

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

**DIVISION A—TRADE FACILITATION AND TRADE ENFORCEMENT
ACT OF 2015**

TITLE I—TRADE FACILITATION AND TRADE ENFORCEMENT

SECTION 101. IMPROVING PARTNERSHIP PROGRAMS

Present Law

The Customs-Trade Partnership Against Terrorism (C-TPAT), codified in the Security and Accountability for Every Port Act (SAFE Port Act) of 2006 (6 U.S.C. 961 et seq.), is a voluntary trade partnership program in which Customs and Border Protection (CBP) and members of the trade community work together to secure and facilitate the movement of legitimate trade. Companies that are members of C-TPAT are considered low-risk, which expedites cargo clearance based on the company's security profile and compliance history.

House Amendment

Section 101 requires the Commissioner of CBP to work with the private sector and other Federal agencies to ensure that all CBP partnership programs provide trade benefits to participants. This would apply to partnership programs established before enactment of this bill, and any programs established after enactment. It establishes elements for the development and operation of any such partnership programs, which require the Commissioner to: 1) consult with private sector entities, the public, and other Federal agencies when appropriate, to ensure that participants receive commercially significant and measurable trade benefits; 2) ensure an integrated and transparent system of trade benefits and compliance requirements for all CBP partnership programs; 3) consider consolidating partnership programs in situations in which doing so would support the objectives of such programs, increase participation, enhance trade benefits, and enhance the allocation of resources of CBP; 4) coordinate with the Director of ICE, and other Federal agencies with authority to detain and release merchandise; and 5) ensure that trade benefits are provided to participants in partnership programs.

It further requires the Commissioner to submit to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives a report that: 1) identifies each partnership program; 2) for each program, identifies the requirements for participation, benefits provided to participants, the number of participants, and in the case of a program that provides for participation at multiple tiers, the number of participants at each such tier; 3) identifies the number of participants enrolled in more than one program; 4) assesses the effectiveness of each program in advancing the security, trade enforcement, and trade facilitation missions of CBP; 5) summarizes CBP's efforts to work with

other Federal agencies to detain and release merchandise entering the United States to ensure that partnership programs of those agencies are compatible with CBP partnership programs; 6) summarizes criteria developed with those agencies for authorizing the release, on an expedited basis, of merchandise for which documentation is required from one or more of those agencies to clear or license the merchandise for entry into the United States; 7) summarizes CBP efforts to work with the private sector and the public to develop partnership programs; 8) describes measures taken by CBP to make the private sector aware of trade benefits available to participants in partnership programs; and 9) summarizes CBP's plans, targets, and goals with respect to partnership programs for the two years following submission of the report.

Senate Amendment

Section 101 of the Senate amendment is the same as section 101 of the House amendment with the exception of a difference in the recipients of the report required in this section.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 102. REPORT ON EFFECTIVENESS OF TRADE ENFORCEMENT ACTIVITIES

Present Law

No provision.

House Amendment

Section 102(a) requires the Comptroller General of the United States to submit a report on the effectiveness of trade enforcement activities of CBP to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives, no later than one year after the date of enactment the bill.

Section 102(b) establishes that the report shall include: 1) a description of the use of resources, results of audits and verifications, targeting, organization, and training of CBP personnel; and 2) a description of trade enforcement activities to address undervaluation, transshipment, legitimacy of entities making entry, protection of revenue, fraud prevention and detection, and penalties, including intentional misclassification, inadequate bonding, and other misrepresentations.

Senate Amendment

Section 102 of the Senate amendment is the same as section 102 of the House amendment with the exception of the following provisions. In addition to the reporting requirements in section 102(b) of the House amendment, the Senate amendment requires a description of trade

enforcement activities with respect to the priority trade issues, including methodologies used in such enforcement of actives, recommendations for improving such enforcement activities, and a description of the implementation of previous recommendations for improving such enforcement activities. The amendments also differ in the recipients of the required report.

Conference Agreement

The conference agreement follows the Senate amendment with a modification. The Conferees agree to modify section 102(a) of the Senate amendment to include the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives as recipients of the required report.

SECTION 103. PRIORITIES AND PERFORMANCE STANDARDS FOR CUSTOMS MODERNIZATION, TRADE FACILITATION, AND TRADE ENFORCEMENT FUNCTIONS AND PROGRAMS

Present Law

No provision.

House Amendment

Section 103(a) directs the Commissioner of Customs to consult with the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives to establish priorities and performance standards to measure the development and levels of achievement of the customs modernization, trade facilitation, and trade enforcement functions of the programs described in section 103(b). The amendment requires that the priorities and performance standards shall, at a minimum, include priorities and performance standards relating to efficiency, outcome, output, and other types of applicable measures.

Section 103(b) establishes the functions and programs to which section 103(a) applies: 1) the Automated Commercial Environment; 2) each of the priority trade issues described in section 111(a) of the House amendment (section 117 of the conference report); 3) the Centers of Excellence and Expertise; 4) drawback; 5) transactions relating to imported merchandise in bond; 6) the collection of antidumping and countervailing duties assessed; 7) the expedited clearance of cargo; 8) the issuance of regulations and rulings; and 9) the issuance of Regulatory Audit Reports.

Section 103(c) requires that the consultations with the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives occur, at a minimum, on an annual basis, and requires the Commissioner to notify the

Committees of any changes to the priorities referred to in section 103(a) no later than 30 days before such changes are to take effect.

Senate Amendment

Section 103 of the Senate amendment is the same as section 103 of the House amendment with the exception of a difference in the recipients of the report and consultations required in this section.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 104. EDUCATIONAL SEMINARS TO IMPROVE EFFORTS TO CLASSIFY AND APPRAISE IMPORTED ARTICLES TO IMPROVE TRADE ENFORCEMENT EFFORTS, AND TO OTHERWISE FACILITATE LEGITIMATE INTERNATIONAL TRADE

Present Law

No provision.

House Amendment

Section 104(a) requires the Commissioner of CBP and the Director of ICE to establish and carry out educational seminars for CBP port personnel and ICE agents to improve their ability to classify and appraise imported articles, improve trade enforcement efforts, and otherwise improve the ability and effectiveness of CBP and ICE to facilitate legitimate trade.

Section 104(b) establishes that these seminars shall include instruction on conducting physical inspections of articles, including testing of samples; reviewing the manifest and accompanying documentation to determine country of origin; customs valuation; industry supply chains; collection of antidumping and countervailing duties; addressing evasion of duties on imports of textiles; protection of intellectual property rights; and the enforcement of child labor laws.

Section 104(c) directs the Commissioner to establish a process to solicit, evaluate and select interested parties in the private sector to assist in providing instruction.

Section 104(d) directs the Commissioner to give special consideration to carrying out educational seminars dedicated to improving the ability of CBP to enforce antidumping and countervailing duty orders upon the request of a petitioner.

Section 104(e) requires the Commissioner and the Director to establish performance standards to measure the development and level of achievement of educational seminars under this section.

Section 104(f) requires the Commissioner and the Director to submit an annual report to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives on the effectiveness of the educational seminars.

Senate Amendment

Section 104 of the Senate amendment is the same as section 104 of the House amendment except for a difference in the recipients of the report required in this section.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 105. JOINT STRATEGIC PLAN

Present Law

No provision.

House Amendment

Section 105(a) requires the Commissioner of CBP and the Director of ICE to create and submit to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives a biennial joint strategic plan on trade facilitation and trade enforcement.

Section 105(b) requires the joint strategic plan to contain a comprehensive plan for trade facilitation and trade enforcement that includes: 1) a summary of the actions taken during the 2-year period preceding submission of the plan to improve trade facilitation and trade enforcement; 2) a statement of objectives and plans for further improving trade facilitation and trade enforcement; 3) a specific identification of priority trade issues that can be addressed to enhance trade enforcement and trade facilitation; 4) a description of efforts made to improve consultation and coordination among and within Federal agencies; 5) a description of training that has occurred within CBP and ICE to improve trade enforcement and trade facilitation; 6) a description of efforts to work with the World Customs Organization and other international organizations with respect to enhancing trade facilitation and trade enforcement; 7) a description of CBP organizational benchmarks for optimizing staffing and wait times at ports of entry; 8) a specific identification of any domestic or international best practices that may further improve trade enforcement and trade facilitation; 9) any legislative recommendations to further improve trade facilitation and trade enforcements; and 10) a description of efforts to improve consultation and coordination with the private sector to enhance trade facilitation and trade enforcement.

Section 105(c) requires the Commissioner and the Director to consult with the appropriate Federal agencies and appropriate officials from relevant law enforcement agencies, international organizations, and interested parties in the private sector.

Senate Amendment

Section 105 of the Senate amendment is the same as section 105 of the House amendment with exception the following provisions. In addition to the reporting requirements contained in section 105(b) of the House amendment, the Senate amendment requires a description of trade enforcement activities with respect to priority trade issues, including methodologies used in enforcement activities, recommendations for improving enforcement activities, and a description of the implementation of previous recommendations for improving enforcement activities. The amendments also differ in the recipients of the required report.

Conference Agreement

The conference agreement follows the Senate amendment with a modification. The Conferees agree to modify section 105(a) to include the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives as recipients of the required joint strategic plan.

SECTION 106. AUTOMATED COMMERCIAL ENVIRONMENT

Present Law

Section 411 of the Tariff Act of 1930 requires the Secretary of Treasury to establish the National Customs Automation Program, an automated and electronic system for processing commercial importations.

Section 13031(f)(4)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 provides an authorization for appropriations from the Customs Commercial and Homeland Security Automation Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment (ACE) computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security.

Section 311(b)(3) of the Customs Border Security Act of 2002 requires the Commissioner of Customs to prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report demonstrating that the development and establishment of the Automated Commercial Environment computer system is being carried out in a cost-effective manner and meets the modernization requirements of title VI of the North American Free Trade Agreement Implementation Act.

House Amendment

Section 106(a) amends section 13031(f)(4)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to update fiscal years 2003 through 2005 to fiscal years 2016 through 2018, to update the amount to be allocated to ACE to “not less than \$153,736,000,” and to make clear that these funds shall be used to complete the development and implementation of ACE.

Section 106(b) amends section 311(b)(3) of the Customs Border Security Act of 2002 to require two reports from the Commissioner in regards to ACE. The Commissioner is required to submit a report no later than December 31, 2016, to the Senate Appropriations Committee and Finance Committee, and the House of Representatives Appropriations Committee and Ways and Means Committee, updates on the implementation of ACE, incorporation of all core trade processing capabilities, components that have not been implemented, and additional components needed to realize the full implementation and operation of the program. The Commissioner is required to submit a second report no later than September 30, 2017, providing updates to the relevant Congressional committees from the prior report, as well as evaluations on the effectiveness of implementation of ACE and details of the percentage of trade processed in ACE every month since September 30, 2016.

Section 106(c) directs the Comptroller General of the United States to submit a report to the Senate Appropriations Committee and Finance Committee, and House of Representatives Appropriations Committee and Ways and Means Committee, assessing the progress of other Federal agencies in accessing and utilizing ACE and identifying potential cost savings to the U.S. government, importers, and exporters upon full implementation and utilization of ACE.

Senate Amendment

Section 106 of the Senate amendment is the same as section 106 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 107. INTERNATIONAL TRADE DATA SYSTEM

Present Law

Section 411(d) of the Tariff Act of 1930 requires the Secretary of the Treasury to oversee the establishment of an electronic trade data interchange system, known as the International Trade Data System (ITDS). It further requires ITDS to be implemented no later than the date that ACE is fully implemented and mandates the participation of all federal agencies that require documentation for clearing or licensing cargo imports or exports.

House Amendment

Section 107 amends section 411(d) of the Tariff Act of 1930 to require the Secretary of Homeland Security to work with the head of each Federal agency participating in ITDS and the Interagency Steering Committee to ensure that each agency: 1) develops and maintains the necessary information technology infrastructure to support the operation of ITDS and to submit all data to ITDS electronically; 2) enters into a memorandum of understanding to provide information sharing between the agency and CBP for the operation and maintenance of ITDS; 3) identifies and transmits admissibility criteria and data elements required by the agency to authorize the release of cargo by CBP for incorporation into ACE, no later than June 30, 2016; and 4) utilizes ITDS as the primary means of receiving the standard set of data and other relevant documentation from users, no later than December 31, 2016.

Senate Amendment

Section 107 of the Senate amendment is the same as section 107 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 108. CONSULTATIONS WITH RESPECT TO MUTUAL RECOGNITION ARRANGEMENTS

Present Law

No provision.

House Amendment

Section 108(a) requires the Secretary of Homeland Security to consult with the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives at least thirty days before the initiation of mutual recognition arrangement negotiations and at least thirty days before entering into any mutual recognition arrangement.

Section 108(b) requires that the United States have as a negotiating objective in any negotiation for a mutual recognition arrangement with a foreign country on partnership programs to seek to ensure the compatibility of the foreign country's partnership program with the partnership programs of CBP in order to enhance security, trade facilitation, and trade enforcement.

Senate Amendment

Section 108 of the Senate amendment is the same as section 108 of the House bill, except that the Senate amendment does not include as a negotiating objective an enhancement of security when CBP seeks to ensure the compatibility of partnership programs of foreign countries. The amendments also differ in the recipients of the required report.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 109. COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE

Present Law

The Advisory Committee on Commercial Operations (COAC) of the United States Customs Service was established in the Omnibus Budget Reconciliation Act of 1987. The Department of the Treasury Order No. 100-16, effective May 23, 2003, specified that COAC would be administered jointly by the Department of the Treasury and Department of Homeland Security.

House Amendment

Section 109(a) requires the Secretary of the Treasury and the Secretary of Homeland Security to jointly establish a Commercial Customs Operations Advisory Committee (COAC).

Section 109(b) requires that COAC be comprised of 20 appointed individuals from the private sector, appointed without regard to political affiliation; the Commissioner of CBP and the Assistant Secretary of Treasury for Tax Policy, who shall co-chair meetings; and the Assistant Secretary for Policy of the Department of Homeland Security and the ICE Director, who shall serve as deputy co-chairs of meetings. Section 109(b) further requires that appointed private sector individuals be representative of individuals and firms affected by the commercial operations of CBP, and provides that individuals may be appointed to multiple 3-year terms but cannot serve more than two terms sequentially. The Secretaries of the Treasury and Homeland Security are authorized to transfer members to the COAC who are currently serving on the Advisory Committee on Commercial Operations of the United States Customs Service.

Section 109(c) establishes the duties of COAC, which shall be to: 1) advise the Secretaries of the Treasury and Homeland Security on all matters involving the commercial operations of CBP and the investigations of ICE; 2) provide recommendations to the Secretaries on improvements that CBP and ICE should make to their commercial operations and investigations; 3) collaborate in developing the agenda for COAC meetings; and 4) perform other functions relating to the commercial operations of CBP and the investigations of ICE as prescribed by law or as directed by the Secretaries.

Section 109(d) establishes that: 1) COAC shall meet at the call of the Secretary of the Treasury, the Secretary of Homeland Security, or two-thirds of the membership of COAC; 2) COAC shall meet at least four times each calendar year; and 3) that COAC meetings shall be open to the public unless the Secretary of the Treasury or the Secretary of Homeland Security determines that the meeting will include matters the disclosure of which would compromise the development of policies, priorities, or negotiating objectives or positions that could impact the commercial operations of CBP of the operations or investigations of ICE.

Section 109(e) requires COAC to submit an annual report to the Senate Committee on Finance and the House Committee on Ways and Means that describes the activities of COAC during the preceding fiscal year and sets forth any recommendations of COAC regarding the commercial operations of CBP.

Section 109(f) establishes that section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), relating to the termination of advisory committees, shall not apply to COAC.

Senate Amendment

Section 109 of the Senate amendment is the same as section 109 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment with a modification. The Conferees have agreed to strike Section 109(d)(2). The Conferees believe that COAC meetings should normally be open to the public. The Conferees recognize the need to close COAC meetings, in portion or in whole, when a meeting will include matters the disclosure of which would compromise the development of policies, priorities, or negotiating objectives or positions that could impact the operations of CBP or the operations or investigations of ICE. The Conferees agree, however, that the current procedures in the Federal Advisory Committee Act (5 U.S.C. App.) are sufficient to close COAC meetings, in portion or in whole, when necessary.

