

109TH CONGRESS
2^D SESSION

S. 3658

To reauthorize customs and trade functions and programs in order to facilitate legitimate international trade with the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2006

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To reauthorize customs and trade functions and programs in order to facilitate legitimate international trade with the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Customs and Trade Facilitation Reauthorization Act of
6 2006”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CUSTOMS AND TRADE FACILITATION FUNCTIONS

Subtitle A—Functions Other Than Investigative Functions

- Sec. 101. Establishment of Bureau; Commissioner.
- Sec. 102. Officer and employees.
- Sec. 103. Separate budget for Bureaus.
- Sec. 104. Revolving fund.
- Sec. 105. Authorization of appropriations.
- Sec. 106. Advances in foreign countries.
- Sec. 107. Advances for enforcement of customs provisions.
- Sec. 108. Certification of reason for advance.
- Sec. 109. Payments in foreign countries; claims for reimbursement.
- Sec. 110. Undercover investigative operations.
- Sec. 111. Customs administration.
- Sec. 112. Annual national trade and customs law violation estimates and enforcement strategy.
- Sec. 113. Conforming amendment.

Subtitle B—Investigative Functions

- Sec. 121. Establishment of Bureau.

TITLE II—CUSTOMS AND TRADE FACILITATION PROGRAMS

- Sec. 201. Definitions.

Subtitle A—Bilateral and Multilateral Negotiations

- Sec. 211. Bilateral customs partnerships.
- Sec. 212. Multilateral customs negotiations.

Subtitle B—Customs Data Collection

- Sec. 221. International trade data system.
- Sec. 222. Authorization of appropriations.

Subtitle C—Trade Facilitation Programs

- Sec. 231. Establishment of a voluntary customs industry partnership program.
- Sec. 232. Trade resumption plan.
- Sec. 233. Automated Targeting System.
- Sec. 234. Drawback for exported merchandise.
- Sec. 235. Final authority over matters relating to customs brokers.
- Sec. 236. Advisory Committee.
- Sec. 237. Study and report.

Subtitle D—Staffing and Resources

- Sec. 241. Staffing for commercial operations and revenue functions of the Bureau of Customs and Border Protection.

TITLE III—AUTHORIZATION OF APPROPRIATIONS FOR OTHER TRADE AGENCIES

- Sec. 301. Authorization of appropriations for United States International Trade Commission.
- Sec. 302. Authorization of appropriations for the Office of the United States Trade Representative.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Methamphetamine and methamphetamine precursor chemicals.
 Sec. 402. United States port and terminal operator competitiveness.
 Sec. 403. Charter flights.
 Sec. 404. Technical amendments to customs modernization.
 Sec. 405. Articles repaired or altered.

1 **TITLE I—CUSTOMS AND TRADE**
 2 **FACILITATION FUNCTIONS**
 3 **Subtitle A—Functions Other Than**
 4 **Investigative Functions**

5 **SEC. 101. ESTABLISHMENT OF BUREAU; COMMISSIONER.**

6 The first section of the Act of March 3, 1927 (44
 7 Stat. 1381, chapter 348; 19 U.S.C. 2071), is amended to
 8 read as follows:

9 **“SECTION 1. ESTABLISHMENT OF BUREAU; COMMIS-**
 10 **SIONER.**

11 **“(a) ESTABLISHMENT OF BUREAU.—**There shall be
 12 in the Department of Homeland Security a bureau to be
 13 known as the Bureau of Customs and Border Protection,
 14 and a Commissioner of Customs. The Commissioner of
 15 Customs, who shall be appointed by the President by and
 16 with the advice and consent of the Senate, shall—

17 **“(1)** be at the head of the Bureau of Customs
 18 and Border Protection;

19 **“(2)** carry out the duties and powers prescribed
 20 by the Secretary of Homeland Security and by law;
 21 and

1 “(3) report directly to the Deputy Secretary of
2 Homeland Security.

3 “(b) COMPENSATION.—The Commissioner of Cus-
4 toms, Department of Homeland Security, shall be com-
5 pensated at the rate of pay for level III of the Executive
6 Schedule in section 5314 of title 5, United States Code.”.

7 **SEC. 102. OFFICER AND EMPLOYEES.**

8 Section 2 of the Act of March 3, 1927 (44 Stat.
9 1381, chapter 348; 19 U.S.C. 2072), is amended to read
10 as follows:

11 **“SEC. 2. OFFICERS AND EMPLOYEES OF BUREAU.**

12 “(a) DEPUTY COMMISSIONER AND OTHER OFFI-
13 CERS.—The Secretary of Homeland Security is authorized
14 to appoint, in the Bureau established by section 1, one
15 deputy commissioner, and such other officers as are nec-
16 essary to manage the individual offices within the Bureau.
17 Appointments under this subsection shall be subject to the
18 provisions of the civil service laws, and the salaries shall
19 be fixed in accordance with chapter 51 and subchapter III
20 of chapter 53 of title 5, United States Code.

21 “(b) ABSENCE OR DISABILITY OF COMMISSIONER.—
22 The Secretary of Homeland Security is authorized to des-
23 ignate an officer of the Bureau of Customs and Border
24 Protection as Commissioner of Customs, during the ab-

1 sence or disability of the Commissioner of Customs, or in
2 the event that there is no Commissioner of Customs.

3 “(c) DUTIES OF PERSONNEL.—The personnel of the
4 Bureau of Customs and Border Protection shall perform
5 any customs revenue function delegated by the Secretary
6 of the Treasury to the Secretary of Homeland Security
7 pursuant to section 412 of the Homeland Security Act of
8 2002 (6 U.S.C. 212), other than the conduct of a commer-
9 cial investigation in connection with such delegated func-
10 tion, and such other duties as the Secretary of Homeland
11 Security may prescribe or are prescribed by law.”.

