

# Trade Facilitation and Trade Enforcement Act of 2015:

## Section-by-Section Summary

### Overview:

<b>Title I:</b>	<b>Trade Facilitation and Trade Enforcement</b>
<b>Title II:</b>	<b>Import Health and Safety</b>
<b>Title III:</b>	<b>Import-Related Protection of Intellectual Property Rights</b>
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### TITLE I: TRADE FACILITATION AND TRADE ENFORCEMENT

**Section 101:** Requires the Commissioner to work with the private sector and other Federal agencies to ensure that all Agency partnership programs provide trade benefits to participants.

**Section 102:** Requires a study by the General Accountability Office (GAO) to measure the effectiveness of U.S. Customs and Border Protection (CBP) in trade enforcement activities (in particular the Primary Trade Issues in section 111).

**Section 103:** Requires CBP to establish key performance measures and requires reports to Congress on modernization, facilitation, and trade enforcement functions, in consultation with the Committees on Ways and Means and Finance, with respect to the implementation of the Automated Commercial Environment (ACE), drawback modernization, in-bond merchandise movement, collection of antidumping and countervailing duties, expedited clearance of cargo, and Centers for Excellence and Expertise.

**Section 104:** Requires the Commissioner of CBP and the Director of Immigration and Customs Enforcement (ICE) to co-develop and provide educational seminars for CBP port personnel and ICE agents to provide instructions on collection of antidumping and countervailing duties, textile transshipment, intellectual property protection, and enforcement of child labor laws, for the purpose of improving trade fraud prevention and detection techniques.

**Sec 105:** Requires CBP and ICE to submit to Congress a biennial joint strategic plan on trade enforcement and trade facilitation, and requires the CBP Commissioner and ICE Director to consult with appropriate officials from relevant Federal agencies, the Commercial Customs Advisory Committee (COAC), relevant law enforcement agencies, international organizations, and interested parties in the private sector in developing the joint strategic plan.

**Section 106:** Authorizes the Automated Commercial Environment (ACE) computer system; requires reports from CBP on the development and implementation of ACE; and requires a GAO report evaluating the cost and effectiveness of CBP's efforts to complete ACE development, establishment, and implementation, as well as the benefits of ACE.

**Section 107:** Amends the Tariff Act of 1930 by adding an information technology infrastructure and requires that the Secretary of Treasury to work with the head of each agency participating in International Trade Data System (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 the ITDS and to submit all data to ITDS electronically; (2) enters into a memorandum of understanding, or take such other action as is necessary, to provide for the information sharing between the agency and CBP necessary for the operation and maintenance of ITDS; and (3) identifies and transmits to the Commissioner the admissibility criteria and data elements required by the agency to authorize the release of cargo by CBP for incorporation into the operational functionality of the ACE computer system.

**Section 108:** Provides the House Committee on Ways and Means and the Senate Finance Committee with 30 days' notification before CBP initiates or enters into a mutual recognition agreement relating to supply chain or customs revenue functions, and establishes that it shall be a negotiating objective of the United States, in any negotiation for a mutual recognition arrangement with a foreign country on partnership programs, to seek to ensure compatibility with CBP partnership programs to enhance trade enforcement and trade facilitation.

**Section 109:** Codifies and expands the role of the Commercial Customs Advisory Committee (COAC), which is made up of 20 members representing the trade community and advises and provides recommendations to the Secretaries of the Treasury and Homeland Security on CBP's commercial operations, including modernization and streamlining of cargo processing.

**Section 110:** Requires the Commissioner, in consultation with the private sector, to develop and implement Centers of Excellence and Expertise (CEEs) within CBP that ensure uniform implementation and enforcement of the laws and regulations of the United States across ports of entry, improve enforcement efforts, build upon CBP expertise in particular industry operations and supply chains, centralize Agency decision making, and formalize an account-based approach to the importation of merchandise into the United States.

**Section 111:** Establishes a Commercial Targeting Division in CBP; codifies targeting and analysis groups for each of the Primary Trade Issues (PTIs), with each group required to develop specific targeted risk assessment methodologies and performance standards as well as provide enforcement alerts to the ports of entry for cargo inspection; and requires that advanced trade data collected for security purposes be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and not for any commercial enforcement purposes, including for determining merchandise entry.