SECTION 110. CENTERS FOR EXCELLENCE AND EXPERTISE

Present Law

No provision.

House Amendment

Section 110(a) requires the Commissioner to develop and implement, in consultation with the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives, and the COAC established by section 109(a), Centers of Excellence and Expertise (CEE) throughout CBP that: 1) enhance the economic competitiveness of the United States; 2) improve enforcement efforts; 3) build upon CBP expertise in particular industry operations, supply chains, and compliance requirements; 4) promote the uniform implementation at each port of entry of policies and regulations relating to imports; 5) centralize the trade enforcement and trade facilitation efforts of CBP; 6) formalize an account-based approach to the importation of merchandise into the United States; 7) foster partnerships through the expansion of trade programs and other trusted trader programs; 8) develop applicable

performance measures to meet internal efficiency and effectiveness goals; and 9) when feasible, facilitate a more efficient flow of information between Federal agencies.

Section 110(b) requires the Commissioner to submit a report to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives no later than December 31, 2016 describing the scope, functions and structure of the CEEs; the effectiveness of the CEEs in improving enforcement efforts; the benefits to the trade community; applicable performance measurements; the performance of each CEE in facilitating trade; and any planned changes to the CEEs.

Senate Amendment

Section 110 of the Senate amendment is similar to section 110 of the House amendment except the House amendment requires the CEEs to use targeting information from the National Targeting Center at CBP, while the Senate amendment requires the CEEs to use targeting information from the Commercial Targeting Division established in the amendment. The amendments also differ in the recipients of the required report.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 111. COMMERCIAL RISK ASSESSMENT TARGETING AND TRADE ALERTS

Present Law

No provision.

House Amendment

Section 111(a) requires National Targeting Center (NTC) to establish methodologies for assessing the risk that imports may violate U.S. customs and trade laws and to issue trade alerts when the NTC determines cargo may violate such laws; assess the risk of cargo based on all information available to CBP through the Automated Targeting System, ACE, the Automated Entry System, ITDS, and TECS (formerly known as the “Treasury Enforcement Communications System”) or any successor systems, publicly available information, and information made available to the NTC by private sector entities; and, provide for the receipt and transmission to appropriate CBP offices of allegations from interested parties in the private sector of violations of the customs and trade laws of the United States relating to the priority trade issues described in section 111(a) of the House amendment (section 117 of the conference report).

Section 111(b) authorizes the Executive Director of the NTC to issue trade alerts to port directors when such person determines cargo may violate U.S. customs and trade laws. The

trade alert may direct further inspection or physical examination or testing of specific merchandise by the port personnel. A port director may determine not to carry out the direction of the trade alerts if the port director finds security interests justify such determination, and the port director notifies the Assistant Commissioner of the Office of Field Operations of such determination. The Assistant Commissioner of the Office of Field Operations must compile an annual report of all determinations by port directors to not implement trade alerts and include an evaluation of the utilization of trade alerts. This report must be submitted to Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives not later than December 31 each year. Section 111(b) further defines “inspection” as the comprehensive evaluation process used by CBP, other than physical examination or testing, to permit the entry of merchandise into the United States, or the clearance of merchandise for transportation in bond through the United States for the purposes of assessing duties, identifying restricted or prohibited items, and ensuring compliance with all applicable customs and trade laws and regulations administered by CBP.

Section 111(c) amends section 343(a)(3)(F) of the Trade Act of 2002 to establish that the information collected pursuant to regulations shall be used exclusively for ensuring cargo safety and security, prevent smuggling, and commercial risk assessment targeting, and shall not be used for any commercial enforcement purposes, including for determining merchandise entry.

Senate Amendment

Section 111(a) of the Senate amendment establishes a Commercial Targeting Division (CTD) at CBP by amending section 2(d) of the Act of March 3, 1927 (19 U.S.C. 2072(d)). The section requires the Secretary of Homeland Security to establish and maintain a Commercial Targeting Division (CTD) within CBP’s Office of International Trade at CBP. The CTD shall be comprised of headquarters staff led by an Executive Director, and individual National Targeting and Analysis Groups (NTAGs) led by Directors reporting to the Executive Director. The CTD shall develop and conduct commercial targeting with respect to cargo destined for the United States and issue trade alerts.

Section 111(a) requires the establishment of an NTAG for, at a minimum, each of the following priority trade issues (PTIs): 1) agricultural programs; 2) antidumping and countervailing duties; 3) import safety; 4) intellectual property rights; 5) revenue; 6) textiles and wearing apparel; and 7) trade agreements and preference programs. The Commissioner may alter the PTIs in consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

The duties of each NTAG include: 1) directing the trade enforcement and compliance assessment activities of CBP as they relate to the each NTAG’s PTI; 2) facilitating, promoting, and coordinating cooperation and the exchange of information between CBP, ICE, and other relevant Federal departments and agencies regarding each NTAG’s PTI; and 3) serving as the primary liaison between CBP and the public regarding United States Government activities related to each NTAG’s PTI.

Section 111(a) also requires the CTD to establish methodologies for assessing the risk that cargo destined for the United States may violate U.S. customs and trade laws and for issuing Trade Alerts. The CTD should assess the risk of cargo based on all information available to CBP through the Automated Targeting System, ACE, the Automated Commercial System, the Automated Export System, ITDS, and TECS (formerly known as the “Treasury Enforcement Communications System”), the case management system of ICE or any successor systems, and publicly available information. The CTD should also use information provided by private sector entities and coordinate targeting efforts with other Federal agencies.

The section authorizes the CTD Executive Director and NTAG Directors to issue Trade Alerts to port directors to ensure compliance with U.S. customs and trade laws. The Trade Alert may direct further inspection or physical examination or testing of merchandise by port personnel if certain risk-assessment thresholds are met. A port director may determine not to carry out the direction of the Trade Alerts if the port director finds such a determination is justified by security interests and the port director notifies the Assistant Commissioners of the Office of Field Operations and the Office of International Trade of such a determination. The Assistant Commissioner of the Office of Field Operations must compile an annual report of all determinations by port directors to override Trade Alerts and evaluate the utilization of Trade Alerts.

Section 111(b) amends section 343(a)(3)(F) of the Trade Act of 2002 (19 U.S.C. 2071 note), to indicate that information collected pursuant to the regulations shall be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and shall not be used for any commercial enforcement purposes, including for determining merchandise entry.

Conference Agreement

The conference agreement follows the House amendment with modifications. It requires the NTC to coordinate with the CBP Office of Trade, as appropriate, in carrying out its duties under this section and to notify each interested party in the private sector that has submitted an allegation of any violation of the customs and trade laws of the United States or any civil or criminal action taken by CBP or any other agency resulting from the allegation. It also provides that the first report under Section 111(b)(3) is due December 31, 2016.

SECTION 112. REPORT ON OVERSIGHT OF REVENUE PROTECTION AND ENFORCEMENT MEASURES

Present Law

No provision.

House Amendment

Section 112(a) requires the Inspector General of the Department of the Treasury to submit a report, not later than March 31, 2016 and biennially thereafter, to the Senate Committee on

Finance and the House Committee on Ways and Means that assesses the effectiveness of the measures taken by CBP with respect to protection of the revenue and to measure accountability and performance with respect to protection of the revenue.

Section 112(b) establishes that each report required by section 112(a) shall cover the period of two fiscal years ending on September 30 of the calendar year preceding the submission of the report.

Senate Amendment

Section 112 of the Senate amendment is the same as section 112 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment except that it provides an additional three months for the issuance of the first report required under Section 112(a).

SECTION 113. REPORT ON SECURITY AND REVENUE MEASURES WITH RESPECT TO MERCHANDISE TRANSPORTED IN BOND

Present Law

No provision.

House Amendment

Section 113(a) requires the Secretaries of Homeland Security and the Treasury to jointly submit a report to the Senate Committee on Finance and the House Committee on Ways and Means on efforts undertaken by CBP to ensure the secure transportation of merchandise in bond through the United States and the collection of revenue owed upon the entry of such merchandise into the United States for consumption. The report must be submitted no later than December 31 of 2016, 2017, and 2018.

Section 113(b) requires that each report required by section 113(a) shall include information on: 1) the overall number of entries of merchandise for transportation in bond through the United States; 2) the ports at which merchandise arrives in the United States for transportation in bond and at which records of arrival of such merchandise are generated; 3) the average time taken to reconcile such records with the records at the final destination of merchandise in the United States to demonstrate that the merchandise reaches its final destination or is re-exported; 4) the average time taken to transport merchandise in bond from the port at which the merchandise arrives in the United States to its final destination in the United States; 5) the total amount of duties, taxes, and fees owed with respect to shipments of merchandise transported in bond and the total of such duties, taxes, and fees paid; 6) the total number of notifications by carriers of

merchandise being transported in bond that the destination of merchandise has changed; and 7) the number of entries that remain unreconciled.

Senate Amendment

Section 113 of the Senate amendment is the same as section 113 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 114. IMPORTER OF RECORD PROGRAM

Present Law

No provision.

House Amendment

Section 114(a) requires the Secretary of Homeland Security to establish an importer of record program to assign and maintain importer of record numbers.

Section 114(b) requires the Secretary to ensure that CBP develops criteria that importers must meet in order to obtain an importer of record number, provides a process by which importers are assigned importer of record numbers, maintains a centralized database of importer of record numbers, evaluates and maintains accuracy of the database if importer information changes, and takes measures to ensure that duplicate importer of record numbers are not issued.

Section 114(c) requires the Secretary of Homeland Security to submit a report to the Senate Committee on Finance and the House Committee on Ways and Means on the establishment of the importer of record program no later than one year after enactment of the Trade Facilitation and Trade Enforcement Act of 2015.

Senate Amendment

Section 114 of the Senate amendment is the same as section 114 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 115. ESTABLISHMENT OF IMPORTER RISK ASSESSMENT PROGRAM

Present Law

No provision.

House Amendment

Section 115(a) requires the Commissioner to establish a new importer program that directs CBP to adjust bond amounts for new importers based on the level of risk assessed by CBP for revenue protection.

In establishing this program, section 115(b) requires CBP to: 1) develop risk-based criteria to assess new importers; 2) develop risk assessment guidelines for new importers to determine if and to what extent to adjust the bond amounts and increase screening of imports of new importers; 3) develop procedures to ensure increased oversight of imported products of new importers relating to the enforcement of priority trade issues; 4) develop procedures to ensure increased oversight by Centers of Excellence and Expertise; and 5) establish a centralized database of new importers to ensure the accuracy of information provided by new importers pursuant to the requirements of this section.

Senate Amendment

Section 115 of the Senate amendment is the same as section 115 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment except that the Commissioner is required to establish a program that directs CBP to adjust bond amounts for importers, including new importers and non-resident importers, based on the level of risk assessed by CBP for revenue protection.

In establishing this program, CBP is required to: 1) develop risk-based guidelines to determine if and to what extent to adjust bond amounts and screen imported products of importers, including new and non-resident importers; 2) develop procedures to ensure increased oversight of imported products of new importers, including new non-resident importers, relating to the enforcement of the priority trade issues; 3) develop procedures to ensure increased oversight of imported products of new importers, including new non-resident importers, by Centers of Excellence and Expertise; and 4) establish a centralized database of new importers, including new non-resident importers, to ensure the accuracy of information provided by such importers pursuant to the requirements of this section. The requirements of this section shall not apply to any importer that is a validated Tier 2 or Tier 3 participant in the Customs-Trade Partnership Against Terrorism program established under subtitle B of title II of the SAFE Port Act (6 U.S.C. 961 et seq.).

No later than two years after the enactment of this Act, the Inspector General of the Department of Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report detailing: 1) the risk assessment guidelines required by this section; 2) the procedures developed to ensure increased

oversight of imported products of new importers, including new non-resident importers, relating to the enforcement of priority trade issues; 3) the procedures developed to ensure increased oversight of imported products of new importers, including new non-resident importers, by Centers of Excellence and Expertise; and 4) the number of bonds adjusted based on the risk assessment guidelines required by this section.

SECTION 116. CUSTOMS BROKER IDENTIFICATION OF IMPORTERS

Present Law

Section 641 of the Tariff Act of 1930 establishes requirements and procedures for customs brokers in acquiring a license or permit, disciplinary proceedings, and judicial appeals of revocation or suspension of a broker's license.

House Amendment

Section 116(a) amends section 641 of the Tariff Act of 1930 by inserting a new provision that requires the Secretary of Homeland Security to prescribe regulations setting minimum standards for customs brokers and importers regarding the identity of the importer. The regulations shall, at a minimum, require customs brokers and importers, upon adequate notice, to comply with procedures for collecting the identity of importers, including nonresident importers, seeking to import merchandise into the United States, and maintain records of the information used to substantiate a person's identity. This section further provides that a customs broker will be penalized, at the discretion of the Secretary, in an amount not exceeding \$10,000 for each violation of the regulations concerning the collection and maintenance of importer's identity and identifying information, and the broker's license or permit will be subject to revocation or suspension, pursuant to procedures established in section 641(d) of the Tariff Act of 1930.

Section 116(b) requires the Commissioner to submit a report to Congress no later than 180 days after enactment of this bill containing recommendations for determining the most timely and effective way to require foreign nationals to provide customs brokers with appropriate and accurate information (comparable to that which is required of United States nationals concerning the identity, address and other related information), and for establishing a system for customs brokers to review information maintained by relevant Federal agencies for purposes of verifying the identities of importers, including nonresident importers, seeking to import merchandise into the United States.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment except that the regulations shall, at a minimum: 1) identify the information that an importer, including a nonresident importer, must

submit to a broker in order to verify the identity of the importer; 2) identify the reasonable procedures that a broker must perform to verify the authenticity of the information collected from the importer; and 3) require the broker to maintain records of the information collected to verify an importer's identity. Further, the penalties required under this section shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in 19 U.S.C. 1641(d)(2)(A).

SECTION 117. PRIORITY TRADE ISSUES

Present Law

No provision.

House Amendment

Section 118(a) requires the Commissioner to establish the following as priority trade issues within CBP: 1) agriculture programs; 2) antidumping and countervailing duties; 3) import safety; 4) intellectual property rights; 5) revenue; 6) textiles and wearing apparel; and 7) trade agreements and preference programs.

Section 118(b) authorizes the Commissioner to establish new priority trade issues and eliminate, consolidate or otherwise modify them upon the determination that it is necessary and appropriate to do so with notification to the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives no later than 60 days before such changes are to take effect.

Senate Amendment

Section 111 of the Senate amendment includes a list of priority trade issues (PTI) that is the same as the PTIs identified in section 118 of the House amendment. The Senate amendment, however, requires notification by CBP not later than 30 days after the establishment of a new PTI. The amendments also differ in the recipients of the required report.

Conference Agreement

The conference agreement follows the House amendment and requires the Commissioner to notify the committees of 1) new PTIs no later than 30 days after the establishment of the new PTI, and 2) a summary of proposals to eliminate, consolidate or otherwise modify existing PTIs no later than 60 days before such changes are to take effect.

SECTION 118. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED

Present Law

No provision.

House Amendment

Section 119 defines the term “appropriate congressional committees,” as used in title I of the Trade Facilitation and Trade Enforcement Act of 2015, as the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and the Committee on Homeland Security of the House of Representatives.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

TITLE II—IMPORT HEALTH AND SAFETY

SECTION 201. INTERAGENCY IMPORT SAFETY WORKING GROUP

Present Law

No provision.

House Amendment

Section 201(a) establishes an Interagency Import Safety Working Group.

Section 201(b) sets forth the membership of the Working Group and designates the Secretary of Homeland Security as the Chair and the Secretary of Health and Human Services as the Vice-Chair. The membership of the Working Group also shall include the Secretaries of the Treasury, Commerce and Agriculture; the United States Trade Representative; the Director of the Office of Management and Budget; the Commissioners of CBP and the Food and Drug Administration; the Chairman of the Consumer Product Safety Commission; the Director of ICE; and the head of any other Federal agency designated by the President to participate.

Section 201(c) requires the Working Group to 1) consult on the development of a joint import safety rapid response plan required under section 202; 2) evaluate federal government and agency resources, plans, and practices to ensure the safety of U.S. imports and the expeditious entry of such merchandise; 3) review the engagement and cooperation of foreign governments and foreign manufacturers; 4) identify best practices, in consultation with the private sector, to assist U.S. importers in ensuring import health and safety of imported merchandise; 5) identify best practices to improve Federal, state, and local coordination in responding to import health

and safety threats; and 6) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

Senate Amendment

Section 201 of the Senate amendment is the same as section 201 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 202. JOINT IMPORT SAFETY RAPID RESPONSE PLAN

Present Law

No provision.