12 **SEC. 103. SEPARATE BUDGET FOR BUREAUS.**

13 (a) IN GENERAL.—The President shall include in
14 each budget transmitted to Congress under section 1105
15 of title 31, United States Code, a separate budget request
16 for the Bureau of Customs and Border Protection and a
17 separate budget request for the Bureau of Immigration
18 and Customs Enforcement.

19 (b) REPEAL.—Section 414 of the Homeland Security
20 Act of 2002 (6 U.S.C. 214) is hereby repealed.

21 **SEC. 104. REVOLVING FUND.**

22 The matter under the heading “REVOLVING FUND,
23 BUREAU OF CUSTOMS” in the Treasury and Post Office
24 Departments Appropriations Act, 1950 (63 Stat. 360; 19
25 U.S.C. 2074) (as amended by Treasury Department Order

1 No. 165–23, effective August 1, 1973), is amended by
2 striking “United States Customs Service” and inserting
3 “Bureau of Customs and Border Protection”.

4 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) IN GENERAL.—Section 301 of the Customs Pro-
6 cedural Reform and Simplification Act of 1978 (19 U.S.C.
7 2075) is amended to read as follows:

8 **“SEC. 301. APPROPRIATIONS AUTHORIZATION.**

9 “(a) IN GENERAL.—For the fiscal year beginning Oc-
10 tober 1, 2006, and each fiscal year thereafter, there are
11 authorized to be appropriated to the Department of
12 Homeland Security for the Bureau of Customs and Border
13 Protection only such sums as may hereafter be authorized
14 by law.

15 “(b) MERCHANDISE PROCESSING FEE.—The monies
16 authorized to be appropriated pursuant to subsection (a)
17 for any fiscal year, except for such sums as may be ne-
18 cessary for the salaries and expenses of the Bureau of Cus-
19 toms and Border Protection that are incurred in connec-
20 tion with the processing of merchandise that is exempt
21 from the fees imposed pursuant to section 13031(a) (9)
22 and (10) of the Consolidated Omnibus Budget Reconcili-
23 ation Act of 1985 (19 U.S.C. 58c(a) (9) and (10)) shall
24 be appropriated from the Customs User Fee Account.

1 “(c) MANDATORY 10-DAY DEFERMENT.—No part of
2 the funds appropriated under subsection (a) for any fiscal
3 year may be used to provide less time for the collection
4 of estimated duties than the 10-day deferment procedure
5 in effect on January 1, 1981.

6 “(d) OVERTIME PAY LIMITATIONS; WAIVER.—No
7 part of the funds appropriated pursuant to subsection (a)
8 for any fiscal year may be used for administrative ex-
9 penses to pay any employee of the Bureau of Customs and
10 Border Protection overtime pay in an amount exceeding
11 \$35,000 unless the Secretary of Homeland Security, or
12 the designee of the Secretary, determines on an individual
13 basis that payment of overtime pay to such employee in
14 an amount exceeding \$35,000 is necessary for national se-
15 curity purposes, to prevent excessive costs, or to meet
16 emergency requirements of the Bureau.

17 “(e) PAY COMPARABILITY AUTHORIZATION.—For
18 the fiscal year beginning October 1, 2006, and for each
19 fiscal year thereafter, there are authorized to be appro-
20 priated to the Department of Homeland Security for sala-
21 ries of the Bureau of Customs and Border Protection such
22 additional sums as may be provided by law to reflect pay
23 rate changes made in accordance with the Federal Pay
24 Comparability Act of 1970 (84 Stat. 1946, Public Law
25 91–656).

1 “(f) USE OF SAVINGS RESULTING FROM ADMINIS-
2 TRATIVE CONSOLIDATIONS.—If savings in salaries and ex-
3 penses result from the consolidation of administrative
4 functions within the Bureau of Customs and Border Pro-
5 tection, the Commissioner of Customs shall apply the sav-
6 ings, to the extent the savings are not needed to meet
7 emergency requirements of the Bureau, to strengthening
8 the commercial operations of the Bureau by increasing the
9 number of inspectors, import specialists, auditors, and
10 other line operational positions.

11 “(g) ALLOCATION OF RESOURCES; REPORT TO CON-
12 GRESSIONAL COMMITTEES.—The Commissioner of Cus-
13 toms shall notify the Committee on Finance of the Senate
14 and the Committee on Ways and Means of the House of
15 Representatives at least 180 days prior to taking any ac-
16 tion that would—

17 “(1) result in any significant reduction in force
18 of employees of the Bureau of Customs and Border
19 Protection other than by means of attrition;

20 “(2) result in any significant reduction in hours
21 of operation or services rendered at any office of the
22 Bureau of Customs and Border Protection or any
23 port of entry;

24 “(3) eliminate or relocate any office of the Bu-
25 reau of Customs and Border Protection;

1 “(4) eliminate any port of entry; or

2 “(5) significantly reduce the number of employ-
3 ees assigned to any office or any function of the Bu-
4 reau of Customs and Border Protection.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) IN GENERAL.—Section 5(c) of the Act of
7 February 13, 1911 (19 U.S.C. 267(c)), is amended
8 to read as follows:

9 “(c) LIMITATIONS.—

10 “(1) FISCAL YEAR CAP.—The aggregate of
11 overtime pay under subsection (a) of this section (in-
12 cluding commuting compensation under subsection
13 (a)(2)(B) of this section) and premium pay under
14 subsection (b) of this section that an employee of the
15 Bureau of Customs and Border Protection may be
16 paid in any fiscal year may not exceed \$35,000 un-
17 less the Secretary of Homeland Security, or the des-
18 ignee of the Secretary, determines on an individual
19 basis that payment of overtime pay to such employee
20 in an amount exceeding \$35,000 is necessary for na-
21 tional security purposes, to prevent excessive costs,
22 or to meet emergency requirements of the Bureau.

