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THE CUSTOMS MODERNIZATION ACT OF 2023

A bipartisan solution to better collect and leverage data to position government and industry for the future of trade.

Sens. Bill Cassidy and Sheldon Whitehouse

SECTION-BY-SECTION SUMMARY

SUMMARY

This bill increases Customs and Border Protection's (CBP) visibility into international supply chains to resolve CBP data collection constraints, expand the legal use of trade data, increase supply chain visibility and accountability, improve enforcement effectiveness, and direct federal agencies to share trade data.

SEC. 1 SHORT TITLE

Customs Modernization Act of 2023

TITLE I: IMPROVED COLLECTION AND USE OF INFORMATION

Sec. 101 Modification of requirements for filing of entry documentation.

Under current law, CBP receives the data it needs to levy taxes and fees and catch illicit goods at the time imports enter the United States. This data is typically provided by parties that are often far removed from the source of the goods. This section would allow CBP to access data prior to entry and from parties throughout the supply chain, which would allow it to more effectively enforce the law while providing predictability for importers. Specifically, it:

- (a) Amends Section 484(a) of the Tariff Act of 1930 (19 U.S.C. 1484(a)) to clarify CBP's authority to require electronic filing and a single entry for all data and clarify that the importer of record or its broker will submit the data.
- (b) Amends Section 484(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1484(a))—

(D) PROVISION OF ADVANCED INFORMATION. Clarifies CBP's authority to promulgate regulations permitting an importer of record or its agent to request that the importer of record, its agent, or another party in the supply chain make available to CBP advance information related to the merchandise. Authorizes the importer of record, using reasonable care, to convert this pre-entry information into a certified entry filing. CBP may impose a penalty of \$5,000 for the first violation of these regulations and \$10,000 for subsequent violations.

(c) Release of merchandise—CBP may permit the entry and release of merchandise from customs custody in accordance with regulations provided by the Secretary. Also clarifies that the exemption from liability on delivery of merchandise released from customs applies to all CBP employees, not just CBP officers.

(d) Certification of entry filings—Clarifies that entry data electronically filed shall be certified by the importer of record or its agent. In circumstances where data is not electronically filed, the importer of record or its agent will sign the entry.

Sec. 102 Expansion of recordkeeping requirements relating to importation

Customs laws were last overhauled in 1993, before the rise of e-commerce platforms that keep records that are critical to enforcing IP laws and cracking down on other illegal imports. This section clarifies that record keeping and production requirements include e-commerce platforms and other entities that facilitate cross-border transactions.

Sec. 103 Expansion of authority of U.S. Customs and Border Protection to obtain information relating to importation and trade enforcement

This section clarifies that the ability to issue a summons for records and assess penalties for noncompliance extends to the additional data that will be collected under this legislation. Specifically:

(a) Amends Section 509(a) of the Tariff Act of 1939 (19 U.S.C. 1509(a))

(1) Amend outdated language and clarify what delegates of the Secretary may examine records and issue summons.

(2) Clarify that any record required to be retained under 19 USC 1508 can be demanded by CBP and must be provided (and is thus subject to penalties for non-production). Authorizes CBP to apply adverse inference to importers and other parties that fail to make reasonable efforts to comply with CBP record demands.

(3) Authorize CBP to summons, upon reasonable notice, records from those who knowingly caused merchandise to be imported, participated in, facilitated, or were otherwise connected or related to an importation. Further clarifies those parties from whom CBP may summons records, including e-commerce platforms.

(b) DEFINITION OF RECORDS – Clarifies certain records that are included in the definition of “records” as it relates to CBP issuing a summons to third party actors.

(c) IDENTIFICATION OF RECORDS AND INFORMATION – Clarifies that CBP will identify in regulations which type of records and information a party is required to keep and produce.

Sec. 104 Use of mandatory advance electronic information for cargo

Removes limitations on data use by allowing mandatory advance electronic information collected for cargo to be collected for the purpose of enforcing all trade and customs laws as opposed to being collected and used solely for ensuring cargo safety and security. Restricting the use of this data under current law sets up roadblocks for the clearance process, enforcement actions, and even national security determinations.

TITLE II: STRENGTHENED ENFORCEMENT OF IMPORT AND EXPORT PROHIBITIONS

Sec. 201 Examination and testing of merchandise that infringes intellectual property rights

Clarifies CBP’s authority to provide information to relevant supply chain parties when CBP has a reasonable suspicion that goods are counterfeit or otherwise illicit.

Sec. 202 Seizure and forfeiture and disposition of, and expanded liability for, merchandise bearing a counterfeit mark or infringing a copyright

The current process for seizing and forfeiting violative goods is cumbersome and the costs of the process often exceed the value of the seized goods. Under this section:

(a) Seizure and forfeiture and disposition – amends 526(e) of the Tariff Act of 1930 (19 U.S.C. 1526(e)) – authorizes alternatives to seizure for goods that infringe on intellectual property rights (IPR), including exports. Permits the summary forfeiture of certain IPR-infringing goods.

(b) Expansion of liability for importing merchandise bearing a counterfeit mark or infringing a copyright – amending section 526(f) of the Tariff Act (19 U.S.C. 1526(f)) – clarifying that those involved in IPR infringement are subject to civil penalties.

Sec. 203 Summary forfeiture of certain merchandise

Grants CBP the authority under certain circumstances to summarily forfeit controlled substances, merchandise found in violation of the Food, Drug, and Cosmetic Act, and counterfeit items.