House Amendment

Section 202(a) requires the Secretary of Homeland Security, in consultation with the Working Group, to develop a joint import safety rapid response plan (the Plan) that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers.

Section 202(b) sets forth the contents of the Plan, which must define 1) the authorities and responsibilities of CBP and other Federal agencies in responding to an import health or safety threat; 2) the protocols and practices used in responding to such threats; 3) the mitigation measures CBP and other agencies must take when responding to such threats after the incident to ensure the resumption of the entry of merchandise into the United States; and 4) exercises CBP should take with Federal, State, and local agencies as well as the private sector to simulate responses to such threats.

Section 202(c) requires the Secretary of Homeland Security to review and update the joint import safety rapid response plan, as appropriate, after conducting exercises under subsection (d).

Section 202(d) requires the Commissioner, in conjunction with Federal, State, and local agencies, to conduct exercises to test and evaluate the Plan. When conducting exercises, the Commissioner must make allowances for the specific needs of the port where the exercise is occurring, base evaluations on current import risk assessments, and ensure that the exercises are conducted consistent with other national preparedness plans. The Secretary of Homeland Security and Commissioner must ensure that the testing and evaluations use performance measures in order to identify best practices and recommendations in responding to import health and safety threats and develop metrics with respect to the resumption of the entry of merchandise into the United States. Best practices and recommendations should then be shared among relevant stakeholders and incorporated into the Plan.

Senate Amendment

Section 202 of the Senate amendment is the same as section 202 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 203. TRAINING

Present Law

No provision.

House Amendment

Section 203 requires the Commissioner to ensure that CBP port personnel are trained to effectively enforce U.S. import health and safety laws.

Senate Amendment

Section 203 of the Senate amendment is the same as section 203 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE III—IMPORT-RELATED PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS

SECTION 301. DEFINITION OF INTELLECTUAL PROPERTY RIGHTS

Present Law

No provision.

House Amendment

Section 301 defines “intellectual property rights,” as used in this title, as copyrights, trademarks, and other forms of intellectual property rights that are enforced by CBP and ICE.

Senate Amendment

Section 301 of the Senate amendment is the same as section 301 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 302. EXCHANGE OF INFORMATION RELATED TO TRADE ENFORCEMENT

Present Law

Section 818(g) of the 2012 National Defense Authorization Act (NDAA) authorizes, but does not require, CBP to share unredacted images and samples with right holders if CBP suspects a product of infringing a trademark.

House Amendment

Section 302 amends the Tariff Act of 1930 to create section 628A, which requires CBP to share certain information about merchandise suspected of violating intellectual property rights (IPR) prior to seizure if CBP determines that examination or testing of the merchandise by the right holder would assist in determining if there is a violation, except in such cases as would compromise an ongoing law enforcement investigation or national security. Section 302 supersedes section 818(g) of the 2012 NDAA.

Senate Amendment

Section 302 of the Senate amendment is the same as section 302 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 303. SEIZURE OF CIRCUMVENTION DEVICES

Present Law

Section 596(c)(2) of the Tariff Act of 1930 specifies a number of items that are to be seized by CBP when presented for importation, including “merchandise or packaging in which copyright, trademark, or trade name protection violations are involved.”

House Amendment

Section 303(a) expands CBP’s seizure and forfeiture authority to explicitly include unlawful circumvention devices, as defined under subsection (a)(2) or (b)(1) of section 1201 of title 17, United States Code.

Section 303(b) directs CBP to disclose certain information to right holders about the seized merchandise within 30 days of seizure, if the right holder is included on a list maintained by

CBP. The information that must be provided is the same information provided to copyright owners under CBP regulations for merchandise seized under copyright laws. CBP must prescribe regulations establishing procedures that implement this process within one year of the date of enactment of this bill.

Senate Amendment

Section 303 of the Senate amendment is the same as section 303 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 304. ENFORCEMENT BY U.S. CUSTOMS AND BORDER PROTECTION OF WORKS FOR WHICH
A COPYRIGHT REGISTRATION IS PENDING

Present Law

No provision.

House Amendment

Section 304 directs the Secretary of Homeland Security to establish a process for the enforcement of copyrights for which the owner has submitted an application for registration with the U.S. Copyright Office to the same extent and in the same manner as if the copyright were registered with the Copyright Office.

Senate Amendment

Section 304 of the Senate amendment is the same as section 304 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 305. NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER

Present Law

No provision.

House Amendment

Section 305(a) establishes within ICE the National Intellectual Property Rights Coordination Center (IPR Center), which shall be headed by an Assistant Director.

Section 305(b) assigns the Assistant Director duties, including: 1) coordinating the investigation of sources of merchandise that infringes intellectual property rights (IPR); 2) conducting and coordinating training with other domestic and international law enforcement agencies to improve IPR enforcement; 3) coordinating, with CBP, U.S. activities to prevent the importation or exportation of IPR infringing merchandise; 4) supporting the international interdiction of merchandise destined for the U.S. that infringe IPR; 5) collecting and integrating information regarding infringements; 6) developing a means to receive and organize information regarding infringement of IPR; 7) disseminating information regarding infringement of IPR to other Federal agencies; 8) developing risk-based alert systems in coordination with CBP; and 9) coordinating with U.S. Attorneys' offices to investigate and prosecute IPR crime.

Section 305(c) requires the Assistant Director to coordinate with federal, state, local and international law enforcement, intellectual property, and trade agencies, as appropriate, in carrying out the IPR Center's duties.

Section 305(d) requires the Assistant Director to: 1) conduct outreach to the private sector to determine trends in and methods of infringing IPR; and 2) coordinate public and private-sector efforts to combat the infringement of IPR.

Senate Amendment

Section 305 of the Senate amendment is the same as section 305 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 306. JOINT STRATEGIC PLAN FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Present Law

No provision.

House Amendment

Section 306 requires the Commissioner and Director to include in the joint strategic plan on trade facilitation and enforcement required under section 105 of the amendment the following: 1) a description of DHS's IPR enforcement efforts; 2) a list of the top 10 ports, by volume and value, where CBP seized IPR infringing goods in the preceding two years; and 3) a recommendation of the optimal allocation of personnel to ensure CBP and ICE are effectively enforcing IPR.

Senate Amendment

Section 306 of the Senate amendment is the same as section 306 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 307. PERSONNEL DEDICATED TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Present Law

No provision.

House Amendment

Section 307(a) requires the Commissioner to ensure sufficient personnel are assigned throughout CBP with responsibility to enforce intellectual property rights with respect to U.S. imports.

Section 307(b) requires the Commissioner to assign at least three full-time CBP employees to the IPR Coordination Center established under section 305 and to ensure that sufficient personnel are assigned to U.S. ports of entry to carry out the directives of the IPR Coordination Center established under section 305.

Senate Amendment

Section 307 of the Senate amendment is the same as section 307 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 308. TRAINING WITH RESPECT TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Present Law

No provision.

House Amendment

Section 308(a) requires the Commissioner to effectively train CBP port personnel to detect and identify IPR infringing imported goods.

Section 308(b) requires the Commissioner to work with the private sector to identify opportunities for collaboration with respect to training for officers of the agency to enforce IPR.

Section 308(c) requires the Commissioner to consult with private sector entities to identify technologies which can cost-effectively identify infringing merchandise, and to provide for cost-effective training for CBP officers with regard to the use of such technologies.

Section 308(d) permits CBP to receive donations of technology to improve IPR enforcement.

Senate Amendment

Section 308 of the Senate amendment is the same as section 308 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 309. INTERNATIONAL COOPERATION AND INFORMATION SHARING

Present Law

Section 628 of the Tariff Act of 1930 permits CBP to exchange information or documents with foreign customs and law enforcement agencies if the Secretary of the Treasury reasonably believes the exchange of information is necessary to comply with CBP laws and regulations, to enforce a trade agreement to which the United States is a party, to assist in investigative, judicial and quasi-judicial proceedings in the United States, or for any similar action undertaken by a foreign law enforcement agency in a foreign country.

House Amendment

Section 309 requires the Secretary of Homeland Security to coordinate with competent foreign law enforcement agencies to enhance IPR enforcement, including by information sharing and technical assistance, and requires the Commissioner and the Director of ICE to lead interagency efforts to collaborate with law enforcement and customs authorities of foreign countries.

Senate Amendment

Section 309 of the Senate amendment is the same as section 309 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 310. REPORT ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

Present Law

No provision.

House Amendment

Requires the Commissioner of CBP and the Director of ICE to jointly submit to the Committee on Finance and Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Ways and Means and Committee on Homeland Security of the House of Representatives a report that includes: 1) information regarding the number, and a description of, certain efforts to investigate and prosecute IPR infringements; 2) an estimate of the average time required by the CBP Office of International Trade to respond to a request from port personnel for advice with respect to whether merchandise detained by the Agency infringed IPR, distinguished by types of IPR infringed; 3) a summary of the outreach efforts of CBP and ICE with respect to interdiction, investigation and information sharing between certain agencies related to the infringement of IPR, collaboration with the private sector, and coordination with foreign governments; 4) a summary of the efforts of CBP and ICE to address the challenges with respect to the enforcement of IPR presented by Internet commerce and the transit of small packages and an identification of the volume, value, and type of merchandise seized for infringing IPR as a result of such efforts; and 5) a summary of training relating to the enforcement of IPR conducted under section 308 and expenditures for such training.

Senate Amendment

Section 310 of the Senate amendment is the same as section 310 of the House amendment with the exception of a difference in the recipients of the report required in this section.

Conference Agreement

The conference agreement follows the House amendment, except that it changes the due date of the report to September 30th of each year.

SECTION 311. INFORMATION FOR TRAVELERS REGARDING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS

Present Law

No provision.

House Amendment

Section 311(a) requires the Secretary of Homeland Security to develop and implement an educational campaign for travelers entering or departing the United States on the legal, economic, and public health and safety implications of importing IPR infringing goods into the United States.

Section 311(b) requires the Commissioner to ensure that all versions, including the electronic versions, of CBP Form 6059B (customs declaration), or a successor form, include a written warning to inform travelers arriving in the United States that importation of merchandise that infringes IPR may subject travelers to civil or criminal penalties and may pose serious risks to health and safety.

Senate Amendment

Section 311 of the Senate amendment is the same as section 311 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE IV—PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

SECTION 401. SHORT TITLE

Present Law

No provision.

House Amendment

Section 401 sets forth the short title as the “Preventing Recurring Trade Evasion and Circumvention Act.”

Senate Amendment

Section 401 of the Senate amendment sets forth the short title as the “Enforcing Orders and Reducing Customs Evasion Act of 2015.”

Conference Agreement

The conference agreement sets forth the short title as the “Enforce and Protect Act of 2015.”

SECTION 402. DEFINITIONS

Present Law

No provision.

House Amendment

Section 402 establishes the applicable definitions for this title.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 403. APPLICATION TO CANADA AND MEXICO

Present Law

Article 1902 of the North American Free Trade Agreement (NAFTA) (19 U.S.C. 3438) states that any amendments to title VII of the Tariff Act of 1930, or to any other statute which provides for judicial review of determinations under that title or the standard of review to be applied, shall apply to goods from a NAFTA country only to the extent specified in the amendment.

House Amendment

Section 403 provides that this title applies to goods from Canada and Mexico, the current members of NAFTA.

Senate Amendment

Section 402(e) of the Senate amendment is the same as section 403 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SUBTITLE A—ACTIONS RELATING TO ENFORCEMENT OF TRADE
REMEDY LAWS

SECTION 411. TRADE REMEDY LAW ENFORCEMENT DIVISION

Present Law

No provision.

House Amendment

Section 411(a) establishes within the Office of International Trade of CBP a Trade Law Remedy Enforcement Division. The Trade Law Remedy Division's duties are to: develop and administer policies to prevent and counter evasion; direct enforcement and compliance assessment activities concerning evasion; develop and conduct commercial risk assessment targeting with respect to potentially evading cargo destined for the United States; issuing Trade Alerts regarding evading imports; and develop policies for the application of single entry and continuous bonds to sufficiently protect the collection of antidumping and countervailing duties.

Section 411(b) establishes the Director of the Trade Law Remedy Enforcement Division responsible for: directing the trade enforcement and compliance assessment activities of CBP regarding evasion; improving cooperation and the exchange of information between CBP, ICE, and other relevant agencies regarding evasion; notifying the Department of Commerce and the International Trade Commission of any findings, determinations, or criminal actions taken by CBP or other Federal agency regarding evasion; and serving as the primary liaison between CBP and the public regarding United States Government activities concerning evasion. The Director's liaison responsibilities include: receiving and transmitting to the appropriate CBP office parties' allegations of evasion; provide information to a party that submitted an allegation of evasion on the status of CBP's consideration of the allegation and decision to pursue or not pursue any administrative inquiries or other actions; request from the party that submitted an allegation of evasion any additional information that may be relevant for CBP determining whether to initiate an administrative inquiry or take any other action regarding the allegation; notify on a timely basis the party that submitted such an allegation of the results of any administrative, civil or criminal actions taken by CBP or other Federal agency regarding evasion as a direct or indirect result of the allegation; provide technical assistance and advice to eligible small businesses to enable such businesses to prepare and submit allegations of evasion; develop guidelines on the types and nature of information that may be provided in allegations of evasion; and regularly consult with relevant parties and organizations regarding the development and implementation of regulations, interpretations, and policies related to countering evasion.

Section 411(c) establishes within the Trade Remedy Law Enforcement Division a National Targeting and Analysis Group (NTAG) dedicated to preventing and countering evasion through establishing targeted risk assessment methodologies and standards.

Section 411(d) requires the Director of the Trade Remedy Law Enforcement Division to issue Trade Alerts to port directors as required to inspect imported merchandise, require additional bonds, and take other actions necessary to prevent evasion.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment, except also adding that the duties of the Trade Remedy Law Enforcement Division and its director include those policies and activities related to implementing section 517 of the Tariff Act of 1930, as added by section 421 of this Act. The conference agreement establishes the Trade Law Remedy Enforcement Division in the Office of Trade, the successor office to the Office of International Trade.

SECTION 412. COLLECTION OF INFORMATION ON EVASION OF TRADE REMEDY LAWS

Present Law

No provision.

House Amendment

Section 412(a) directs CBP to exercise all existing information collection authorities to identify evasion and authorizes CBP to issue questionnaires to collect information on alleged evasion from persons who have information relevant to an allegation of evasion.

If a person fails to cooperate to provide requested information, section 412(b) authorizes CBP to apply an adverse inference against the interests of that party in determining if evasion occurred.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment, except also clarifying that an adverse inference may be used with respect to a person alleged to have entered covered merchandise through evasion, or a foreign producer or exporter of covered merchandise alleged to have entered through evasion regardless of whether another person involved in the same transaction or transactions has provided requested information.

SECTION 413. ACCESS TO INFORMATION

Present Law

Section 777(b)(1)(A)(ii) of the Trade Act of 1930, at 19 U.S.C. 1677f(b)(1)(A)(ii), authorizes the Department of Commerce and the International Trade Commission to transfer to CBP information that was designated proprietary by the person submitting the information, for purposes of conducting an investigation regarding fraud.

House Amendment

Section 413(a) amends section 777(b)(1)(A)(ii) of the Trade Act of 1930 by allowing the Department of Commerce and the International Trade Commission to transfer information designated proprietary by the person submitting the information to CBP for investigations of negligence and gross negligence, rather than just for fraud.

Section 413(b) authorizes the Secretary of the Treasury to provide to the Department of Commerce or the International Trade Commission any information that would enable the Department of Commerce or the International Trade Commission to assist in identifying imports evading antidumping or countervailing duties.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 414. COOPERATION WITH FOREIGN COUNTRIES ON PREVENTING EVASION OF TRADE
REMEDY LAWS

Present Law

No provision.

House Amendment

Section 414(a) requires the negotiation of bilateral agreements with other countries' customs authorities to cooperate on preventing evasion. These agreements should include provisions allowing the sharing of information to determine if evasion occurred, verification of such information, allowing officials from the importing country to participate in such verifications, and, if a country refuses to allow officials from an importing country to participate in a verification, allowing the importing country to take such lack of cooperation into account in its trade enforcement and compliance activities.