23 “(2) EXCLUSIVITY OF PAY UNDER THIS SEC-
24 TION.—An employee of the Bureau of Customs and
25 Border Protection who receives overtime pay under

1 subsection (a) of this section or premium pay under
2 subsection (b) of this section for time worked may
3 not receive pay or other compensation for that work
4 under any other provision of law.”.

5 (2) BASIC PAY.—Section 8331(3)(G) of title 5,
6 United States Code, is amended—

7 (A) by striking “a customs officer” and in-
8 serting “employee of the Bureau of Customs
9 and Border Protection”; and

10 (B) by striking “customs officers” and in-
11 serting “such employees”.

12 **SEC. 106. ADVANCES IN FOREIGN COUNTRIES.**

13 The first section of the Act of May 6, 1930 (53 Stat.
14 660, chapter 115; 19 U.S.C. 2076), is amended by strik-
15 ing “United States Customs Service” and inserting “Bu-
16 reau of Customs and Border Protection or the Bureau of
17 Immigration and Customs Enforcement”.

18 **SEC. 107. ADVANCES FOR ENFORCEMENT OF CUSTOMS**
19 **PROVISIONS.**

20 Section 2 of the Act of August 7, 1939 (53 Stat.
21 1263, chapter 566; 19 U.S.C. 2077), is amended to read
22 as follows:

1 **“SEC. 2. ADVANCES FOR ENFORCEMENT OF CUSTOMS PRO-**
2 **VISIONS.**

3 “The Commissioner of Customs and the Director of
4 Immigration and Customs Enforcement, with the approval
5 of the Secretary of Homeland Security and the Secretary
6 of the Treasury, are each authorized to direct the advance
7 of funds by the Fiscal Service in the Department of the
8 Treasury, in connection with the enforcement of the cus-
9 toms laws.”.

10 **SEC. 108. CERTIFICATION OF REASON FOR ADVANCE.**

11 Section 3 of the Act of August 7, 1939 (53 Stat.
12 1263, chapter 566; 19 U.S.C. 2078), is amended by strik-
13 ing “Commissioner of Customs” and inserting “Commis-
14 sioner of Customs or the Director of Immigration and
15 Customs Enforcement”.

16 **SEC. 109. PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR**
17 **REIMBURSEMENT.**

18 Section 4 of the Act of August 7, 1939 (53 Stat.
19 1263, chapter 566; 19 U.S.C. 2079), is amended to read
20 as follows:

21 **“SEC. 4. PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR**
22 **REIMBURSEMENT.**

23 “The provisions of this Act shall not affect payments
24 made for the Bureau of Customs and Border Protection
25 or the Bureau of Immigration and Customs Enforcement
26 in foreign countries, nor the right of any officer or em-

1 ployee of such bureaus to claim reimbursement for per-
2 sonal funds expended in connection with the enforcement
3 of the customs laws.”.

4 **SEC. 110. UNDERCOVER INVESTIGATIVE OPERATIONS.**

5 Section 3131 of the Customs Enforcement Act of
6 1986 (19 U.S.C. 2081) is amended to read as follows:

7 **“SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF**
8 **THE BUREAU OF IMMIGRATION AND CUS-**
9 **TOMS ENFORCEMENT.**

10 “(a) CERTIFICATION REQUIRED FOR EXEMPTION OF
11 UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With
12 respect to any undercover investigative operation of the
13 Bureau of Immigration and Customs Enforcement (in this
14 section referred to as the ‘Bureau’) that is necessary for
15 the detection and prosecution of offenses against the
16 United States that are within the jurisdiction of the Sec-
17 retary of Homeland Security—

18 “(1) sums authorized to be appropriated may
19 be used—

20 “(A) to purchase property, buildings, and
21 other facilities, and to lease space, within the
22 United States, the District of Columbia, and
23 the territories and possessions of the United
24 States without regard to—

1 “(i) sections 1341 and 3324 of title
2 31, United States Code;

3 “(ii) sections 3732(a) and 3741 of the
4 Revised Statutes of the United States (41
5 U.S.C. 11(a) and 22);

6 “(iii) section 305 of the Act of June
7 30, 1949 (63 Stat. 396; 41 U.S.C. 255);

8 “(iv) section 8141 of title 40, United
9 States Code; and

10 “(v) section 304(a) of the Federal
11 Property and Administrative Services Act
12 of 1949 (41 U.S.C. 254(a)); and

13 “(B) to establish or to acquire proprietary
14 corporations or business entities as part of the
15 undercover operation, and to operate such cor-
16 porations or business entities on a commercial
17 basis, without regard to sections 9102 and
18 9103 of title 31, United States Code;

19 “(2) sums authorized to be appropriated for the
20 Bureau and the proceeds from the undercover oper-
21 ation, may be deposited in banks or other financial
22 institutions without regard to the provisions of sec-
23 tion 648 of title 18 and section 3302 of title 31,
24 United States Code; and

1 “(3) the proceeds from the undercover oper-
2 ation may be used to offset necessary and reasonable
3 expenses incurred in such operation without regard
4 to the provision of section 3302 of title 31, United
5 States Code;

6 only upon the written certification of the Director of the
7 Bureau (or, if designated by the Director, such other offi-
8 cer within the Bureau) that any action authorized by para-
9 graph (1), (2), or (3) of this subsection is necessary for
10 the conduct of such undercover operation.

11 “(b) LIQUIDATION OF CORPORATIONS AND BUSINESS
12 ENTITIES.—If a corporation or business entity established
13 or acquired as part of an undercover operation under sub-
14 section (a)(1)(B) of this section with a net value over
15 \$50,000 is to be liquidated, sold, or otherwise disposed
16 of, the Bureau, as much in advance as the Director (or,
17 if designated by the Director, such other officer within the
18 Bureau) determines is practicable, shall report the cir-
19 cumstances to the Secretary of Homeland Security and
20 the Secretary of the Treasury. The proceeds of the liquida-
21 tion, sale, or other disposition, after obligations are met,
22 shall be deposited in the Treasury of the United States
23 as miscellaneous receipts.