TITLE III: LIABILITY FOR VIOLATIONS OF CUSTOMS AND TRADE LAWS

Sec. 301 Expansion of liability for certain violations of arrival, reporting, entry, and clearance requirements

Under current law, CBP can penalize vessel masters, aircraft pilots, and persons in charge of a vehicle for failing to comply with reporting requirements like providing manifest information. This is outdated since much of this data is now transmitted electronically by other parties such as the air carrier. This provision clarifies that any person reporting such information who knowingly provides incorrect information is liable for a civil penalty.

Sec. 302 Modification of standards and penalties for fraud and negligence

Removes standard and maximum penalty of gross negligence, further defines prohibited actions, and clarifies CBP's pre-penalty procedures for violative merchandise. Defines standards for negligence and fraud, aligning definition of fraud with standards in other civil fraud statutes such as the False Claims Act, and case law. Clearer standards will mean more consistent, uniform enforcement.

Sec. 303 Expansion of liability for aiding unlawful importation and exportation

Under current law, CBP can penalize vessel masters, aircraft pilots, and persons in charge of a vehicle for failing to comply with reporting requirements like providing manifest information. This is outdated since much of this data is now transmitted electronically by other parties such as the air carrier. This provision clarifies that any person reporting such information who knowingly provides incorrect information is liable for a civil penalty.

Sec. 304 Procedures for investigating claims of evasion of antidumping and countervailing duty orders

Permits CBP to disclose the importer name in an Enforce and Protect Act investigation where the importer is not identified in the allegation and CBP has a reasonable suspicion that evasion has occurred. Also allows CBP to expand such investigations to include additional importers if CBP reasonably suspects that such importers are engaging in similar conduct.

Sec. 305 Obstruction of investigations

Grants CBP authority to levy penalties on those who intentionally destroy, alter, mutilate, conceal, cover up, or falsify evidence with the intent of avoiding duties, taxes, fees, or penalties.

Sec. 306 Modification of bonding requirements

Clarifies that CBP has the authority to issue regulations governing information sharing with sureties to ensure duties, taxes, and fees are secured by bonds.

Sec. 307 Treatment of importations involving suspended or debarred persons

Takes measures to protect the integrity of the Importer of Record Program by clarifying CBP's authority to assess program participation by those who have been suspended or debarred from doing business with the federal government under the System for Award Management Exclusions.

TITLE IV: ADMINISTRATIVE EXEMPTION FROM DUTIES

Sec. 401 Collection and use of data relating to eligibility for administrative exemption from duties

Under current law, shipments worth less than \$800 are considered “de minimis” and not subject to taxes, duties, fees, or rigorous inspection to prevent unsafe and illegal goods like those made with forced labor from entering the country. This threshold is the highest in the world – China’s equivalent threshold is just \$8. This section would allow CBP to collect more information on de minimis shipments so it can prevent more unsafe and illegal imports. Specifically:

(a) Amends Section 321 of the Tariff Act (19 U.S.C. 1321):

(1) Clarifies CBP's authority to promulgate regulations requiring submission of additional information to determine eligibility for de minimis exemption.

(2) Lays out the type of information that may be collected.

(3) Allows CBP to require information from parties other than parties qualified to make entry under section 1498.

(4) Accuracy of information – requires that information submitted be true and correct to the best of the knowledge and belief of the party.

(5) Authorizes CBP to use this information for any lawful purpose.

(6) Civil penalty – authorizes penalties up to \$1,000 for the first violation and \$2,000 for each subsequent violation.

(7) Defines what it means to provide CBP with this documentation.

(c) Regulations – In prescribing regulations to implement this section, 1) requires that information be submitted by one of the parties qualifying to make entry or a customs broker and 2) requires CBP to give due consideration to whether such documentation supports trade facilitation.

Sec. 402 Streamlined disposition of merchandise subject to administrative exemptions

CBP cannot effectively investigate and process the increasing flood of illegal imports that are under the de minimis threshold. This provision provides for streamlined disposition of detained de minimis importations for which CBP receives no timely response.

TITLE V: OTHER MATTERS

Sec. 501 Protests against decisions of U.S. Customs and Border Protection

Clarifies the avenue for challenging exclusion order enforcement lies solely with the International Trade Commission. Also clarifies that CBP's Enforce and Protect Act determinations are final unless challenged at the Court of International Trade.

Sec. 502 Reduction of administrative burdens

Allows for the electronic transmission of requests for accelerated disposition of protests and modifies requirements for filing official documents before the Court of International Trade.

Sec. 503 Authority to conduct communications electronically

Allows CBP to conduct its communications electronically.

Sec. 504 Disclosure of vessel, aircraft, or vehicle manifest information

Under current law, ocean vessel manifest information must be publicly disclosed. Due to a technical error, this public disclosure requirement does not apply to aircraft manifests, which was Congress's intent. Public disclosure of manifest data is critical for monitoring supply chains for illegal goods like fentanyl and those made with forced labor, combatting trade-based money laundering, identifying unfair trade practices like dumping, and allowing IP holders to enforce their rights. Limiting public disclosure to ocean vessel manifests is a relic of the past, when most imports came by ship. Today, half of imports come by either air or by land.

This provision clarifies that aircraft manifest must be disclosed. It also requires that vehicle (i.e. truck and rail) manifest information be disclosed. Finally, it requires CBP to ensure that certain personally identifiable information like a Social Security number is removed from manifests before public disclosure.