Section 414(b) allows CBP to take into account whether a country is a party to a bilateral agreement regarding cooperation on evasion and the extent to which that country is cooperating under such an agreement for the purposes of trade enforcement and compliance assessment of that country's exports regarding potential evasion.

Section 414(c) requires an annual report to Congress on the status of ongoing negotiations of bilateral cooperation agreements regarding evasion, the terms of any such completed agreements, and any cooperation and other activities conducted as a result of such agreements.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 415. TRADE NEGOTIATING OBJECTIVES

Present Law

No provision.

House Amendment

Section 415 establishes obtaining the commitments for cooperation on evasion described in section 414 as a negotiating objective for current trade agreements under negotiation and future agreements.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SUBTITLE B—INVESTIGATION OF EVASION OF TRADE REMEDY LAWS

SECTION 421. PROCEDURES FOR INVESTIGATION OF EVASION OF ANTIDUMPING AND
COUNTERVAILING DUTY ORDERS

Present Law

No provision.

House Amendment

Section 421 grants the Department of Commerce the authority to administratively investigate evasion and order CBP to collect or preserve for collection antidumping and countervailing duties owed on evading imports. In addition to defining required terms, section 421(a) excludes from these investigations evasion that is the result of clerical errors unless the errors reflect a pattern of negligent conduct.

Section 421(b) establishes the procedures for evasion investigations. The Department of Commerce may self-initiate an evasion investigation, or may initiate an investigation as a result of an adequate petition from an interested party or a referral from CBP. CBP is required to refer a matter to the Department of Commerce if CBP has information that evasion occurred, but cannot determine if the merchandise is in fact subject to an antidumping or countervailing duty order. The Department of Commerce has 30 days after receiving a petition or referral to determine whether to initiate an investigation. The Department of Commerce is to notify CBP if it initiates an evasion investigation as a result of a petition from an interested party.

CBP is required to provide documents and information requested by the Department of Commerce for an evasion investigation within 10 days after the request and these documents and information will be available to authorized representatives of interested parties under an administrative protective order. If an authorized representative of an interested party has access to business proprietary information from another Department of Commerce proceeding under an administrative protective order issued in that proceeding and this information is relevant to an evasion investigation, the authorized representative may submit this information on the record of the evasion investigation. The Department of Commerce is authorized to issue questionnaires to interested parties in an evasion investigation and to make an adverse inference against a party that fails to cooperate to the best of its ability.

The Department of Commerce is to issue a preliminary determination of whether there is a reasonable basis to believe or suspect evasion within 90 days after initiation of the investigation and a final determination of evasion within 300 days after initiation. If the Department of Commerce makes an affirmative preliminary determination of evasion, CBP is to suspend liquidation of entries of evading merchandise on or after the preliminary determination and any unliquidated entries before that date. A cash deposit is also required for such entries reflecting the applicable rates previously determined by the Department of Commerce.

If the Department of Commerce makes an affirmative final determination of evasion, CBP is to assess the applicable antidumping and countervailing duties on entries of evading merchandise, including such entries that were already liquidated, and to review and reassess the amount of bond or other security the importer must post for entries of such merchandise on or after the date of the final determination. The Department of Commerce may also instruct CBP to require a cash deposit or bond on entries of such merchandise on or after the date of the final determination in the amount of antidumping and countervailing duties potentially owed on the merchandise. If the Department of Commerce cannot determine the amount of the applicable antidumping and countervailing duty rate or cash deposit because the actual producer or exporter of the merchandise is unknown, then the highest amount for any producer or exporter will be applied. If the Department of Commerce makes a negative final determination of evasion, then any suspension of liquidation is ended and any cash deposits refunded. The preliminary and

final determinations in an evasion investigation are to be published in the Federal Register, as well as the notice of initiation of such an investigation.

If the Department of Commerce makes an affirmative preliminary or final determination of evasion, it is required to transmit the administrative record of the investigation to CBP and any other agency that requests the administrative record. After making a final determination, the Department of Commerce may also provide importers information discovered in an investigation that would help educate importers on complying with importing merchandise in accordance with U.S. laws and regulations.

The Department of Commerce and CBP are to establish procedures to maximize cooperation and communication between the two agencies to quickly, efficiently, and accurately investigate allegations of evasion. The Department of Commerce will issue annual reports to Congress on the conduct of evasion investigations.

Section 421(b) makes a technical amendment to the table of contents for title VII of the Trade Act of 1930 to reflect this subtitle.

Section 421(c) establishes that the Department of Commerce's final determination in an evasion investigation is subject to judicial review by the U.S. Court of International Trade.

Section 421(d) instructs the Department of Commerce and CBP to issue regulations to implement this subtitle.

Section 421(e) provides that the amendments in this subtitle are effective 180 days after enactment and applies to merchandise entered on or after the date of enactment.

Senate Amendment

Section 402 requires that if the Commissioner makes an affirmative determination of evasion, the Commissioner shall: 1) suspend the liquidation of any unliquidated entries of the covered merchandise that is the subject of the allegation entered between the date of initiation and the date of the determination; 2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; 3) notify Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; 4) require importers of such covered merchandise to post cash deposits and assess duties on the covered merchandise as directed by Commerce; and 5) take such additional enforcement measures as the Commissioner deems appropriate, including initiating proceedings for related violations of law, modifying CBP's procedures for identifying future evasion, requiring a deposit of estimated duties on future entries, and referring the matter to ICE for civil or criminal investigation. The section also requires the Department of Commerce to promptly provide the Commissioner with cash deposit rates and antidumping and countervailing duty rates, and establishes a special rule for cases in which the producer or exporter is unknown.

Under section 402, the Commissioner must determine within 90 calendar days of initiation of an evasion investigation whether there is a reasonable suspicion that entries of covered

merchandise that are the subject of the allegation were entered through evasion. If the Commissioner decides there is a reasonable suspicion, the Commissioner shall: 1) suspend the liquidation of any unliquidated entries of the covered merchandise entered after the date of initiation; 2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; and 3) take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring a single transaction bond or posting cash deposits with respect to entries of covered merchandise.

Section 402 requires that if the Commissioner makes an affirmative determination of evasion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise that is the subject of the allegation entered between the date of initiation and the date of the determination; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; (3) notify Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; (4) require importers of such covered merchandise to post cash deposits and assess duties on the covered merchandise as directed by Commerce; and (5) take such additional enforcement measures as the Commissioner deems appropriate, including initiating proceedings for related violations of law, modifying CBP's procedures for identifying future evasion, requiring a deposit of estimated duties on future entries, and referring the matter to ICE for civil or criminal investigation. The section also requires the Department of Commerce to promptly provide the Commissioner with cash deposit rates and antidumping and countervailing duty rates, and establishes a special rule for cases in which the producer or exporter is unknown.

Under section 402, the Commissioner must determine within 90 calendar days of initiation of an evasion investigation whether there is a reasonable suspicion that entries of covered merchandise that are the subject of the allegation were entered through evasion. If the Commissioner decides there is a reasonable suspicion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise entered after the date of initiation; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; and (3) take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring a single transaction bond or posting cash deposits with respect to entries of covered merchandise.

Section 402 provides a period of 30 business days for interested party who made the allegation of evasion or the importer of the covered merchandise alleged to have entered the merchandise subject to the evasion determination to request de novo administrative review by the Commissioner after notification of a determination. Section 402 establishes that judicial review shall be available to the interested party alleging evasion or the party found to have entered merchandise subject to the investigation through evasion of any administrative review of the evasion determination by CBP. Section 402 also sets out a rule of construction with respect to other civil and criminal proceedings so that no determination under subsection (c) or action taken by the Commissioner pursuant to the section shall be construed to limit the authority to carry out, or the scope of, any other proceeding or investigation pursuant to any other provision of Federal or State law.

Conference Agreement

The conference agreement follows the Senate amendment except for the following changes. The definition of the term “interested party” is expanded to include a foreign manufacturer, producer, or exporter, or the United States importer, of covered merchandise, or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise.

The Commissioner has 15 business days after receiving an evasion allegation or a referral to determine whether to initiate an investigation.

If the Commissioner is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall refer the matter to the Department of Commerce to determine whether the merchandise is covered merchandise. The Department of Commerce is to make this determination pursuant to its applicable statutory and regulatory authority, and the determination shall be subject to judicial review under 19 U.S.C. 1516a(a)(2). The Conferees intend that such determinations include whether the merchandise at issue is subject merchandise under 19 U.S.C. 1677j. The time required for the Department of Commerce to determine whether the merchandise at issue is covered merchandise shall not be counted in calculating any deadlines under the procedures created by this section.

The Commissioner has 300 calendar days after the date on which an evasion investigation was initiated to make a determination as to whether the covered merchandise was entered through evasion. If the Commissioner concludes that the investigation is extraordinarily complicated and additional time is necessary to make a determination, then the Commission may extend the time to make a determination by no more than 60 calendar days.

It is clarified that an adverse inference may be used with respect to a person alleged to have entered covered merchandise through evasion, or a foreign producer or exporter of covered merchandise alleged to have entered through evasion regardless of whether another person involved in the same transaction or transactions has provided requested information.

The standard of review for judicial review of an investigation is clarified to be whether the Commissioner fully complied with all procedures in making a determination and conducting an administrative review of that determination and whether any determination, finding, or conclusion is arbitrary, capricious, or an abuse of discretion. Other technical changes were made to the judicial review provision.

SECTION 422. GOVERNMENT ACCOUNTABILITY OFFICE REPORT

Present Law

No provision.

House Amendment

Section 422 directs the Government Accountability Office to submit to Congress a report on the effectiveness of the provisions made by this title and the actions by the Department of Commerce and CBP pursuant to this title.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not contain this section. Under the House amendment, the Department of Commerce would conduct evasion investigations, and the primary purpose of the report was to monitor the cooperation of the Department of Commerce and CBP in the Department of Commerce's conduct of such investigations. This report is not required under the Conference Agreement because the Senate amendment is being followed, which has CBP conduct evasion investigations.

SUBTITLE C—OTHER MATTERS

SECTION 431. ALLOCATION AND TRAINING OF PERSONNEL

Present Law

No provision.

House Amendment

Section 431 requires CBP, to the maximum extent possible, to assign sufficient personnel responsible for preventing and investigating evasion and to provide adequate training for such personnel.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 432. ANNUAL REPORT ON PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

Present Law

No provision.

House Amendment

Section 432(a) directs CBP, in consultation with the Department of Commerce and ICE, to provide Congress with an annual report on efforts to prevent and investigate evasion.

The required contents of the report are described in section 432(b). In addition to metrics on CBP's activities, resource allocation and training regarding evasion, the report must include a description of CBP's policies and practices regarding evasion, any changes in such policies and practices, and any recommended legislative or other changes to improve the effectiveness of CBP in preventing and identifying evasion.

Senate Amendment

Section 403 requires the Commissioner to submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House an annual report on the Commissioner's efforts to prevent and investigate the evasion of antidumping and countervailing duty orders.

Conference Agreement

The conference agreement follows the Senate amendment, except to clarify that the report is to cover all types of evasion allegations and investigations. The requirement to report the number of investigations not completed within the deadlines provided in section 517 of the Tariff Act of 1930, as added by section 421 of this Act, is removed because the Commissioner is statutorily required to meet these deadlines.

SECTION 433. ADDRESSING CIRCUMVENTION BY NEW SHIPPERS

Present Law

Section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)) allows new exporters and producers to obtain an individual weighted average dumping margin or individual countervailing duty rate on an expedited basis. While the review to determine the individual margin or duty rate is being conducted, an importer of the new exporter or producer's merchandise may post a bond or security instead of a cash deposit for entries of that merchandise.

House Amendment

Section 433 strikes the ability of an importer of a new exporter or producer's merchandise to post a bond or security instead of a cash deposit for entries of that merchandise while the Department of Commerce is determining the exporter or producer's individual weighted average dumping margin or individual countervailing duty rate. This section also adds the requirement

that the individual weighted average dumping margin or individual countervailing duty rate for a new exporter or producer must be based on bona fide sales in the United States and sets out criteria to be considered in determining if such sales were bona fide.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

TITLE V—SMALL BUSINESS TRADE ISSUES AND STATE TRADE
COORDINATION

SECTION 501. SHORT TITLE

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement sets forth the short title as the “Small Business Trade Enhancement Act of 2015” or the “State Trade Coordination Act.”

SECTION 502. OUTREACH AND INPUT FROM SMALL BUSINESSES TO TRADE PROMOTION
AUTHORITY

Present Law

Per section 203 of Public Law 94-305 (15 U.S.C. 1634c), the Office of Advocacy within the Small Business Administration is statutorily charged with receiving complaints, criticisms, and suggestions concerning federal policies affecting small businesses, transmitting those complaints, criticisms and suggestions to the relevant federal regulatory agencies, and

developing proposals for changes in the policies and activities of federal agencies as those relate to small businesses. However, current law does not specifically provide for engagement by the Office of Advocacy during the negotiation of trade agreements.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conferees agree to amend section 203 of Public Law 94-305 (15 U.S.C. 634c) by adding certain provisions and requirements concerning the Office of Advocacy. In particular, the provision requires: 1) the Chief Counsel for Advocacy to convene an Interagency Working Group (IWG) not later than 30 days after the date on which the President submits a notification to Congress under section 105(a) of Public Law 114-26; 2) the IWG to include representation from the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture, and any other federal agencies deemed relevant with respect to the subject of the trade agreement at issue; 3) the IWG to identify a diverse group of small entities to provide to the IWG the views of small businesses on the potential economic effects of the trade agreement at issue; and 4) the Chief Counsel for Advocacy to submit to relevant Committees of the Senate and the House of Representatives a report on the economic impacts of the trade agreement at issue on small entities. By assigning the Office of Advocacy a role in trade negotiations, the legislation will promote consideration of small business interests throughout trade negotiation processes.

SECTION 503. STATE TRADE EXPANSION PROGRAM

Present Law

Section 1207 of the Small Business Jobs Act of 2010 (Pub. L. 111-240) created a pilot State Trade and Export Promotion Grant Program to make grants to states to carry out export promotion programs for small businesses. These programs include a foreign trade mission, a foreign market sales trip, a subscription to services provided by the Department of Commerce, the payment of website translation fees, the design of international marketing media, a trade show exhibition, and training workshops.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conferees agree to rename the “State Trade and Export Promotion Grant Program” authorized by the Small Business Jobs Act of 2010 the “State Trade Expansion Program” (STEP); to insert STEP into section 22 of the Small Business Act (15 U.S.C. 652); and to authorize STEP grants at \$30 million per year through fiscal year 2020. The Conferees also agree to alter STEP to improve coordination between the federal government and the states, to authorize reverse trade missions and procurement of consultancy services, and to require the Inspector General of the Small Business Administration to provide to the Congress a report on STEP within 18 months of the first grant award.

SECTION 504. STATE AND FEDERAL EXPORT PROMOTION COORDINATION

Present Law

Section 2312 of the Export Enhancement Act of 1988 (Public Law 100-418) created the Trade Promotion Coordinating Committee (TPCC). The TPCC provides a framework to coordinate and carry out certain export promotion and export financing programs of the United States Government.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conferees agree to establish a new section 2313A of the Export Enhancement Act of 1988, which establishes a State and Federal Export Promotion Coordination Working Group as a subcommittee of the TPCC. The subcommittee is charged with coordinating export promotion and export financing activities between the federal government and state and local governments. The provision further requires that the Office of International Trade of the Small Business Administration, in coordination with other members of the TPCC, submit a report to the Congress that includes recommendations to improve the Internet website Export.gov.

SECTION 505. STATE TRADE COORDINATION

Present law

Section 2312 of the Export Enhancement Act of 1988 (Public Law 100-418) created the Trade Promotion Coordinating Committee (TPCC), which is charged with developing a plan to carry out Federal export promotion and export financing programs. The TPCC is chaired by the Department of Commerce and comprised of representatives from the Office of the United States Trade Representative, the Small Business Administration, the Agency for International Development, the Trade and Development Program, the Overseas Private Investment Corporation, the Export-Import Bank of the United States, and the Departments of Agriculture, Energy, State, Transportation, and the Treasury. The President may appoint additional departments or agencies to the TPCC.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conferees agree to amend section 2312 by: 1) adding to the TPCC one or more new members appointed by the President who are representatives of state trade promotion agencies; 2) expanding the scope of the responsibilities of the TPCC to add a new Federal and State Export Promotion Coordination Plan, which shall develop a comprehensive plan to coordinate federal and state export promotion resources and strategies; and 3) requiring the TPCC to include, as part of its annual report, a survey and analysis regarding the overall effectiveness of Federal-state coordination and export promotion goals. Further, the provision requires: 1) the Department of Commerce to develop an annual Federal-state export strategy for each state that provides its export strategy; and 2) the Department of Commerce and the state trade promotion agencies to develop a coordinated set of reporting metrics on exports and to report annually to Congress on the results of the coordination.