24 “(c) DEPOSIT OF PROCEEDS.—As soon as the pro-
25 ceeds from an undercover investigative operation with re-

1 spect to which an action is authorized and carried out
2 under paragraphs (2) and (3) of subsection (a) of this sec-
3 tion are no longer necessary for the conduct of such oper-
4 ation, such proceeds or the balance of such proceeds re-
5 maining at the time shall be deposited into the Treasury
6 of the United States as miscellaneous receipts.

7 “(d) AUDITS.—

8 “(1) IN GENERAL.—The Bureau shall—

9 “(A) conduct a detailed financial audit of
10 each undercover investigative operation that is
11 closed in each fiscal year, and—

12 “(B) submit the results of the audit in
13 writing to the Secretary of Homeland Security
14 and the Secretary of the Treasury; and

15 “(C) not later than 180 days after such
16 undercover operation is closed, submit a report
17 to the Congress concerning such audit.

18 “(2) REPORT.—The Bureau shall also submit a
19 report annually to the Congress specifying as to its
20 undercover investigative operations—

21 “(A) the number, by program, of under-
22 cover investigative operations pending at the
23 end of the 1-year period for which such report
24 is submitted;

1 “(B) the number, by program, of under-
2 cover investigative operations commenced in the
3 1-year period preceding the period for which
4 such report is submitted; and

5 “(C) the number, by program, of under-
6 cover investigative operations closed in the 1-
7 year period preceding the period for which such
8 report is submitted and, with respect to each
9 such closed undercover operation, the results
10 obtained and any civil claims made with respect
11 thereto.

12 “(e) DEFINITIONS.—For purposes of subsection (d),
13 the following applies:

14 “(1) CLOSED.—The term ‘closed’ refers to the
15 earliest point in time at which—

16 “(A) all criminal proceedings (other than
17 appeals) are concluded; or

18 “(B) covert activities are concluded, which-
19 ever occurs later.

20 “(2) EMPLOYEES.—The term ‘employees’
21 means employees of the Bureau, as defined in sec-
22 tion 2105 of title 5, United States Code.

23 “(3) UNDERCOVER INVESTIGATIVE OPERATION;
24 UNDERCOVER OPERATION.—

1 “(A) IN GENERAL.—The terms ‘undercover
2 investigative operation’ and ‘undercover oper-
3 ation’ mean any undercover investigative oper-
4 ation of the Bureau—

5 “(i) in which—

6 “(I) the gross receipts (excluding
7 interest earned) exceed \$50,000; or

8 “(II) expenditures (other than
9 expenditures for salaries of employees)
10 exceed \$150,000; and

11 “(ii) which is exempt from section
12 3302 or 9102 of title 31, United States
13 Code.

14 “(B) EXCEPTION.—Clauses (i) and (ii) of
15 subparagraph (A) shall not apply with respect
16 to the report required under paragraph (2) of
17 subsection (d) of this section.”.

18 **SEC. 111. CUSTOMS ADMINISTRATION.**

19 Section 113 of the Customs and Trade Act of 1990
20 (19 U.S.C. 2082) is amended to read as follows:

21 **“SEC. 113. CUSTOMS ADMINISTRATION.**

22 “(a) IN GENERAL.—The Commissioner of Customs
23 and the Director of Immigration and Customs Enforce-
24 ment each shall—

1 “(1) develop and implement accounting systems
2 that accurately determine and report the allocations
3 made of the personnel and other resources of the
4 Bureau of Customs and Border Protection and the
5 Bureau of Immigration and Customs Enforcement
6 among the various operational functions of each bu-
7 reau, such as merchandise processing and trade and
8 customs law enforcement; and

9 “(2) develop and implement periodic labor dis-
10 tribution surveys of major workforce activities within
11 the Bureau of Customs and Border Protection and
12 the Bureau of Immigration and Customs Enforce-
13 ment to determine the costs of the various oper-
14 ational functions of each Bureau and the extent to
15 which any such costs are being borne by the other
16 bureau.

17 “(b) SURVEY REPORTS.—The Commissioner of Cus-
18 toms and the Director of Immigration and Customs En-
19 forcement each shall, not later than June 30, 2007, sub-
20 mit to the Committee on Finance of the Senate and the
21 Committee on Ways and Means of the House of Rep-
22 resentatives a report on the results of the first surveys
23 implemented under paragraph (2) of subsection (a).”.

1 **SEC. 112. ANNUAL NATIONAL TRADE AND CUSTOMS LAW**
2 **VIOLATION ESTIMATES AND ENFORCEMENT**
3 **STRATEGY.**

4 Section 123 of the Customs and Trade Act of 1990
5 (19 U.S.C. 2083) is amended to read as follows:

6 **“SEC. 123. ANNUAL NATIONAL TRADE AND CUSTOMS LAW**
7 **VIOLATION ESTIMATES AND ENFORCEMENT**
8 **STRATEGY.**

9 “(a) VIOLATION ESTIMATES.—Not later than 30
10 days after the beginning of each fiscal year after fiscal
11 year 2006, the Commissioner of Customs and the Director
12 of Immigration and Customs Enforcement shall jointly
13 submit to the Committee on Finance of the Senate and
14 the Committee on Ways and Means of the House of Rep-
15 resentatives (in this section referred to as the ‘Commit-
16 tees’) a report that contains estimates of—

17 “(1) the aggregate number and extent of non-
18 voluntarily disclosed violations of the trade and cus-
19 toms laws listed under subsection (b) that are likely
20 to occur during the fiscal year; and

21 “(2) the relative incidence of the violations esti-
22 mated under paragraph (1) among the various ports
23 of entry and customs regions within the customs ter-
24 ritory of the United States.