**Section 112:** Requires the Inspector General of the Department of Treasury to conduct periodic reviews of CBP's revenue protection and enforcement measures, focusing in particular on collection of revenue from antidumping and countervailing duties, assessment and collection of penalties, and adequacy of policies regarding in-bond movements of cargo.

**Section 113:** Requires the Secretaries of Treasury and Homeland Security to jointly report on CBP improvements to internal controls over merchandise moving in-bond.

**Section 114:** Requires CBP to strengthen internal controls and develop criteria for assigning importer-of-record numbers, establishing an accurate database of importer of record numbers, and improving the accuracy of existing numbers.

**Section 115:** Provides CBP with the authority to strengthen internal controls over “new importers” to ensure collection of revenue through risk-based bonding for duties, fees, and penalties.

**Section 116:** Requires Customs brokers to collect information on the identity of importers, with penalties for failure to comply.

**Section 117:** Requires CBP to collect additional information and levy financial requirements on “nonresident importers” to increase revenue protection.

## **TITLE II: IMPORT HEALTH AND SAFETY**

**Section 201:** Establishes an interagency import safety working group, chaired by the Secretary of Homeland Security, which is required 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 manufacturers; (4) consult with the private sector to identify best practices in import health and safety; (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.]

**Section 202:** Requires the Secretary of Homeland Security, in consultation with the import safety working group, to develop and review a joint import safety rapid response 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, and requires the Commissioner to conduct exercises to test the plan in conjunction with Federal, state, and local agencies.]

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

## **TITLE III: IMPORT-RELATED PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

**Section 301:** Defines the term “intellectual property rights” as used in Title III.

**Section 302:** Amends the Tariff Act of 1930 by authorizing and directing CBP to share information with rights holders to help quickly ascertain whether a suspect good crossing the U.S. border at a port of entry violates a copyright or trademark, except in such cases as would compromise an ongoing law enforcement investigation or national security.

**Section 303**: Amends the Tariff Act of 1930 by authorizing a seizure if CBP determines suspect merchandise is a circumvention device, and directs CBP to notify an injured rightholder of the seizure and provide information required by CBP regulations, if the rightholder is included on a list maintained by CBP that is revised annually.

**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 Copyright Office of the Library of Congress to the same extent and in the same manner as if the copyright were registered with the Copyright Office.

**Section 305**: Establishes within ICE the National Intellectual Property Rights Coordination Center.

**Section 306**: Requires the Commissioner and Director to include in the joint strategic plan required under section 131 the following: (1) a description of DHS's IPR enforcement efforts; (2) a list of the top ten ports, by volume and value, where CBP seized IPR infringing goods in the preceding two years; and (3) a recommendation for the optimal allocation of personnel to ensure CBP and ICE are effectively enforcing IPR.

**Section 307**: Requires the Commissioner to ensure sufficient personnel are assigned throughout CBP with responsibility to enforce IPR with respect to U.S. imports.

**Section 308**: Requires the Commissioner to effectively train CBP port personnel to detect and identify IPR infringing imported goods, to work with the private sector to identify opportunities for collaboration with respect to training for officers of the agency to enforce IPR, consult with the private sector to identify technologies that can cost-effectively identify infringing merchandise, provide for cost-effective training for CBP officers with regard to the use of such technologies, and prescribe regulations to enable CBP to receive donations of technology and training from private sector entities for the purpose of enforcing IPR.

**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 ICE Director to lead interagency efforts to collaborate with law enforcement and customs authorities of foreign countries.

**Section 310**: Requires the Commissioner and the ICE Director to jointly submit to the Congress a report on DHS's IPR enforcement efforts.

**Section 311**: 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, and to ensure that all versions of CBP Form 6059B, 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.

## **TITLE IV: PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS**

**Section 401**: Short title – “Preventing Recurring Trade Evasion and Circumvention Act.”

**Section 402**: Definitions.

**Section 403**: Provides that the provisions apply to Canada and Mexico.

### ***Subtitle A - Actions Relating to Enforcement of Trade Remedy Laws***

**Section 411**: Establishes the Trade Remedy Law Enforcement Division within CBP’s Office of International Trade, dedicated to preventing and investigating trade remedy evasion and directing CBP activity concerning evasion. This division would coordinate information exchange and cooperation between CBP, ICE, and other agencies regarding evasion. It would also serve as the primary contact point for evasion allegations and would be required to provide parties updates on the status and outcome of investigations or other activities resulting from allegations. The division would contain a National Targeting and Analysis Group dedicated to identifying potentially evading imports and alerting relevant ports.