TITLE VI—ADDITIONAL ENFORCEMENT PROVISIONS

SUBTITLE A—TRADE ENFORCEMENT

SECTION 601. TRADE ENFORCEMENT PRIORITIES

Present Law

No provision.

House Amendment

Section 601 requires the Administration to identify, in close consultation with Congress, enforcement priorities and to more regularly consult with Congress on the Administration's enforcement strategy. This section also directs the Administration to focus its enforcement actions on addressing practices that, if eliminated, would likely have the most significant potential to increase economic growth of the United States.

Senate Amendment

Section 601 of the Senate amendment is the same section 601 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 602. EXERCISE OF WTO AUTHORIZATION TO SUSPEND CONCESSIONS OR OTHER OBLIGATIONS UNDER TRADE AGREEMENTS

Present Law

Under section 307(c) of the Trade Act of 1974, a particular action taken under section 301 of the Trade Act of 1974 automatically terminates after four years if neither the petitioner nor any representative of the domestic industry that benefits from such action has requested its continuation during the last sixty days of the four-year period.

House Amendment

Section 602 allows the Administration, under certain conditions, to reinstate a retaliatory action if such action has terminated previously. To reinstate such action, the Administration must receive a request from an affected domestic industry and engage in a detailed analysis and robust consultations with Congress and the public.

Senate Amendment

Section 602 of the Senate amendment is the same section 602 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 603. TRADE MONITORING

Present Law

No provision.

House Amendment

Section 603(a) requires the International Trade Commission to make a web-based import monitoring tool available that provides public access to data on the volume and value of goods imports for the purposes of determining if such data has changed over time. The data used will be from the Department of Commerce and any other appropriate government data, and will include data from the most recent quarter for which such data are available, plus previous quarters as practicable.

This provision further requires the Department of Commerce to publish on a website monitoring reports on changes in the volume and value of imports and exports of goods categorized based on the 6-digit subheadings of the Harmonized Tariff Schedule of the United States. The Department of Commerce must also notify Congress when the reports are available. These reports are to be published at least quarterly and have data for the most recent quarter for which such data are available, as well as previous quarters as practicable. The Department of Commerce is required to solicit public comment on the monitoring reports through the Federal Register.

This provision is to terminate seven years after the date of enactment.

Section 603(b) makes the clerical amendment of adding the title of this section to the table of contents for the Trade Act of 1974 (19 USC 2101 et. seq.).

Senate Amendment

Section 603 of the Senate amendment is the same section 603 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 604. ESTABLISHMENT OF INTERAGENCY CENTER ON TRADE IMPLEMENTATION,
MONITORING, AND ENFORCEMENT

Present Law

The Office of the United States Trade Representative (USTR) is required to submit to Congress an Annual Report on Trade Agreements Program and National Trade Policy Agenda, pursuant to 19 U.S.C. 2213; a budget justification, pursuant to 31 U.S.C. 1105; and an agency strategic plan, pursuant to 5 U.S.C. 306.

House Amendment

Section 907 requires that, in its Annual Report on Trade Agreements Program and National Trade Policy Agenda to Congress, USTR must submit additional information regarding USTR-led interagency programs, including the Interagency Trade Enforcement Center. Specifically, the section requires that USTR report on the objectives and priorities of all USTR-led interagency programs; the actions proposed, or anticipated, to be undertaken to achieve such objectives and priorities, including actions authorized under the trade laws and negotiations with foreign countries; the role of each Federal agency participating in the interagency program in achieving such objectives and priorities and activities of each agency with respect to their participation in the program; USTR's coordination of each participating Federal agency to more effectively achieve such objectives and priorities; any proposed legislation necessary or appropriate to achieve such objectives or priorities; and prior progress made in achieving such objectives and priorities and coordination activities.

The section also requires that USTR submit a report to Congress, in conjunction with the President's budget, regarding its annual plan to match available agency resources with projected workload and provide a detailed analysis of how the prior year's funds were spent; identify existing and new staff necessary to support the functions and powers of USTR; identify USTR and other Federal agency staff who will be required to be detailed to support USTR-led interagency programs; and provide detailed analysis of the budgetary requirements of USTR-led interagency programs.

In addition, the section requires that USTR submit to Congress a quadrennial plan, in conjunction with agency strategic plans already required under statute, with some additional requirements: analyzing internal quality controls and record management; identifying existing and new staff necessary to support the functions and powers of USTR; identifying existing USTR and other Federal agency staff who will be required to be detailed to support USTR-led interagency programs; providing an outline of budget justifications, including salaries, expenses, and non-personnel administrative costs, required under the strategic plan; providing an outline of budget justifications for USTR-led interagency programs. This quadrennial plan is required in conjunction with the agency strategic plan produced at the beginning of every new Presidential Administration; this section requires USTR to submit the initial report separately, on February 1, 2016.

Senate Amendment

Section 604 establishes an Interagency Trade Enforcement Center (ITEC) in the Office of the United States Trade Representative (USTR), and provides that the main functions of the Center are to: 1) serve as the primary forum within the Federal government for the USTR and other agencies to coordinate the enforcement of United States trade rights under international trade agreements and enforcement of United States trade remedy laws; 2) coordinate the exchange of information related to potential violations of international trade agreements; and 3) conduct outreach to United States workers, businesses, and other interested persons.

Section 604 also requires the head of the ITEC to be a Director who shall be appointed from among full-time senior-level officials of USTR, and a Deputy Directory appointed by the Secretary of Commerce from among full-time, senior-level officials of Commerce. Other Federal government agencies that the Center coordinates with may detail or assign employees to the

Center. The provision requires that funding and administrative support for the ITEC be provided by USTR. The Director of ITEC is required to submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the actions taken by the Center with respect to the enforcement of U.S. trade rights under trade agreements in the preceding year.

Conference Agreement

The conference agreement establishes the Interagency Center on Trade Implementation, Monitoring, and Enforcement (ICTIME) in the office of the United States Trade Representative. The function of ICTIME is to support the USTR in: 1) investigating potential disputes to be brought at the World Trade Organization; 2) investigating potential disputes to be brought under U.S. bilateral and regional trade agreements; 3) monitoring and enforcement activities pursuant to U.S. trade agreements; and 4) monitoring measures taken by parties during implementation of trade agreements with the United States. The director of ICTIME is to be appointed by the USTR, and additional personnel may be detailed or assigned to ICTIME by other Federal agencies. The conference agreement requires the President to annually report to Congress regarding the operations of ICTIME. The conference agreement also adopts the House provision requiring USTR to submit to Congress a quadrennial plan concerning quality controls and records management, staffing, and budgeting, with the first report due June 1, 2016. The commitments subject to ICTIME's monitoring and enforcement shall include those negotiated to address the interests in U.S. trade agreements of domestic manufacturers, services providers, farmers, ranchers, and intellectual property rightholders.

SECTION 605. INCLUSION OF INTEREST IN CERTAIN DISTRIBUTIONS OF ANTIDUMPING DUTIES AND COUNTERVAILING DUTIES

Present Law

No provision.

House Amendment

Section 913(a) directs CBP to include in all distributions of collected antidumping and countervailing duties any and all interest earned on such duties that is, or was, realized through any payments received on or after October 1, 2014 under, or in connection with, any customs bond pursuant to a court order or judgment, or settlement.

Section 913(b) describes the distributions in subsection (a) as all distributions made on or after enactment pursuant to section 754 of the Trade Act of 1930 (19 USC 1675c) (as that section was in effect on February 7, 2006) of collected antidumping and countervailing duties assessed on or after October 1, 2000 on entries made through September 30, 2007.

Senate Amendment

Section 609 of the Senate amendment is similar to section 913 of the House amendment. Senate section 609(a) provides that the Secretary of Homeland Security shall deposit all interest in subsection 609(c) into the special account established under section 754(e) of the Tariff Act of 1930 for inclusion in distributions described in subsection 609(b) made on or after the date of the enactment of this Act.

Section 609(b) defines distributions as those made under section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c) (repealed by subtitle F of title VII of the Deficit Reduction Act of 2005 (Public Law 109-171; 120 Stat. 154)) with respect to entries of merchandise made on or before September 30, 2007 and that were unliquidated, not in litigation, and not under an order of liquidation on December 8, 2010.

Section 609(c) defines interest as an amount earned on antidumping duties or countervailing duties distributed in subsection (b) that is realized through application of a payment received on or after October 1, 2014 by CBP or in connection with a customs bond pursuant to a court order or a settlement for any such bond. It further provides that the types of interest include interest accrued under section 778 or 505(d) of the Trade Act of 1930, or equitable interest under common law, or interest under section 963 of the Revised Statutes awarded by a court against a surety under its bond for late payment of antidumping duties, countervailing duties, or other interest.

Conference Agreement

The conference agreement follows the Senate amendment with a modification. The Conferees agree to describe interest in section 609(c) as an amount earned on antidumping duties or countervailing duties in subsection (b) that is realized through application of a payment received on or after October 1, 2014 by CBP under, or in connection with, a customs bond pursuant to a court order or judgment, or a settlement with respect to a customs bond, including any payment to CBP with respect to that bond by a surety.

SECTION 606. ILLICITLY IMPORTED, EXPORTED, OR TRAFFICKED CULTURAL PROPERTY, ARCHAEOLOGICAL OR ETHNOLOGICAL MATERIALS, AND FISH, WILDLIFE, AND PLANTS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 610 of the Senate amendment requires the Commissioner and Director of ICE to ensure that appropriate personnel are trained in the detection, identification, detention, seizure, and forfeiture of cultural property and archaeological or ethnological materials, and fish, wildlife

and plants, the importation, exportation, or trafficking of which violates the laws of the United States.

Conference Agreement

The conference agreement follows the Senate amendment.

SECTION 607. ENFORCEMENT UNDER TITLE III OF THE TRADE ACT OF 1974 WITH RESPECT TO CERTAIN ACTS, POLICIES, AND PRACTICES

Present Law

Section 301 of the Trade Act of 1974 establishes procedures and timetables for addressing certain violations of U.S. rights under a trade agreement and unreasonable or discriminatory practices that burden or restrict U.S. commerce.

House Amendment

No provision.

Senate Amendment

Section 606 of the Senate amendment amends section 301(d)(3)(B) of the Trade Act of 1974 to include, among the conduct that is unreasonable for purposes of taking discretionary action under 301(b), a persistent pattern of conduct by a foreign country that: 1) fails to effectively enforce the environmental laws of the foreign country; 2) waives or otherwise derogates from the environmental laws of the foreign country or weakens the protections afforded by such laws; 3) fails to provide for the judicial or administrative proceedings giving access to remedies for violations of the environmental laws of the foreign country; 4) fails to provide appropriate and effective sanctions or remedies for violations of the environmental laws of the foreign country; or 5) fails to effectively enforce environmental commitments under agreements to which the foreign country and the United States are a part.

Conference Agreement

The conference agreement includes modifications to amend section 301(d)(3)(B) of the Trade Act of 1974 to include, among the types of conduct that are unreasonable for purposes of taking discretionary action under 301(b), actions that constitute a persistent pattern of conduct by the government of the foreign country under which that government fails to effectively enforce commitments under agreements including with respect to trade in goods, trade in services, trade in agriculture, foreign investment, intellectual property, digital trade in goods and services and cross-border data flows, regulatory practices, state-owned and state-controlled enterprises, localization barriers to trade, labor and the environment, anti-corruption, trade remedy laws, textiles, and commercial partnerships to which the foreign country and the United States are a party.

SECTION 608. HONEY TRANSSHIPMENT

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 608(a) requires the Commissioner of CBP to direct appropriate personnel and resources to address concerns that honey is being imported into the United States in violation of U.S. customs and trade laws.

Section 608(b) requires CBP to compile a database of the individual characteristics of foreign honey to facilitate the verification of country of origin markings, and to seek to work with foreign governments, industry, and the Food and Drug Administration in compiling the database.

Section 608(c) requires the Commissioner to submit a report to Congress within 180 days after enactment of the Act that describes and assesses the limitations in existing analysis capabilities of laboratories with respect to determining the country of origin of honey and includes any recommendation of the Commissioner for improving such capabilities.

Section 608(d) expresses the sense of Congress that the Commissioner of Food and Drugs should promptly establish a honey national identification standard to ensure that honey imports are classified appropriately for duty assessment; and are denied entry to the United States if such imports pose a threat to the health or safety of consumers.

Conference Agreement

The conference agreement follows the Senate amendment. The agreement of the conference on establishment of a database pertaining to honey transshipment reflects the unique geographical characteristics of honey, particularly unique regional pollens, that allow CBP to discern the country of origin of honey imported into the United States through currently available, cost-effective scientific methods, and also the importation of honey in sufficient quantity and with historical patterns of duty evasion to justify establishing and maintaining such a database.

SECTION 609. ESTABLISHMENT OF CHIEF INNOVATION AND INTELLECTUAL PROPERTY NEGOTIATOR

Present Law

Section 141 of the Trade Act of 1974 (19 U.S.C. 2171) establishes the structure, functions, powers, and personnel of the Office of the United States Trade Representative (USTR).

House Amendment

No provision.

Senate Amendment

Section 611(a) amends section 141 of the Trade Act of 1974 (19 U.S.C. 2171) to establish a Chief Innovation and Intellectual Property Negotiator at USTR with the rank of Ambassador, who shall be appointed by the President, by and with the advice and consent of the Senate, to conduct trade negotiations and to enforce trade agreements relating to United States intellectual property, and to take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation.

Section 611(b) amends section 5314 of title 5, United States Code, to set the pay for this position at Level III of the Executive Schedule.

Section 611(c) requires the USTR to submit an annual report to the Senate Finance and Ways and Means Committees detailing the enforcement actions taken by USTR to ensure the protection of United States innovation and intellectual property interests, and other actions taken to advance United States innovation and intellectual property interests.

Conference Agreement

The conference agreement follows the Senate amendment.

SECTION 610. MEASURES RELATING TO COUNTRIES THAT DENY ADEQUATE PROTECTION FOR
INTELLECTUAL PROPERTY RIGHTS

Present Law

Section 182 of the Trade Act of 1974 (19 U.S.C. 2242) requires USTR to submit to the Committees a “Special 301 Report” identifying countries that deny adequate protection or market access for intellectual property rights.

House Amendment

No provision.

Senate Amendment

Section 612(a) amends section 182(d)(2) of the Trade Act of 1974 (19 U.S.C. 2242(d)(2)) to require USTR to identify foreign countries that deny adequate and effective protection of trade secrets.

Section 612(b) amends section 182 of the Trade Act of 1974 (19 U.S.C. 2242) to require USTR, within 90 days after submitting the annual National Trade Estimate, to develop an action plan for foreign countries that have spent at least one year on the Priority Watch List of the Special 301 Report. The action plan calls for such countries to meet benchmarks designed to assist them to achieve effective protection of intellectual property rights, and equitable market access for U.S. persons that rely upon intellectual property protections. This section also authorizes the President to take appropriate action with respect to foreign countries that fail to meet action plan benchmarks and requires USTR to transmit to the Committees a report on the action plans and the progress in achieving the action plan benchmarks.

Conference Agreement

The conference agreement follows the Senate amendment, with the addition of allowing USTR to provide assistance to developing countries pursuant to Section 611.