25 “(b) APPLICABLE STATUTORY PROVISIONS.—The
26 Commissioner of Customs and the Director of Immigra-

1 tion and Customs Enforcement, after consultation with
2 the Committees—

3 “(1) shall, before the end of fiscal year 2007,
4 prepare a list of those provisions of the trade and
5 customs laws of the United States for which the Bu-
6 reau of Customs and Border Protection and the Bu-
7 reau of Immigration and Customs Enforcement have
8 enforcement responsibilities and to which the reports
9 required under subsection (a) of this section will
10 apply; and

11 “(2) may from time to time amend the list de-
12 veloped under paragraph (1).

13 “(c) ENFORCEMENT STRATEGY.—Within 90 days
14 after submitting a report under subsection (a) of this sec-
15 tion for any fiscal year, the Commissioner of Customs and
16 the Director of Immigration and Customs Enforcement
17 shall jointly—

18 “(1) develop a national uniform enforcement
19 strategy for dealing, during that year, with the viola-
20 tions estimated in the report; and

21 “(2) submit to the Committees a report setting
22 forth the details of the strategy.

23 “(d) COMPLIANCE PROGRAM.—The Commissioner of
24 Customs and the Director of Immigration and Customs
25 Enforcement shall jointly—

1 “(1) devise and implement a methodology for
2 estimating the level of compliance with the laws ad-
3 ministered by the Bureau of Customs and Border
4 Protection and the Bureau of Immigration and Cus-
5 toms Enforcement; and

6 “(2) include as an additional part of the report
7 required to be submitted under subsection (a) of this
8 section for each of fiscal years 2007, 2008, and
9 2009, an evaluation of the extent to which such com-
10 pliance was obtained during the 12-month period
11 preceding the 60th day before each such fiscal year.

12 “(e) CONFIDENTIALITY.—The contents of any report
13 submitted to the Committees under subsection (a) or
14 (c)(2) of this section are confidential and disclosure of all
15 or part of the contents is restricted to—

16 “(1) officers and employees of the United
17 States designated by the Commissioner of Customs
18 and the Director of Immigration and Customs En-
19 forcement;

20 “(2) the chairman and ranking member of each
21 of the Committees; and

22 “(3) those members of each of the Committees
23 and staff persons of each of the Committees who are
24 authorized by the chairman thereof to have access to
25 the contents.”.

1 **SEC. 113. CONFORMING AMENDMENT.**

2 Not later than 180 days after the date of the enact-
3 ment of this Act, the Secretary of Homeland Security, in
4 consultation with the Secretary of the Treasury, shall sub-
5 mit a report to the Committee on Finance of the Senate
6 and the Committee on Ways and Means of the House of
7 Representatives of proposed conforming amendments to
8 the statutes set forth in section 412(a)(2) of the Home-
9 land Security Act of 2002 (6 U.S.C. 212(a)(2)) and any
10 other statute applicable to the Customs Service or the
11 Commissioner of Customs on the day before the date of
12 the enactment of such Act in order to determine the ap-
13 propriate allocation of legal authority set forth in those
14 statutes. The appropriate allocation includes allocation be-
15 tween the Department of the Treasury and the Depart-
16 ment of Homeland Security, and between the Bureau of
17 Immigration and Customs Enforcement, the Bureau of
18 Customs and Border Protection, and other offices within
19 the Department of Homeland Security.

20 **Subtitle B—Investigative Functions**

21 **SEC. 121. ESTABLISHMENT OF BUREAU.**

22 (a) IN GENERAL.—Section 442 of the Homeland Se-
23 curity Act of 2002 (6 U.S.C. 252(a)) is amended to read
24 as follows:

1 **“SEC. 442. ESTABLISHMENT OF BUREAU; DIRECTOR.**

2 “(a) ESTABLISHMENT OF BUREAU.—There shall be
3 in the Department of Homeland Security a bureau to be
4 known as the Bureau of Immigration and Customs En-
5 forcement, and a Director of Immigration and Customs
6 Enforcement. The Director of Immigration and Customs
7 Enforcement, shall be appointed by the President by and
8 with the advice and consent of the Senate and shall—

9 “(1) head the Bureau of Immigration and Cus-
10 toms Enforcement;

11 “(2) carry out the duties and powers prescribed
12 by the Secretary of Homeland Security and by law;

13 “(3) report directly to the Deputy Secretary of
14 Homeland Security;

15 “(4) have a minimum of 5 years professional
16 experience in law enforcement, and a minimum of 5
17 years of management experience; and

18 “(5) advise the Secretary with respect to any
19 policy or operation of the Bureau of Immigration
20 and Customs Enforcement that may affect the Bu-
21 reau of Citizenship and Immigration Services estab-
22 lished under subtitle E, including potentially con-
23 flicting policies or operations.

24 “(b) DEPUTY DIRECTOR AND OTHER OFFICERS.—
25 The Secretary of Homeland Security is authorized to ap-
26 point, in the Bureau established by subsection (a), 1 Dep-

1 uty Director, and such other officers as are necessary to
2 manage the individual offices within the Bureau. Appoint-
3 ments under this subsection shall be subject to the provi-
4 sions of the civil service laws, and the salaries shall be
5 fixed in accordance with chapter 51 and subchapter III
6 of chapter 53 of title 5, United States Code.

7 “(c) ABSENCE OR DISABILITY OF DIRECTOR.—The
8 Secretary of Homeland Security is authorized to designate
9 an officer of the Bureau of Immigration and Customs En-
10 forcement as Director of Immigration and Customs En-
11 forcement, during the absence or disability of the Director
12 of Immigration and Customs Enforcement, or in the event
13 that there is no Director of Immigration and Customs En-
14 forcement.