**Section 412**: Directs CBP to exercise all existing information collection authorities to identify evasion; authorizes CBP to issue questionnaires to collect information on alleged evasion and to apply an adverse inference against a party that does not provide the requested information.

**Section 413**: Authorizes increased data sharing between CBP, the Department of Commerce, and the U.S. International Trade Commission for enforcement actions against evasion.

**Section 414**: Directs CBP to enter into agreements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion.

**Section 415**: Establishes as a negotiating objective for future trade agreements the creation of arrangements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion.

### ***Subtitle B – Investigation of Evasion of Trade Remedy Laws***

**Section 421**: Grants the Department of Commerce the authority to investigate evasion of antidumping and countervailing duty orders and establishes the procedures for such investigations. In addition, requires CBP to provide the Department of Commerce information and documents required to conduct these investigations, and requires the Department of Commerce to send CBP the administrative record of these investigations. Requires the Department of Commerce to submit an annual report to Congress on its evasion investigations.

**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.

***Subtitle C – Other Matters***

**Section 431:** Directs CBP to assign sufficient personnel responsible for preventing and investigating evasion and requires that such personnel are adequately trained.

**Section 432:** Requires CBP to submit an annual report to Congress providing a detailed description of CBP evasion policies and activities.

**Section 433:** Terminates the ability of new shippers to post bonds during Department of Commerce new shipper antidumping and countervailing duty reviews and establishes criteria for identifying bona fide sales by a new shipper.

**TITLE V: ADDITIONAL TRADE ENFORCEMENT PROVISIONS**

**Section 501:** 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 directs the Administration to focus its enforcement actions on addressing practices that, if eliminated, would likely have the most significant potential to increase United States economic growth.

**Section 502:** 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.

**Section 503:** Requires the International Trade Commission to create a web-based import monitoring tool to provide data on the volume and value of imports, and requires the Department of Commerce to provide on a website periodic reports on quarterly changes in the volume and value of imports.

**TITLE VI: MISCELLANEOUS PROVISIONS**

**Section 601:** Raises *de minimis* amounts from \$200 to \$800 to reduce paperwork burdens and facilitate the movement of cargo.

**Section 602:** Requires notification to Congress no later than 30 days after proposing and 30 days prior to the finalization of any DHS policies, initiatives, or actions that will have a major impact on trade and customs revenue functions.

**Section 603:** Adds committing or conspiring to commit an act of terrorism to the list of offenses as grounds for removal of a broker license.

**Section 604:** Amends Chapter 98 of the Harmonized Tariff Schedule (HTS) of the United States by: (1) reducing record-keeping burden on goods returned to the United States without improvement abroad so that duties are not assessed twice (HTS 9801); and (2) modernizing existing inventory management rules by subtracting the value of U.S. components assembled into the final product that will be entered into U.S. commerce for articles exported and returned after being improved abroad (HTS 9802).

**Section 605:** Removes from formal entry requirements residue of bulk cargo contained in instruments of international traffic previously exported from the United States.

**Section 606:** Implements drawback modernization by allowing use of eight-digit Harmonized Tariff System (HTS) classifications for determining eligibility for drawback claims; makes most time-frames for filing drawback claims consistent; and requires a GAO to report on drawback, including determining the impact of moving to eight-digit HTS classification for determining eligibility for drawback.

**Section 607:** Establishes reporting requirements for interagency programs led by the Office of the United States Trade Representative (USTR), including the Interagency Trade Enforcement Center, and for budgetary and staffing requirements in USTR's Annual Report, in conjunction with other reports USTR is already required to submit to Congress.

**Section 608:** [Israel Roskam Bill]

**Section 609:** Eliminates the consumptive demand exception to the prohibition on importing merchandise made by convict, forced or indentured labor, and requires the Commissioner to provide a 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 the section, and 3) such other information the Commissioner considers appropriate with respect to monitoring and enforcing compliance with this section.

**Section 610: fees**

**Section 611:** Requires the Commissioner to submit to Congress a detailed annual report on each reimbursable agreement and public-private partnership agreement CBP enters into. 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 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.