SECTION 611. TRADE ENFORCEMENT TRUST FUND

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 607 of the Senate amendment establishes a Trade Enforcement Trust Fund (Trust Fund) in the Treasury of the United States. The provision requires the Treasury to transfer \$15 million each fiscal year to the Trust Fund of receipts from antidumping and countervailing duties, and the aggregate money held in the Trust Fund may not exceed \$30 million at any time. Transfers to the fund are made quarterly. The provision allows the United States Trade Representative to use amounts in the Trust Fund to enforce the provisions of and commitments and obligations under WTO Agreements and free trade agreements to which the United States is a party, monitor the implementation by foreign countries of the provisions and commitments and obligations under free trade agreements, and investigate and respond to petitions under section 302 of the Trade Act of 1974. In addition, identified Federal agencies would also be authorized to also use amounts in the Trust Fund to ensure capacity building efforts undertaken by the United States prioritize the implementation of intellectual property, labor, and environmental commitments, are self-sustaining and promote local ownership, include performance indicators, and monitor and evaluate capacity building efforts.

If a Federal agency uses amounts in the Trust Fund in connection with the entry into force of any free trade agreement, that agency must submit a report to Congress on the actions taken by that agency not later than 18 months after the agreement enters into force. It also requires the Comptroller General to submit a report to Congress within one year of enactment that contains (1) a comprehensive analysis of the trade enforcement expenditures of each Federal agency and (2) recommendations on the additional employees and resources that each Federal agency may need to effectively enforce free trade agreements that the United States is a party to.

Conference Agreement

The conference agreement follows the Senate amendment with a number of changes. The conference agreement establishes the Trust Fund through 2026 and funds are transferred from the general fund. It allows the United States Trade Representative, on the basis of advice from the Trade Policy Committee, to use amounts in the Trust Fund, only as provided in appropriation acts, to enforce obligations under WTO Agreements and free trade agreements to which the United States is a party, monitor the implementation by foreign countries of the provisions and commitments and obligations under free trade agreements, investigate and respond to petitions under section 302 of the Trade Act of 1974, and to support capacity building efforts, including commitments and obligations related to trade in goods, trade in services, trade in agriculture, foreign investment, intellectual property, digital trade in goods and services and cross-border data flows, regulatory practices, state-owned and state-controlled enterprises, localization barriers to trade, labor and the environment, currency, foreign currency manipulation, anticorruption, trade remedy laws, textiles, and commercial partnerships. Additional changes are made with respect to reporting and definitions.

The conferees are committed to work diligently and at the earliest opportunity to achieve full appropriation for the fund, including during the annual budget resolution process to assure full appropriations to the fund.

TITLE VII—CURRENCY MANIPULATION

SECTION 701. ENHANCEMENT OF ENGAGEMENT ON CURRENCY EXCHANGE RATE AND ECONOMIC POLICIES WITH CERTAIN MAJOR TRADING PARTNERS OF THE UNITED STATES

Present Law

No provision.

House Amendment

This section strengthens and complements existing requirements by requiring the Secretary of the Treasury to submit to Congress a report on the macroeconomic and currency exchange rate policies of each country that is a major trading partner of the United States and to take specific steps if it finds that a currency is undervalued. The report is to include: 1) an analysis of various economic indicators for each major trading partner and 2) an enhanced analysis of

macroeconomic and exchange rate policies for each major trading partner that satisfies certain economic criteria related to its bilateral trade balance, current account balance, and foreign exchange interventions. The new report thus strengthens existing requirements, established in Section 3005 of the Omnibus Trade and Competitiveness Act of 1988, regarding reporting by the Secretary to Congress of international economic and exchange rate policies. The provisions direct the Secretary to conduct enhanced bilateral engagement with each country for which an enhanced analysis of macroeconomic and currency exchange rate policies is included in the report submitted by the Secretary to Congress. The Secretary may determine not to enhance bilateral engagement with a country if the Secretary determines that commencing enhanced bilateral engagement would have an adverse impact on the U.S. economy greater than the benefits of such engagement or would cause serious harm to the national security of the United States. The provision authorizes the President to take certain remedial actions regarding a country that fails to adopt appropriate policies to correct the identified undervaluation and surpluses, including: 1) restrictions on U.S. government financing; 2) restrictions on U.S. government procurement; 3) additional efforts at the International Monetary Fund; or (4) by taking into account such currency policies before initiating or entering into any bilateral or regional trade agreement negotiations.

Senate Amendment

The Senate Amendment is similar to the House Amendment but contains certain variations, including variations related to the economic criteria associated with an enhanced analysis of a major trading partner, variations related to the objectives of enhanced bilateral engagement, and variations related to a decision by the Secretary not to enhance bilateral engagement with a country.

Conference Agreement

The conference agreement follows the House amendment with modified criteria in section 701(a)(2)(B), an additional item in the list of actions in section 701(b)(1) from the Senate amendment, and modified reporting requirements.

SECTION 702. ADVISORY COMMITTEE ON INTERNATIONAL EXCHANGE RATE POLICY

Present Law

No provision.

House Amendment

This section creates a nine-member advisory committee to advise Treasury on international exchange rates and financial policies and their impact on the United States. The Senate, House, and Administration each appoint members to the committee.

Senate Amendment

Section 712 of the Senate amendment is the same as section 702 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE VIII—ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION

SECTION 801. SHORT TITLE

Present Law

No provision.

House Amendment

Section 801 sets forth the short title as the “U.S. Customs and Border Protection Authorization Act.”

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment.

SECTION 802. ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION

Present Law

Section 401 of the Homeland Security Act of 2002 (HSA), at 6 U.S.C. 201, establishes the now-defunct Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

Further, section 411 of the HSA, at 6 U.S.C. 211, established the now-defunct United States Customs Services and its head, the Commissioner of Customs, within the Department of Homeland Security.

House Amendment

Section 802(a) amends section 411 of the HSA to formally establish U.S. Customs and Border Protection (CBP) in title 6 of the United States Code. Section 802(a) also establishes the

Commissioner of U.S. Customs and Border Protection as the head of the component, and the position of Deputy Commissioner to assist the Commissioner in the management of CBP.

Additionally, section 802(a) establishes operational offices within CBP. These include: U.S. Border Patrol and its head, the Chief of U.S. Border Patrol; Office of Air and Marine Operations and its head, the Assistant Commissioner for the Office of Air and Marine Operations; the Office of Field Operations and its head, the Assistant Commissioner for the Office of Field Operations; the Office of Intelligence and its head, the Assistant Commissioner for the Office of Intelligence; the Office of International Affairs and its head, the Assistant Commissioner for the Office of International Affairs; and the Office of Internal Affairs and its head, the Assistant Commissioner for the Office of Internal Affairs.

Finally, section 802(a) establishes certain Standard Operating Procedures, audits, and reports to be carried out and completed, mandates training for CBP officers and agents, establishes short term detention standards, and grants the Secretary additional authorities to establish additional offices and Assistant Commissioners to carry out the functions of CBP.

Section 802(b) affirms that CBP shall continue to carry out the functions, missions, duties, and authorities that were vested in them prior to the passage of this act. Further, this subsection makes clear that rules, regulations, and policies issued by CBP pursuant to section 411 of the Homeland Security Act prior to the passage of this act shall remain in place.

Section 802(c) clarifies that the Commissioner of CBP, as well as Assistant Commissioners and other CBP officials, may continue to serve in their roles after passage of this act.

Section 802(d) amends 5 U.S.C. 5314 to include the Commissioner of CBP in place of the outdated "Commissioner of Customs" position in the Level III Executive Pay Schedule.

Section 802(e) amends the table of contents in the Homeland Security Act of 2002 to reflect the changes made by this act.

Section 802(f) repeals provisions in the HSA that are no longer necessary or have already been fulfilled. These include: Sec. 416, which mandated a Government Accountability Office report that was completed in 2003; and section 418, which required a report from the Secretary of the Treasury that was completed in 2003.

Section 802(g) amends sections of the HSA to accurately reflect current titles and functions. In addition, 802(g) amends the HSA to maintain the Transportation Security Administration as a distinct entity within the Department of Homeland Security and grants the Secretary of Homeland Security the authority to discipline any employee of CBP or ICE who willfully deceives Congress or DHS leadership.

Section 802(h) amends the Act of March 3, 1927, at 19 U.S.C. 2071, et seq., to establish the Office of Trade within CBP, and its head, the Assistant Commissioner for the Office of

Trade. Section 802(h) also provides for the transfer of assets, functions, and personnel from the Office of International Trade to the Office of Trade within CBP.

Section 802(i) requires the Commissioner of CBP to issue a report on CBP's Business Transformation Initiative, and a report on personal searches conducted by CBP personnel. 802(i) also requires the Commissioner of CBP to conduct a Port of Entry Infrastructure Needs Assessment.

Section 802(j) prohibits the Secretary of Homeland Security from entering into or renewing an agreement with a foreign government for a Trusted Traveler Program administered by CBP unless the Secretary certifies that the foreign government routinely submits information to INTERPOL's Stolen and Lost Travel Document (SLTD) database or otherwise makes such information available to the United States.

Section 802(k) provides a sense of Congress supporting CBP's Foreign Language Award Program (FLAP).

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment with modifications.

The Conferees agree to modify section 802(a) to specify that the Senate Committee on Finance will consider nominations of individuals to fill the position of the Commissioner of U.S. Customs and Border Protection. This modification will ensure that the Senate Committee on Finance will maintain its sole jurisdiction over the confirmation of the Commissioner of U.S. Customs and Border Protection. In addition, the duties of the Commissioner are expanded to require the Commissioner to: 1) coordinate and integrate the security, trade facilitation, and trade enforcement functions of U.S. Customs and Border Protection; 2) direct and administer the commercial operations of U.S. Customs and Border Protection, and the enforcement of the customs and trade laws of the United States; 3) ensure the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and 4) ensure that the policies and regulations of U.S. Customs and Border Protection are consistent with the obligations of the United States pursuant to international agreements.

The Conferees also agree to modify section 802(a) to specify that the head of Air and Marine Operations and the Office of Field Operations will be headed by an Executive Assistant Commissioner. In addition, U.S. Border Patrol shall be headed by a Chief who shall be at the level of an Executive Assistant Commissioner.

With respect to the Office of International Affairs in section 802(a), the Conferees agree to expand the duties of the office to require that it shall: 1) coordinate with customs authorities of foreign countries with respect to trade facilitation and trade enforcement; 2) advise the

Commissioner with respect to matters arising in the World Customs Organization and other international organizations as such matters relate to the policies and procedures of U.S. Customs and Border Protection; and 3) advise the Commissioner regarding international agreements to which the United States is a party as such agreements relate to the policies and regulations of U.S. Customs and Border Protection.

Furthermore, the Conferees also agree to the following changes to section 802(a): 1) Air and Marine Operations will coordinate with other appropriate agencies in detecting, identifying, and coordinating a response to threats to national security in the air domain; 2) the Executive Assistant Commissioner for the Office of Field Operations shall coordinate with the Executive Assistant Commissioner for the Office of Trade with respect to the trade facilitation and trade enforcement activities of CBP; 3) the national targeting center shall coordinate with the TSA, as appropriate; 4) the annual report on staffing for the Office of Field Operations may be submitted in classified form if the Executive Assistant Commissioner of the Office of Field Operations determines it to be appropriate and informs the appropriate Congressional committees of the reasoning for such; 5) the Office of Intelligence shall manage the counter-intelligence operations of CBP; 6) the Office of Internal Affairs is renamed the Office of Professional Responsibility; 7) subsection (k) of section 411 of the Homeland Security Act is modified to state that the Commissioner's right to withhold required notifications due to national security, law enforcement, or other operational interests is unreviewable; and 8) the Commissioner is required to continue to submit to the appropriate committees any reports that were required to be submitted prior to the passage of this Act.

Section 802(c) is modified to clarify that the individuals serving as Assistant Commissioners may continue to serve as Executive Assistant Commissioners, as appropriate.

Section 802(h) is modified to specify that the head of the Office Trade shall be an Executive Assistant Commissioner. In addition, the provisions specifying the pay and qualifications for the Executive Assistant Commissioner of the Office of Trade are stricken. The Conferees have also agreed to allow the transfer of assets, functions, personnel, or liabilities of the Office of International Trade to offices other than the Office of Trade if the appropriate committees are notified with the reason for such a transfer at least 90 days prior to such transfer. Furthermore, section 802(h) is modified to clarify that the individual serving as the Assistant Commissioner may continue to serve as the Executive Assistant Commissioner.

Lastly, the Conferees agree to require CBP to develop a plan to establish an agricultural specialist career track within CBP. This agreement is codified under section 802(k).

SUBTITLE B—PRECLEARANCE OPERATIONS

SECTION 811. SHORT TITLE

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement sets forth the short title as the “Preclearance Authorization Act of 2015.”

SECTION 812. DEFINITION

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement defines key terms.

SECTION 813. ESTABLISHMENT OF PRECLEARANCE OPERATIONS

Present Law

Current law (19 U.S.C. 1629 and 8 U.S.C. 1103(a)(7)) provides the necessary legal authority for CBP to conduct customs and immigration functions (e.g., inspections, seizures, searches, etc.) in foreign countries.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement authorizes CBP to operate preclearance locations, provided an aviation security preclearance agreement is in effect, in foreign countries: 1) to prevent terrorists, instruments of terrorism, and other security threats from entering the United States; 2) to prevent inadmissible persons from entering the United States; 3) to ensure that merchandise destined for the United States complies with applicable laws; 4) to ensure the prompt processing of persons eligible to travel to the United States; and 5) to accomplish such other objectives as the Secretary determines are necessary to protect the United States.

SECTION 814. NOTIFICATION AND CERTIFICATION TO CONGRESS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires DHS to provide certain notifications and certifications to appropriate congressional committees.

Section 814(a) requires the Secretary to provide to the appropriate congressional committees not later than 60 days prior to entering into a preclearance agreement with a foreign country the following: 1) a copy of the proposed agreement to establish such preclearance operations, which shall include the identification of the foreign country with which CBP intends to enter into a preclearance agreement, the location at which such preclearance operations will be conducted, and the terms and conditions for CBP personnel operating at the location; 2) an assessment of the impact such preclearance operations will have on legitimate trade and travel, including potential impacts on passengers traveling to the United States; 3) an assessment of the impacts such preclearance operations will have on CBP domestic port of entry staffing; 4) country-specific information on the anticipated homeland security benefits associated with establishing such preclearance operations; 5) information on potential security vulnerabilities associated with commencing such preclearance operations and mitigation plans to address such potential security

vulnerabilities; 6) a CBP staffing model for such preclearance operations and plans for how such positions would be filled; 7) information on the anticipated costs over the next five fiscal years associated with commencing such preclearance operations; and

Section 814(b) requires the Secretary to provide to the appropriate congressional committees not later than 45 days before entering into a preclearance agreement with a foreign country for preclearance operations at an airport, in addition to the information required in section 814(a), the following: 1) an estimate of the date on which CBP intends to establish preclearance operations under such agreement, including any pending caveats that must be resolved before preclearance operations are approved; 2) the anticipated funding sources for preclearance operations under such agreement, and other funding sources considered; 3) a homeland security threat assessment for the country in which such preclearance operations are to be established; 4) information on potential economic, competitive, and job impacts on United States air carriers associated with establishing such preclearance operations; 5) details on information sharing mechanisms to ensure that CBP has current information to prevent terrorist and criminal travel; and 6) other factors that the Secretary determines to be necessary for Congress to comprehensively assess the appropriateness of commencing such preclearance operations.

Section 814(c) requires the Secretary to provide to the appropriate congressional committees not later than 60 days before entering into a preclearance agreement with a foreign country for preclearance operations at an airport, in addition to the information required in sections 814(a) and 814(b), the following: 1) a certification that preclearance operations under such preclearance agreement, after considering alternative options, would provide homeland security benefits to the United States through the most effective means possible; 2) a certification that preclearance operations within such foreign country will be established under such agreement only if at least one United States passenger carrier operates at such airport and the access of all United States passenger carriers to such preclearance operations is the same as the access of any non-United States passenger carrier; 3) a certification that the establishment of preclearance operations in such foreign country will not significantly increase customs processing times at United States airports; 4) a certification that representatives from CBP consulted with stakeholders, including providers of commercial air service in the United States, employees of such providers, security experts, and such other parties as the Secretary determines to be appropriate; and 5) a report detailing the basis for the certifications referred to in 1) through 4).