15 “(d) DUTIES OF PERSONNEL.—The personnel of the
16 Bureau of Immigration and Customs Enforcement shall
17 conduct and prosecute commercial investigations in con-
18 nection with any customs revenue function delegated by
19 the Secretary of the Treasury to the Secretary of Home-
20 land Security pursuant to section 412, and perform such
21 other duties as the Secretary of Homeland Security may
22 prescribe or are prescribed by law.

23 “(e) AUTHORIZATION OF APPROPRIATIONS.—

24 “(1) IN GENERAL.—For the fiscal year begin-
25 ning October 1, 2006, and each fiscal year there-

1 after, there are authorized to be appropriated to the
2 Department of Homeland Security for the Bureau of
3 Immigration and Customs Enforcement only such
4 sums as may hereafter be authorized by law.

5 “(2) ENFORCEMENT OF TRADE AND CUSTOMS
6 LAWS.—In addition to any other sums hereafter au-
7 thORIZED to be appropriated, there are authorized to
8 be appropriated to the Department of Homeland Se-
9 curity for the Bureau of Immigration and Customs
10 Enforcement to conduct and prosecute commercial
11 investigations in connection with any customs rev-
12 enue function delegated by the Secretary of the
13 Treasury to the Secretary of Homeland Security
14 pursuant to section 412, the following sums, to re-
15 main available until expended—

16 “(A) \$76,850,000 for fiscal year 2007;

17 “(B) \$83,500,000 for fiscal year 2008; and

18 “(C) \$90,750,000 for fiscal year 2009.

19 “(3) PAY COMPARABILITY AUTHORIZATION.—
20 For the fiscal year beginning October 1, 2006, and
21 for each fiscal year thereafter, there are authorized
22 to be appropriated to the Department of Homeland
23 Security for salaries of the Bureau of Immigration
24 and Customs Enforcement such additional sums as
25 may be provided by law to reflect pay rate changes

1 made in accordance with the Federal Pay Com-
2 parability Act of 1970 (Public Law 91–656; 84 Stat.
3 1946).

4 “(f) PROGRAM TO COLLECT INFORMATION RELAT-
5 ING TO FOREIGN STUDENTS.—The Director of Immigra-
6 tion and Customs Enforcement shall be responsible for ad-
7 ministering the program to collect information relating to
8 nonimmigrant foreign students and other exchange pro-
9 gram participants described in section 641 of the Illegal
10 Immigration Reform and Immigrant Responsibility Act of
11 1996 (8 U.S.C. 1372), including the Student and Ex-
12 change Visitor Information System established under that
13 section, and shall use such information to carry out the
14 enforcement functions of the Bureau of Immigration and
15 Customs Enforcement.

16 “(g) CHIEF OF POLICY AND STRATEGY.—

17 “(1) IN GENERAL.—There shall be a position of
18 Chief of Policy and Strategy for the Bureau of Im-
19 migration and Customs Enforcement.

20 “(2) FUNCTIONS.—In consultation with per-
21 sonnel in local offices of the Bureau of Immigration
22 and Customs Enforcement, the Chief of Policy and
23 Strategy shall be responsible for—

1 “(A) making policy recommendations and
2 performing policy research and analysis on im-
3 migration enforcement issues; and

4 “(B) coordinating immigration policy
5 issues with the Chief of Policy and Strategy for
6 the Bureau of Citizenship and Immigration
7 Services (established under subtitle E), as ap-
8 propriate.

9 “(h) LEGAL ADVISOR.—There shall be a principal
10 legal advisor to the Director of Immigration and Customs
11 Enforcement. The legal advisor shall provide specialized
12 legal advice to the Director and shall represent the Bureau
13 of Immigration and Customs Enforcement in all exclusion,
14 deportation, and removal proceedings before the Executive
15 Office for Immigration Review.”.

16 (b) COMPENSATION.—

17 (1) IN GENERAL.—Section 5314 of title 5,
18 United States Code, is amended by adding at the
19 end the following:

20 “Director of Immigration and Customs En-
21 forcement, Department of Homeland Security.”.

22 (2) CONTINUATION IN OFFICE.—The individual
23 serving as Assistant Secretary, Immigration and
24 Customs Enforcement, in the Department of Home-
25 land Security on the day before the date of the en-

1 actment of this Act may serve as Director of Immi-
 2 gration and Customs Enforcement until the earlier
 3 of—

4 (A) the date on which such individual is no
 5 longer eligible to serve as Assistant Secretary,
 6 Immigration and Customs Enforcement; or

7 (B) the date on which a person nominated
 8 to be the Director of Immigration and Customs
 9 Enforcement by the President is confirmed by
 10 the Senate.

11 (c) CONFORMING AMENDMENTS.—

12 (1) SUBTITLE D.—The heading for subtitle D
 13 of title IV of the Homeland Security Act of 2002 is
 14 amended by striking the matter preceding section
 15 441 and inserting the following:

16 **“Subtitle D—Enforcement**
 17 **Functions”.**

18 (2) TABLE OF CONTENTS.—The table of con-
 19 tents for the Homeland Security Act of 2002 is
 20 amended—

21 (A) by striking the item relating to section
 22 442 and inserting the following:

“Sec. 442. Establishment of Bureau, Director.”; and

23 (B) by striking the item relating to subtitle
 24 D of title IV and inserting the following:

“Subtitle D—Enforcement Functions”.

1 (3) DIRECTOR OF THE BUREAU OF CITIZEN-
2 SHIP AND IMMIGRATION SERVICES.—Section
3 451(a)(2)(C) of the Homeland Security Act of 2002
4 (6 U.S.C. 271(a)(2)(C)) is amended by striking “As-
5 sistant Secretary of the Bureau of Border Security”
6 and inserting “Director of Immigration and Cus-
7 toms Enforcement”.

