase trade revenue collections and penalizing violators of the Trade Act of 2002.

Trade Act of 2002 and Electronic Advance Data

Under Section 343 of the **Trade Act of 2002** (Pub. L. 107–210) as amended, and under the SAFE Port Act, CBP has the legal authority to collect Electronic Advance Data (EAD) provided by air, sea, and land commercial transport companies, including Express Consignment Carriers and importers. In the postal environment, bilateral agreements regarding EAD between the U.S. Postal Service (USPS) and foreign postal operators have increased CBP's ability to target high-risk shipments. Additionally, the Synthetics Trafficking and Overdose Prevention (STOP) Act (Pub. L. 115–271) requires that DHS prescribe regulations requiring the USPS to transmit advance electronic information for international mail to CBP consistent with the statute. Currently, USPS provides EAD from more than 129 foreign postal services, and CBP utilizes EAD to actively target international mail shipments at seven International Mail Facilities.

For cargo arriving by aircraft, express consignment operators are required to provide EAD to CBP prior to the scheduled arrival of express cargo in the U.S. Express consignment operators accept items for delivery to the U.S. at points of sale in foreign countries and maintain control of items until they are delivered to the addressees.

Analysis of EAD is one of the tools that helps CBP identify threats in inbound international express cargo items and includes the sender's name and address, recipient's/consignee's name and address, contents' description, number of pieces, and total weight. Express consignment operators found in violation of these requirements are subject to a penalty. EAD requirements were to be implemented by CBP in three phases.

Phase 1 required complete electronic manifests provided to CBP for international cargo 4 hours prior to arrival from most of the world and for Canada, Mexico, the Caribbean, parts of Central and South America at wheels up from the foreign airport. However, every day these manifests are inaccurate with countless overages, which are shipments that are not included on the manifest. In other words, an overage is an un-manifested, unknown shipment which is in violation of the law. A manifest may have 1 or 500 overages, but the highest penalty for all overages is $5,000, and this penalty is routinely mitigated to $50 for a first violation and $100 for subsequent violations.

Phase 2 required air carriers, including express consignment operators to provide quality shipper/consignee data. These addresses should show that the packages are received from legitimate businesses/addresses and are delivered to legitimate end consumers/addresses. If not, the carrier or express consignment operator is subject to a penalty.

In 2007, CBP drafted the Phase 3 implementation plan, but to date has not implemented it. Phase 3 would allow CBP Officers to impose a monetary penalty for incorrect manifest descriptions and false value declarations. Without implementation of Phase 3, CBP Officers cannot penalize carriers for bringing in items manifested as one thing that turn out to be another. Many of these shipments are not concealed well and are often simply mislabeled. For example, narcotic chemicals may be labeled car parts or supplement powder, and CBP cannot impose a penalty for this type of mislabeling.

GAO reports that express consignment operators have reported that "they are able to individually scan each item upon arrival, providing an opportunity to identify and set aside express cargo targeted for CBP inspection based on EAD." (GAO–17–606, page 29.) However, CBP Officers tell NTEU that this is not the case for overages that arrive unmanifested or for mislabeled packages. These CBPOs report that express consignment operators rely on Phase 1 electronic manifests to be accurate when they frequently are not. Also, when first rolled out, Trade Act violations were required to be reported to HQ. That is no longer the case.

Also, according to GAO, "although CBP has been using EAD to target express cargo for inspection since approximately 2004, it has not evaluated whether this method results in benefits relative to other methods of choosing express cargo . . . for inspection." (GAO–17–606, page 28.)

For these reasons, **NTEU recommends that Congress direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the Senate Committee on Ways and Means and Finance.**

This report should include the violator's name; the violation committed; the port of entry/location through which the items entered; an inventory of the items seized including description of the item and quantity; place of origination including address of the violator; the amount in penalties assessed by CBP for each violation by violator name and port of entry/location; the amount of penalties that CBP could have levied for each violation by violator name and port of entry/location and the rationale for negotiating down the penalty for each violation by violator name and port of entry/location.

Congress, by requiring CBP to report this useful information on violators and violator penalty assessments, would enhance CBP's interdiction of prohibited items from entering the U.S. through express consignment operators.

Lastly, even though accurate and reliable advance information is critical to CBP's targeting efforts to ascertain legitimate shipment transactions from those involved in illegal and illicit business transactions utilizing the U.S. Postal Service and private carriers, the ability to assess penalties for violations of Section 343 of the Trade Act is equally important. Unfortunately, penalties are routinely mitigated to a fraction of the full penalty and are now just considered the cost of doing business.

Imposing proper penalties would not only increase compliance but would also provide significant revenue. For example, at one express consignment port of entry where penalties had previously been mitigated to 1% of the maximum penalty, they have recently been mitigated to 10%. In 2023, **97 penalties were assessed at that port for a total of $1,821,098. Of these 97 penalties, 42 were Trade Act violations.** But many ports do not have as robust a penalty effort as this express consignment hub because of staffing limitations. It is unclear to what extent the original Trade Act penalties were mitigated from the original penalty amount and how much could have been collected in penalty if not mitigated. **A penalty is not an effective deterrent if it is mitigated to a token amount that is just seen as the cost of doing business.**

RECOMMENDATIONS

The more than 29,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea, and land ports. These men and women deserve more staffing and more resources to perform their jobs and fulfill their trade enforcement mission of stopping illicit drugs and illegal goods from entering U.S. commerce thereby saving lives, saving jobs, and raising revenue.

Therefore, **NTEU urges the Committee to:**

- **Support FY 2024 funding for at least 1,000 new CBP Officers, 240 Agriculture Specialists and 100 non-uniformed CBP trade operations personnel;**
- **Authorize a $2.00 *De Minimis* User Fee and ensure that this user fee goes 100 percent to reimburse CBP for the cost of providing inspection services to ET 86 shippers;**
- **Reevaluate the *de minimis* threshold and reform the process that verifies the valuation of cargo entering the U.S. under Section 321;**
- **Support a requirement for CBP to provide a report on an annual basis on the individuals and companies that violate the Uyghur Forced Labor Prevention Act and the Trade Act of 2002 to the House Committee on Ways and Means and Senate Committee on Finance; and**
- **Support legislation to end the mitigation of Trade Act penalties.**

Thank you for the opportunity to submit this statement for the Record to the Committee.