Section 814(d) requires the Secretary to provide to the appropriate congressional committees not later than 30 days before entering into a substantially amended preclearance agreement with a foreign country a copy of the proposed agreement, as modified, and the justification for such modification

Section 814(e) requires the Commissioner to report to the appropriate congressional committees on a quarterly basis the number of CBP officers, by port, assigned from domestic ports of entry to preclearance operations and the number of these positions that have been filled by another hired, trained, and equipped CBP officer. In addition, if the CBP officer positions at domestic ports of entry that were reassigned to preclearance ports of entry have not been backfilled and the Commissioner determines that processing times at those domestic ports of entry have significantly increased, the Commissioner shall submit to the appropriate

congressional committees not later than 60 days after such a determination an implementation plan for reducing CBP processing times at those domestic ports of entry. If the Commissioner fails to submit the required implementation plan, the Secretary would be prohibited from establishing additional preclearance locations until such plan is submitted.

Section 814(f) allows for the reporting requirement under subsection (c)(5) to be submitted in classified form.

SECTION 815. PROTOCOLS

Present Law

Current law (49 U.S.C. 44901(d)(4)) requires that for flights traveling to the U.S., checked baggage has been screened in accordance to an aviation security preclearance agreement between the U.S. and the country of departure.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires the TSA to rescreen passengers and their baggage arriving from a foreign country if the Administrator of TSA determines that the foreign government has not maintained security standards and protocols comparable to those at U.S. airports at the airports at which preclearance operations have been established..

SECTION 816. LOST AND STOLEN PASSPORTS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement prohibits the establishment or renewal of a preclearance location with a foreign country unless the Secretary certifies to Congress that the foreign country routinely provides stolen passport information to INTERPOL's Stolen and Lost Travel Document database or provides the information to the United States through comparable reporting.

SECTION 817. RECOVERY OF INITIAL U.S. CUSTOMS AND BORDER PROTECTION PRECLEARANCE OPERATIONS COSTS

Present Law

Current law, including 8 U.S.C. 1356(i) and 7 U.S.C. 8311(b), provides the necessary legal authority for CBP to be reimbursed for immigration and agriculture inspection services, and other preclearance costs.

Current law, however, does not allow CBP to receive payments prior to services being rendered.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement allows CBP to enter into a cost sharing agreement with airport authorities in foreign countries for new preclearance locations or to maintain existing operations. The cost sharing agreement may provide for initial preclearance operations costs. These payments may be made in advance of the incurrence of the costs or on a reimbursable basis.

Initial preclearance operations costs include: 1) hiring, training, and equipping new CBP officers who will be stationed at U.S. ports of entry or other CBP facilities to backfill CBP officers to be stationed at a preclearance facility (payments would be prohibited once such officers are permanently stationed domestically after being trained) and 2) visits to the airport authority conducted by CBP personnel necessary to prepare for the establishment or maintenance of preclearance operations at such airport, including the compensation, travel expenses, and allowances payable to such CBP personnel attributable to such visits.

SECTION 818. COLLECTION AND DISPOSITION OF FUNDS COLLECTED FOR IMMIGRATION
INSPECTION SERVICES AND PRECLEARANCE ACTIVITIES

Present Law

Current law (8 U.S.C. 1356(i) and 7 U.S.C. 8311(b)) allows the reimbursement of funds for immigration and agricultural inspection services.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement allows CBP to be reimbursed in advance of providing immigration and agricultural inspection services for preclearance operations.

SECTION 819. APPLICATION TO NEW AND EXISTING PRECLEARANCE OPERATIONS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement establishes that, with the exception of sections 4(d), 5, 7, and 8 of this subtitle, this subtitle shall apply only to the establishment of preclearance operations in a foreign country in which no preclearance operations have been established as of the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015.

TITLE IX—MISCELLANEOUS PROVISIONS

SECTION 901. DE MINIMIS VALUE

Present Law

Section 321(a)(2)(C) of the Tariff Act of 1930 provides that individuals may import up to \$200 in merchandise free of duties into the United States.

House Amendment

Section 901 raises the duty-free or *de minimis* threshold from \$200 to \$800.

Senate Amendment

Section 901 sets out findings of Congress and a sense of Congress regarding thresholds for the value of articles that may be entered informally and free of duty into the United States and that the United States Trade Representative should encourage foreign countries to establish commercially meaningful *de minimis* thresholds.

Section 901 amends section 321(a)(2)(C) of the Tariff Act of 1930 to raise the *de minimis* threshold for the Secretary of Treasury to permit the admission of articles duty free from \$200 to \$800.

Conference Agreement

The conference agreement follows the Senate amendment.

SECTION 902. CONSULTATION ON TRADE AND CUSTOMS REVENUE FUNCTIONS

Present Law

Section 401(c) of the Safety and Accountability for Every Port Act (SAFE Port) requires the Secretary of Homeland Security to consult with the business community involved in international trade, including the COAC, on Department policies that have a significant impact on international trade and customs revenue functions. Furthermore, section 401(c) requires that the Secretary notify the appropriate congressional committees at least 30 days before finalizing policies or actions that will have a major impact on international trade and customs revenue functions, except if it is determined that it is in the interest of national security to finalize policies or actions prior to consultations with the business community and appropriate congressional committees.

House Amendment

Section 902 amends section 401(c) of the SAFE Port Act by requiring the Secretary of Homeland Security to consult with the business community involved in international trade at least 30 days before proposing and at least 30 days before finalizing any Department policies or

actions that will have an impact on international trade and customs revenue functions. The amendment also extends the notice for appropriate congressional committees by requiring the Secretary of Homeland Security to provide at least 60 days notification before proposing and at least 60 days before finalizing Department policies or actions that have an impact on international trade.

Senate Amendment

Section 902 of the Senate amendment is the same as section 902 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 903. PENALTIES FOR CUSTOMS BROKERS

Present Law

Section 641(d)(1) of the Tariff Act of 1930 authorizes the Secretary of the Treasury to impose a monetary penalty or revoke or suspend a license or permit of any customs broker if the broker has acted contrary to law or regulations.

House Amendment

Section 903 amends section 641(d)(1) of the Tariff Act of 1930 by adding to the list of offenses as grounds for a monetary penalty or removal of a broker license committing or conspiring to commit an act of terrorism.

Senate Amendment

Section 903 of the Senate amendment is the same as section 903 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 904. AMENDMENTS TO CHAPTER 98 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Present Law

U.S. Note 3 to subchapter II of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) allows a partial or complete duty exemption for articles returned to the United States, after having been exported to be advanced in value or improved in condition by means of

repairs or alterations. It also allows goods to be entered duty free if the goods are a product of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.

The article description for heading 9801.00.10 of the HTS establishes that products of the United States, when returned after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means abroad, will be duty-free.

House Amendment

Section 904(a) amends U.S. Note 3 to subchapter II of Chapter 98 of the HTS by modernizing existing inventory management rules by subtracting the value of U.S. components assembled into the final product that will be entered into the commerce of the United States for articles exported and returned after being improved abroad.

Section 904(b) amends the article description for heading 9801.00.10 of the HTS by reducing record-keeping burdens on goods returned to the United States without improvement abroad so that duties are not assessed twice.

Section 904(c) amends subchapter I of chapter 98 of the HTS by inserting new heading 9801.00.11, which provides duty-free treatment for certain U.S. government property returned to the United States.

Senate Amendment

Section 904 of the Senate amendment is the same as section 904 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 905. EXEMPTION FROM DUTY OF RESIDUE OF BULK CARGO CONTAINED IN INSTRUMENTS OF INTERNATIONAL TRAFFIC PREVIOUSLY EXPORTED FROM THE UNITED STATES

Present Law

No provision.

House Amendment

Section 905 amends General Note 3(e) of the Harmonized Tariff Schedule of the United States (HTS) to remove from formal entry requirements residue of bulk cargo contained in instruments of international traffic (IIT) previously exported from the United States.

Senate Amendment

Section 905 of the Senate amendment is the same as section 905 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 906. DRAWBACK AND REFUNDS

Present Law

Section 313 of the Tariff Act of 1930 authorizes a refund, known as drawback, of certain duties, internal revenue taxes, and certain fees collected upon the importation of goods. Such refunds are allowed only upon the exportation or destruction of goods under CBP supervision.

House Amendment

Section 906(a) amends section 313(a) of the Tariff Act of 1930 by establishing that the amount of drawback claimed must be calculated pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment.

Section 906(b) amends section 313(b) of the Tariff Act of 1930 by allowing substitution drawback for imported merchandise or merchandise classifiable under the same 8-digit HTS used in the manufacture or production of articles; establishing that the amount of drawback claimed must be calculated pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment; and providing that such claim must be filed within 5 years of the importation of the merchandise. This subsection further allows records kept in the normal course of business to be used to demonstrate the transfer of merchandise, requires a drawback claimant to submit a bill of materials to demonstrate the merchandise was incorporated into an exported article, and provides a special rule for sought chemical elements.

Section 906(c) amends section 313(c) of the Tariff Act of 1930 by extending the filing deadline for drawback claims for merchandise not conforming to sample or specifications to 5 years from the date of importation. This subsection further establishes that the amount of drawback claimed must be calculated pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment, and allows records kept in the normal course of business to be used to demonstrate the transfer of merchandise.

Section 906(d) amends section 313(i) of the Tariff Act of 1930 by striking the current text and replacing it with a new provision requiring that a person claiming drawback based on exportation shall provide proof of the exportation of the article, that such proof shall fully establish the date and fact of exportation and identity of the exporter, and may be established either by records kept in the normal course of business or through an electronic export system of the United States Government.

Section 906(e) amends section 313(j) of the Tariff Act of 1930 by allowing unused drawback claims for merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise. Merchandise may not be substituted for imported merchandise for drawback purposes based on the 8-digit HTS if the article description for the 8-digit HTS begins with the term “other.” In these instances, merchandise may be substituted for imported merchandise if such imported merchandise is classifiable under the same 10-digit HTS. If the 10-digit HTS begins with the term “other,” then substitution drawback is not permissible and the drawback claimant must use direct identification under section 313(a) of the Tariff Act of 1930, as amended by this Act. For unused merchandise that is either exported or destroyed, the Department of Commerce Schedule B number may be used to demonstrate that an article and merchandise are classifiable under the same 8-digit HTS without regard to whether or not the Schedule B number corresponds to more than one 8-digit HTS number. Furthermore, this subsection amends the filing deadline for drawback claims to be 5 years from the date of importation and establishes that the amount of drawback claimed must be calculated pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment.

Section 906(f) amends section 313(k) of the Tariff Act of 1930 by providing that any person making a drawback claim is liable for the full amount of the drawback claimed. Any person claiming drawback shall be jointly and severally liable with the importer for the lesser of the amount of drawback claimed or the amount the importer authorized the other person to claim.

Section 906(g) amends section 313(l) of the Tariff Act of 1930 to require the Secretary of the Treasury to prescribe regulations for claims with respect to unused merchandise drawback to establish that the calculation of drawback that cannot exceed 99 percent of the lesser of the amount of duties, taxes, and fees paid with respect to the imported merchandise or the amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported. Section 906(g) also requires the Secretary of Treasury to prescribe regulations for claims with respect to manufactured articles into which substitute merchandise is incorporated to establish that the calculation of drawback cannot exceed 99 percent of the lesser of the amount of duties, taxes, and fees paid with respect to the imported merchandise or the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported. This section requires the promulgation of the necessary regulations within 2 years. Additionally, one year after the enactment of this Act, and annually thereafter until the regulations required under this subsection are promulgated, the Secretary shall submit to Congress a report on the status of the regulations.

Section 906(h) amends section 313(p) of the Tariff Act of 1930 to require evidence of transfer to be demonstrated with records kept in the normal course of business.

Section 906(i) amends section 313(q) of the Tariff Act of 1930 to require the amount of drawback shall be calculated pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment.

Section 906(j) amends section 313(r) of the Tariff Act of 1930 to establish that a drawback entry shall be filed or applied for, as applicable, no later than 5 years after the date on which merchandise on which drawback is claimed was imported. This section also requires that all

drawback claims be filed electronically no later than 2 years after the date of the enactment of this Act.

Section 906(k) amends section 313(s) of the Tariff Act of 1930 by allowing a drawback successor to designate unused imported merchandise, other merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, or any combination of such imported merchandise and such other merchandise, that the predecessor received, before the date of succession, from the person who imported and paid any duties, taxes, and fees due on the imported merchandise as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

Section 906(l) strikes section 313(t) of the Tariff Act of 1930.

Section 906(m) amends section 313(x) of the Tariff Act of 1930 by requiring the amount of drawback claimed pursuant to section 313(l) of the Tariff Act of 1930, as amended by this amendment, to be reduced by the value of any materials reclaimed during the destruction of unused merchandise.

Section 906(n) defines key terms.

Section 906(o) amends section 508(c)(3) of the Tariff Act of 1930 by requiring records for drawback claims to be maintained for 5 years after the date of liquidation.

Section 906(p) requires the Government Accountability Office (GAO) to provide the Senate Committee on Finance and the House Committee on Ways and Means with a report that shall include: 1) an assessment of the modernization of drawback and refunds; 2) a description of drawback claims that were permissible before the enactment of the bill that are not permissible after, and an identification of industries most affected; and 3) a description of drawback claims that were not permissible before the enactment of this bill that are after, and an identification of industries most affected.

Section 906(q) provides that the amendments made by this section shall take effect upon enactment of this bill and apply to drawback claims filed on or after the date that is 2 years after such enactment. This section also requires the Secretary of the Treasury to submit a report to Congress, no later than two years after enactment of this bill, on the date on which the Automated Commercial Environment (ACE) will be ready to process claims and the date on which the Automated Export System (AES) will be ready to accept proof of exportation. Lastly, this section provides for a one-year transition for filing drawback claims under section 313 as amended by this section, or under section 313 in effect before the enactment of this bill.

Senate Amendment

Section 906 of the Senate amendment is the same as section 906 of the House amendment with exception the following: (1) the Senate amendment permits the substitution of a manufactured article that is exported or destroyed with an article that is classifiable under the same 8-digit HTS subheading; (2) the House amendment requires CBP to promulgate separate

regulations for calculating drawback for unused merchandise and drawback for articles into which substitute merchandise is incorporated; and (3) the Senate amendment permits a delay in the effective date of this section if the Automated Commercial Environment (ACE) is not ready to process drawback claims within two years after the enactment of this Act.

Conference Agreement

The conference agreement follows the House amendment with technical revisions. The Conferees agree that section 906(g) grants CBP the authority, in prescribing regulations for determining the calculation of amounts refunded as drawback, to permit the drawback claim to be based upon the average per unit duties, taxes, and fees as reported on the summary line item. This authority is granted to CBP solely to allow for the simplification of drawback claims. It is not granted to allow claimants to manipulate claims in order to maximize refunds to the detriment of the revenue of the United States. The Conferees grant this authority with the expectation that CBP and the Department of the Treasury will study the potential impact of such line item averaging in drafting regulations and will forego such averaging if it is determined that line item averaging will result in a significant loss to the revenue of the United States.

The Conferees further clarify that the existing treatment of wine under section 313(j)(2) of the Tariff Act of 1930 is preserved, and that the amendments to the statute do not change this treatment. Such preservation, however, does not preclude the filing of drawback claims for wine under the new substitution drawback procedures, subject to the restrictions in such procedures, such as the amount of drawback that may be refunded when such procedures are used.

With respect to claims for unused merchandise under section 906(g) (adding section 313(l)(2)(B) of the Tariff Act of 1930), the Conferees intend that if the exported article was not imported, CBP will determine the amount of duties, taxes, and fees applicable to the exported article by applying the rate of duties, taxes, and fees applicable to the imported merchandise by substituting the value of the imported merchandise for the value of the exported article. For claims with respect to manufactured articles into which imported or substitute merchandise is incorporated under section 906(g) (adding section 313(l)(2)(C) of the Tariff Act of 1930), the Conferees intend that if the manufactured exported article contains substitute merchandise that was not imported, CBP will determine the amount of duties, taxes, and fees applicable to the imported merchandise by substituting the value of the imported merchandise for the value of the substitute merchandise incorporated into the exported article. The goal of the rules established in section 906(g) (adding sections 313(l)(2)(B) and 313(l)(2)(C) of the Tariff Act of 1930) is to prevent the refund of full duties, taxes, and fees on the importation of higher value goods upon the exportation of lower value goods. The Conferees do not intend a scenario in which the drawback claimant would not receive a refund upon the application of either rule, but rather intend to limit the refund to the lesser of the import and the export.

Lastly, the Conferees agree that section 906(o), amending section 508(c)(3) of the Tariff Act of 1930, shall require records for drawback claims to be maintained for three years after the date of liquidation.