8 **TITLE II—CUSTOMS AND TRADE**
9 **FACILITATION PROGRAMS**

10 **SEC. 201. DEFINITIONS.**

11 In this title:

12 (1) ACE.—The term “ACE” means the Auto-
13 mated Commercial Environment that is an auto-
14 mated trade processing system designed to collect,
15 process, and analyze commercial import and export
16 data to facilitate international trade and travel.

17 (2) BUREAU.—The term “Bureau” means the
18 Bureau of Customs and Border Protection.

19 (3) CIPP.—The term “CIPP” means the Cus-
20 toms Industry Partnership Program established
21 under section 499(d) of the Tariff Act of 1930, as
22 added by section 231 or any similar program such
23 as the Customs-Trade Partnership Against Ter-
24 rorism Program (C-TPAT).

1 (4) COAC.—The term “COAC” means the Ad-
2 visory Committee, established pursuant to section
3 9503(c) of the Omnibus Budget Reconciliation Act
4 of 1987, as amended by section 235, or any suc-
5 cessor Committee (19 U.S.C. 2071 note).

6 (5) COMMISSIONER.—The term “Commis-
7 sioner” means the Commissioner of Customs.

8 (6) IMPORTER SELF-ASSESSMENT PROGRAM.—
9 The term “importer self-assessment program”
10 means the program of the Bureau of Customs and
11 Border Protection in effect on the date of the enact-
12 ment of this Act that provides benefits to those per-
13 sons who have made a commitment of resources and
14 assumed responsibility for—

15 (A) monitoring their own compliance and
16 business practices with respect to establishing,
17 documenting, and implementing adequate inter-
18 nal controls;

19 (B) performing periodic testing of trans-
20 actions based on risk;

21 (C) sharing test results with the Bureau;

22 (D) making appropriate adjustments to in-
23 ternal controls; and

24 (E) maintaining an audit trail of financial
25 records and Customs declarations, or, an alter-

1 nate system that ensures accurate values are
2 reported to the Bureau.

3 (7) INTERNATIONAL SUPPLY CHAIN.—The term
4 “international supply chain” means the end-to-end
5 process for shipping goods to or from the United
6 States from the point of origin (including manufac-
7 turer, supplier, or vendor) through the point of dis-
8 tribution.

9 (8) REVALIDATION; REVERIFICATION.—The
10 terms “revalidation” and “reverification” mean the
11 process by which the Bureau of Customs and Border
12 Protection reviews the qualifications of a participant
13 to continue to participate as a tier 2 or a tier 3 par-
14 ticipant in the CIPP, either on a periodic or risk
15 management basis, to determine if the participant
16 continues to adhere to established business and
17 cargo security practices.

18 (9) TIER 1 PARTICIPANT.—The term “tier 1
19 participant” means a participant in the CIPP that
20 has been certified pursuant to section 499(d) of the
21 Tariff Act of 1930, as added by section 231.

22 (10) TIER 2 PARTICIPANT.—The term “tier 2
23 participant” means a participant in the CIPP that
24 has been validated pursuant to section 499(d) of the
25 Tariff Act of 1930, as added by section 231.

1 (11) TIER 3 PARTICIPANT.—The term “tier 3
2 participant” means a participant in the CIPP that
3 has been validated and with respect to which a
4 verification has been completed pursuant to section
5 499(d) of the Tariff Act of 1930, as added by sec-
6 tion 231.

7 (12) VALIDATION AND VERIFICATION.—The
8 terms “validation” and “verification” mean the
9 processes by which the Bureau of Customs and Bor-
10 der Protection determines an applicant’s qualifica-
11 tions to participate in the CIPP by reviewing the ap-
12 plicant’s trade compliance history and conducting an
13 on-site review of documentation and practices of the
14 applicant relating to the importation of cargo, in
15 order to determine if the applicant’s cargo security
16 and business practices are reliable, accurate, and ef-
17 fective.

18 (13) WCO.—The term “WCO” means the
19 World Customs Organization.

20 (14) WTO.—The term “WTO” means the
21 World Trade Organization established pursuant to
22 the WTO Agreement.

23 (15) WTO AGREEMENT.—The term “WTO
24 Agreement” means the Agreement Establishing the

1 World Trade Organization entered into on April 15,
2 1994.

3 **Subtitle A—Bilateral and**
4 **Multilateral Negotiations**

5 **SEC. 211. BILATERAL CUSTOMS PARTNERSHIPS.**

6 (a) IN GENERAL.—Section 629(a) of the Tariff Act
7 of 1930 (19 U.S.C. 1629(a)) is amended—

8 (1) by striking “Secretary” and inserting “Sec-
9 retary of Homeland Security”; and

10 (2) by striking “examining persons and mer-
11 chandise” and inserting “screening and examining
12 persons, merchandise, and cargo”.

13 (b) DEFINITIONS.—Section 629 of the Tariff Act of
14 1930 (19 U.S.C. 1629) is amended by adding at the end
15 the following:

16 “(h) DEFINITIONS.—In this section:

17 “(1) APPROPRIATE FEDERAL OFFICIALS.—The
18 term ‘appropriate Federal officials’ includes the Sec-
19 retaries of the Treasury, State, Energy, Transpor-
20 tation, and Homeland Security, the United States
21 Trade Representative, the Commissioner of Cus-
22 toms, and the Commandant of the Coast Guard.

23 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
24 TEES.—The term ‘appropriate congressional com-
25 mittees’ means the Committees on Finance, Com-

1 merce, Science, and Transportation, and Homeland
2 Security and Governmental Affairs of the Senate
3 and the Committees on Ways and Means, Transpor-
4 tation and Infrastructure, and Homeland Security of
5 the House of Representatives.

6 “(3) COAC.—The term ‘COAC’ means the Ad-
7 visory Committee established by section 9503 of the
8 Omnibus Budget Reconciliation Act of 1987 (19
9 U.S.C. 2071 note).