SECTION 907. REPORT ON CERTAIN U.S. CUSTOMS AND BORDER PROTECTION AGREEMENTS

Present Law

Section 560 of the Department of Homeland Security Appropriations Act of 2013 authorizes CBP to enter into certain reimbursable fee agreements for the provision of CBP services.

Section 559 of the Department of Homeland Security Appropriations Act of 2014 establishes a pilot program authorizing CBP to enter into partnerships with private sector and government entities at ports of entry.

House Amendment

Section 911 requires the Commissioner to submit to Congress a detailed annual report on each reimbursable agreement and public-private partnership agreement into which CBP enters. Each report must include: 1) a description of the development of the program; 2) a description of the type of entity with which CBP entered into the agreement and the amount that entity reimbursed CBP under the agreement; 3) an identification of the type of port of entry to which the agreement relates and an assessment of how the agreement provides economic benefits at the port of entry; 4) a description of the services provided by CBP under the agreement during the year preceding the submission of the report; 5) the amount of fees collected under the agreement during that year; 6) a detailed accounting of how the fees collected under the agreement have been spent during that year; 7) a summary of any complaints or criticism received by CBP during that year regarding the agreement; 8) an assessment of the compliance with the terms of the agreement of the entity that entered into an agreement with CBP; 9) recommendations with respect to how activities conducted pursuant to the agreement could function more effectively or better produce economic benefits; and 10) a summary of the benefits to and challenges faced by CBP and the entity that entered into an agreement with CBP.

Senate Amendment

Section 909 of the Senate amendment is the same as section 911 of the House amendment except with respect to the recipients of the report required in this section.

Conference Agreement

The conference agreement follows the Senate amendment and House amendment with modifications. For agreements with an airport operator, the Conferees agree to require CBP to include in the annual report a detailed account of revenues collected by CBP to cover its operating costs at that airport from fees collected under the agreement and fees collected from other sources, including fees paid by passengers and aircraft operators. Further, subsection (a) is modified to require CBP to identify the authority under which a program operates and to require the reporting of the total operating expenses of a program, and subsection (b) is modified to cover the program under which CBP collects a fee for the use of customs services at designated facilities under 19 U.S.C. 58b. The conference agreement also incorporates reporting related to the preclearance program established by subtitle B of title VIII.

SECTION 908. CHARTER FLIGHTS

Present Law

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) requires CBP to provide customs services to passengers upon arrival in the United States in connection with scheduled airline flights.

House Amendment

No provision.

Senate Amendment

Section 910 of the Senate amendment amends current law to permit CBP employees to provide customs services for passengers and baggage on charter flights that arrive at U.S. ports of entry after normal operating hours, if the air carrier specifically requests the services at least four hours before the flight arrives and pays any overtime fees.

Conference Agreement

The conference agreement follows the Senate amendment.

SECTION 909. UNITED STATES-ISRAEL TRADE AND COMMERCIAL ENHANCEMENT

Present Law

No provision.

House Amendment

This section sets out U.S. policy identifying the importance of the bilateral U.S.-Israel trade relationship and establishes principal trade negotiating objectives, statements of policy, findings, and other provisions related to trade and commercial activities affecting the United States and Israel. This section: 1) states that among the U.S. principal trade negotiating objectives for proposed trade agreements with foreign countries is the discouragement of politically motivated actions to boycott, divest from, or sanction Israel (*i.e.*, BDS actions); 2) sets forth various statements of policy regarding trade with and commercial activities affecting Israel, including Congress's opposition to politically motivated BDS actions against Israel; 3) presents various positive findings regarding the trade and commercial relationship between the United States and Israel; 4) requires the President to report annually to Congress on politically motivated BDS actions against Israel; and 5) requires that no U.S. court recognize or enforce any judgment by a foreign court against a U.S. person doing business in Israel, or any territory controlled by Israel, if the U.S. court determines that the foreign judgment is based, in whole or in part, on a

determination by a foreign court that the U.S. person's mere conduct of business operations therein or with Israeli entities constitutes a violation of law.

Senate Amendment

The Senate amendment contains the statements of policy contained in the House amendment.

Conference Agreement

The conference agreement follows the House amendment with the exception of section 908(b)(8) of the House amendment regarding certain activities by U.S. states, which is excluded from the conference agreement.

SECTION 910. ELIMINATION OF CONSUMPTIVE DEMAND EXCEPTION TO PROHIBITION ON IMPORTATION OF GOODS MADE WITH CONVICT LABOR, FORCED LABOR, OR INDENTURED LABOR;
REPORT

Present Law

Section 307 of the Tariff Act of 1930 prohibits the importation of foreign-made goods that were manufactured or produced by convict, forced, or indentured labor, except in such quantities as necessary to meet the consumptive demands of the United States.

House Amendment

Section 909 eliminates the "consumptive demand" exception to the prohibition on importing goods made by convict, forced, or indentured labor, and requires the Commissioner to provide an annual report to Congress that includes: 1) the number of instances in which merchandise was denied entry pursuant to this section during the preceding 1-year period; 2) a description of the merchandise denied entry pursuant to this section; and 3) such other information the Commissioner considers appropriate with respect to monitoring and enforcing compliance with this section.

Senate Amendment

Section 912 of the Senate amendment is the same as section 909 of the House amendment.

Conference Agreement

The conference agreement follows the House and Senate amendment.

SECTION 911. VOLUNTARY RELIQUIDATIONS

Present Law

19 U.S.C. 1501 establishes that the Customs Service may reliquidate an entry, notwithstanding the filing of a protest, within 90 days from the date on which notice of the original liquidation is given or transmitted to the importer, the importer's consignee, or the importer's agent.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conferees agree to amend 19 U.S.C. 1501 to establish that CBP may reliquidate an entry, notwithstanding the filing of a protest, within 90 days from the date of the original liquidation.

SECTION 912. TARIFF CLASSIFICATION OF RECREATIONAL PERFORMANCE OUTERWEAR

Present Law

No provision.

House Amendment

Section 914 of the House amendment requires the U.S. International Trade Commission to submit to the Senate Committee on Finance and House Ways and Means Committee a report regarding the competitiveness of the U.S. recreational performance outerwear industry no later than June 1, 2016.

Senate Amendment

No provision.

Conference Agreement

This section includes technical corrections with respect to HTS subheadings for recreational performance outerwear created in Pub. L. 114-27.

SECTION 913. MODIFICATIONS OF DUTY TREATMENT OF PROTECTIVE ACTIVE FOOTWEAR

Present Law

Additional U.S. Note to chapter 64 of the HTS contains HTS subheadings for protective active footwear, which includes products such as certain water resistant hiking shoes, trekking shoes, and train running shoes, and ensures they carry a 20 percent duty rate. Current law requires that any staged reductions in duties as may be required by U.S. free trade agreements for athletic footwear will also apply to protective active footwear.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

Section 913 contains technical corrections to Additional U.S. Note to chapter 64.

SECTION 914. AMENDMENTS TO BIPARTISAN CONGRESSIONAL TRADE PRIORITIES AND
ACCOUNTABILITY ACT OF 2015

Present Law

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 sets forth negotiating objectives, procedures for consulting with Congress, and provisions for the consideration of trade agreements.

House Amendment

This section amends the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Subsection (a) ensures that trade agreements do not require changes to U.S. immigration law or obligate the United States to grant access or expand access to visas issued under 8 U.S.C. 1101(a)(15). Subsection (b) ensures that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures. Subsection (c) adds a negotiating objective related to fisheries. Subsection (d) allows the Chair and Ranking Member of the House and Senate Advisory Groups to each send up to three personnel to serve as delegates to negotiating rounds. Subsection (e) perfects the negotiating objective on human trafficking to require countries to take concrete steps to address trafficking. Subsection (f) makes technical amendments. Subsection (g) makes these amendments effective as if included in the enactment of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House Amendment, with modifications to the climate change, and fisheries negotiating objectives; the provisions on delegates attending negotiating rounds; and human trafficking.

With regard to section 914(b), this negotiating objective reaffirms that, consistent with current practice, trade agreements are not to establish obligations for the United States regarding greenhouse gas emissions measures, other than those fulfilling the other negotiating objectives in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. This objective is not intended to prevent trade agreements from including generally applicable or horizontal commitments, such as those regarding transparency or nondiscrimination, that may also apply to such requirements, nor to prevent trade agreements from including obligations consistent with other negotiating objectives addressed in the Bipartisan Trade Priorities and Accountability Act of 2015, including those relating to the environment, the reduction of tariffs on environmental goods, or fisheries as provided in this Conference Report. Were an agreement to include a provision establishing obligations regarding U.S. greenhouse gas emissions measures as specified in the Conference Report, a bill approving the agreement should be disqualified from eligibility for trade authorities procedures and should be considered under regular order, just like an agreement that fails to make progress in achieving the negotiating objectives set forth in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

With regard to Section 914(d), the Conference additionally clarifies that Members of Congress and personnel designated by the Chair and Ranking Member of the House and Senate Advisory Groups shall be delegates and official advisors to any trade agreement negotiating round.

With regard to section 914(e), this provision follows the House Amendment with additional changes to incorporate the sense of Congress that the integrity of the annual trafficking in persons report and report process should be respected and should not be affected by unrelated considerations, to require that the President provide supporting documentation with any letter submitted pursuant to the exception, and to require the President to submit a detailed description of the credible evidence supporting a change in designation from tier 3 to tier 2 watch list.

SECTION 915. TRADE PREFERENCES FOR NEPAL

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement creates a additional trade preferences for Nepal. The program requires Nepal to satisfy the eligibility criteria of the Africa Growth and Opportunity Act to be eligible for duty-free treatment of certain articles imported from Nepal. The provision is in response to the recent natural disaster in Nepal.

SECTION 916. AGREEMENT BY ASIA-PACIFIC ECONOMIC COOPERATION MEMBERS TO REDUCE RATES OF DUTY ON CERTAIN ENVIRONMENTAL GOODS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

Section 916 amends section 107 of the Trade Priorities and Accountability Act of 2015 to allow the President to use section 103(a) authorities to implement an agreement by members of the Asia-Pacific Economic Cooperation (APEC) forum to reduce any rate of duty on certain environmental goods included in annex C of the APEC Leaders Declaration issued on September 9, 2012, notwithstanding the notification requirement in section 103(a)(2). Such authority may be exercised only after the President notifies Congress, consistent with this provision.

SECTION 917. AMENDMENT TO TARIFF ACT OF 1930 TO REQUIRE COUNTRY OF ORIGIN MARKING OF CERTAIN CASTINGS

Present Law

Section 304(e) of the Tariff Act of 1930 (19 U.S.C. 1304(e)) requires that certain products (e.g. manhole rings) have visible country of origin markings.

House Amendment

No provision.

Senate Amendment

Section 911 of the Senate amendment amends section 304(e) of the Tariff Act of 1930 (19 U.S.C. 1304(e)) to include inlet frames, tree and trench grates, lampposts, lamppost bases, cast utility poles, bollards, hydrants, and utility boxes in the list of products which must be imprinted with a country of origin marking. This section also amends current law by requiring the aforementioned marking to be in a location such that it will remain visible after installation.

Conference Agreement

The conference agreement follows the Senate amendment.

SECTION 918. INCLUSION OF CERTAIN INFORMATION IN SUBMISSION OF NOMINATION FOR APPOINTMENT OF DEPUTY UNITED STATES TRADE REPRESENTATIVE

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 907 of the Senate amendment requires that, when the President submits to the Senate for its advice and consent a nomination of an individual for appointment as a Deputy United States Trade Representative, the President shall include in that submission information on the country, regional offices, and functions of the Office of the United States Trade Representative with respect to which that individual will have responsibility.

Conference Agreement

The conference agreement follows the Senate amendment with additional reporting requirements.

SECTION 919. SENSE OF CONGRESS ON THE NEED FOR A MISCELLANEOUS TARIFF BILL PROCESS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Title VIII of the Senate amendment established a process for the consideration of temporary duty suspensions and reductions.

Conference Agreement

The conference agreement states that it is the sense of Congress that the Senate Finance Committee and the House Ways and Means Committee are urged to advance, as soon as possible, after consultation with the public and Members of the Senate and the House of Representatives, a process for the temporary suspension and reduction of duties that is consistent with the rules of the Senate and the House.

SECTION 920. CUSTOMS USER FEES

Present Law

Under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Secretary of the Treasury is authorized to charge and collect fees for the provision of certain customs services. Pursuant to section 13031(j)(3), the Secretary of the Treasury may not charge fees for the provision of certain customs services after September 30, 2024.

House Amendment

Section 910 amends section 13031(j)(3)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to extend the period that the Secretary of the Treasury may charge for certain customs services for imported goods from July 8, 2025 to July 28, 2025, and extends the ad valorem rate for the Merchandise Processing Fee collected by CBP that offsets the costs incurred in processing and inspecting imports from July 1, 2025 to July 14, 2025.

Senate Amendment

Section 1002 of the Senate amendment is the same as section 910 of the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment and makes technical corrections to the drafting.

SECTION 921. INCREASE IN PENALTY FOR FAILURE TO FILE RETURN OF TAX

Present Law

The Federal tax system is one of “self-assessment,” *i.e.*, taxpayers are required to declare their income, expenses, and ultimate tax due, while the IRS has the ability to propose subsequent changes. This voluntary system requires that taxpayers comply with deadlines and adhere to the filing requirements. While taxpayers may obtain extensions of time in which to file their returns, the Federal tax system consists of specific due dates of returns. In order to foster compliance in meeting these deadlines, Congress has enacted a penalty for the failure to timely file tax returns.¹

A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to 5 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.² If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.³ The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax which may be claimed on the return.⁴ The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.⁵

If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, the failure to file penalty may not be less than the lesser of \$135 (indexed annually for inflation) or 100 percent of the amount required to be shown as tax on the return. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return.⁶ If a return is filed more than 60 days after its due date, the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of \$135 or 100 percent of the amount required to be shown on the return.⁷

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns, and estate and gift tax returns), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms).⁸ The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by sections 6654 or 6655.⁹

¹ See *United States v. Boyle*, 469 U.S. 241, 245 (1985).

² Sec. 6651(a)(1).

³ Sec. 6651(f).

⁴ Sec. 6651(b)(1).

⁵ Sec. 6651(a)(1).

⁶ Sec. 6651(c)(1).

⁷ *Ibid.*

⁸ Sec. 6651(a)(1).

⁹ Sec. 6651(e).

House Amendment

Under the provision, if a return is filed more than 60 days after its due date, then the failure to file penalty may not be less than the lesser of \$205 or 100 percent of the amount required to be shown as tax on the return.

Effective date.—The provision applies to returns required to be filed in calendar years after 2015.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House amendment provision.

SECTION 922. PERMANENT MORATORIUM ON INTERNET ACCESS TAXES AND ON MULTIPLE AND DISCRIMINATORY TAXES ON ELECTRONIC COMMERCE

Present Law

The temporary moratorium on states and localities taxing Internet access or placing multiple and discriminatory taxes on Internet commerce expires on December 11, 2015.

House Amendment

No provision.

Senate Amendment

No provision.

Conference Agreement

Section 922 makes permanent an existing moratorium on states and localities taxing Internet access or placing multiple and discriminatory taxes on Internet commerce. The existing temporary ban was first put in place in 1998. Since then, Congress has extended it multiple times with enormous bipartisan support. Section 922 converts the moratorium into a permanent ban--on which consumers, innovators and investors can permanently rely--by simply striking the 2015 end date. The original moratorium included a grandfather clause to give States that were then taxing Internet access some time to transition to other sources of revenue. All but six of the originally grandfathered states have discontinued taxing Internet access. Section 922 gives those states additional time by delaying the phase-out of the grandfathers until June 30, 2020 which is the end of the fiscal year for states and the start of a new billing cycle for Internet access providers.

MINORITY VIEWS

During the Senate's consideration of legislation earlier this year, Finance Committee Ranking Member Ron Wyden, Senator Bill Nelson (D-FL), and Senator Ben Cardin (D-MD), members of the Finance Committee, expressed their support for the establishment of a process whereby Congress would consider the merits of an extension of certain apparel Tariff Preference Levels (TPLs). It is the view of Senator Wyden that these programs can offer benefits to U.S. consumers, workers, and exporters, and Congress should further consider the merits of an extension of the Nicaragua, Bahrain, and Morocco TPLs.