10 “(4) DESIGNATED PORT.—The term ‘des-
11 ignated port’ means a port in a foreign country with
12 which the United States has a bilateral customs
13 partnership agreement described in subsection (i).

14 “(5) EXAMINATION.—The term ‘examination’
15 means either a physical inspection or the imaging
16 and radiation screening of a conveyance using non-
17 intrusive inspection (NII) technology, for the pres-
18 ence of contraband.

19 “(6) INSPECTION.—The term ‘inspection’
20 means the comprehensive process used by personnel
21 of the Bureau of Customs and Border Protection to
22 assess goods entering the United States for duty
23 purposes, to detect the presence of restricted or pro-
24 hibited items, and to ensure compliance with all ap-

1 plicable laws. This process may include screening,
2 conducting an examination, or conducting a search.

3 “(7) SCANNING.—The term ‘scanning’ means
4 an examination by nonintrusive means, including nu-
5 clear or radiological detection technologies, x-ray or
6 density technologies, and optical character recogni-
7 tion technologies, for the presence of misdeclared,
8 restricted, or prohibited items.

9 “(8) SCREENING.—The term ‘screening’ means
10 a visual or automated review of information about
11 goods, including elements of the manifest or entry
12 documentation accompanying a shipment being im-
13 ported into the United States, to determine or assess
14 the level of threat posed by such cargo.

15 “(9) WCO.—The term ‘WCO’ means the World
16 Customs Organization.

17 “(10) WTO.—The term ‘WTO’ means the
18 World Trade Organization established pursuant to
19 the WTO Agreement.

20 “(11) WTO AGREEMENT.—The term ‘WTO
21 Agreement’ means the Agreement Establishing the
22 World Trade Organization entered into on April 15,
23 1994.

24 “(i) BILATERAL CUSTOMS PARTNERSHIP AGREE-
25 MENTS.—In order to enhance the Container Security Ini-

1 tiative (CSI) of the Bureau of Customs and Border Pro-
2 tection by facilitating the safe, efficient flow of commerce,
3 the Secretary of Homeland Security may, in consultation
4 with the appropriate Federal officials, enter into bilateral
5 customs partnership agreements with foreign countries for
6 the purpose of examining and screening cargo at des-
7 ignated ports before the cargo is shipped to the United
8 States. The agreement shall identify each designated port
9 in the foreign country and shall provide for—

10 “(1) the establishment of mutually agreed upon
11 technical capability, criteria, and standard operating
12 procedures for the use of nonintrusive inspection and
13 nuclear and radiological detection systems;

14 “(2) the use of nonintrusive inspection and nu-
15 clear and radiological detection systems meeting the
16 technical capability, criteria, and standard operating
17 procedures established under paragraph (1); and

18 “(3) continued bilateral review of, and updating
19 as appropriate, the technologies, processes, and tech-
20 niques used to screen, scan, and inspect cargo at
21 designated ports.

22 “(j) ASSESSMENT OF DESIGNATED PORTS.—Before
23 the Secretary of Homeland Security enters into any agree-
24 ment with a foreign government under subsection (i), the
25 Secretary shall conduct an assessment of the ports in that

1 country, in consultation with the appropriate Federal offi-
2 cials. The assessment shall include with respect to each
3 port—

4 “(1) the level of risk for—

5 “(A) the potential compromise of con-
6 tainers by terrorists or terrorist weapons;

7 “(B) smuggling of narcotics; and

8 “(C) violations of United States trade
9 laws, including intellectual property rights and
10 textile transshipment;

11 “(2) the volume of regular container traffic that
12 goes through the port that is bound for the United
13 States;

14 “(3) the commitment of the country to cooper-
15 ate with the Bureau of Customs and Border Protec-
16 tion in sharing critical data and risk management
17 information and to maintain programs to ensure em-
18 ployee integrity;

19 “(4) coordination with and an assessment by
20 the Coast Guard; and

21 “(5) any limitation associated with the infra-
22 structure of the port.

23 “(k) FOREIGN ASSISTANCE.—The Secretary of
24 Homeland Security, in consultation with the appropriate

1 Federal officials, is authorized to provide appropriate as-
2 sistance to designated ports, including—

3 “(1) training and other assistance that could
4 facilitate the deployment of effective cargo screening
5 and examination measures and equipment at des-
6 ignated ports and at foreign ports that are not des-
7 ignated; and

8 “(2) the loan or other arrangement for use of
9 nonintrusive inspection or nuclear and radiological
10 detection systems for cargo containers at designated
11 ports under such terms and conditions as may be
12 appropriate, and training foreign personnel in the
13 operation of such systems.

14 “(1) STAFFING.—The Secretary of Homeland Secu-
15 rity shall develop a human capital management plan to
16 determine adequate staffing levels in foreign ports includ-
17 ing, as appropriate, the remote location of personnel at
18 the National Targeting Center in Reston, Virginia.

19 “(m) ANNUAL DISCUSSIONS.—The Secretary of
20 Homeland Security, in coordination with the appropriate
21 Federal officials, shall hold annual discussions with for-
22 eign governments with which the United States has a bi-
23 lateral customs partnership agreement regarding best
24 practices, technical assistance, training needs, and techno-

1 logical developments that will assist in ensuring the effi-
2 cient and secure movement of international cargo.

3 “(n) REPORT.—Not later than September 30, 2007,
4 and annually thereafter, the Secretary of Homeland Secu-
5 rity shall, in consultation with the appropriate Federal of-
6 ficials and the COAC, report to the appropriate congres-
7 sional committees on the effectiveness of, and need for im-
8 provements to, foreign customs partnership agreements.
9 The report shall include—

10 “(1) recommendations for improvements to, and
11 effectiveness of, screening, scanning, and inspection
12 protocols and technologies at designated ports, and
13 the effect on the flow of commerce at those ports;

14 “(2) recommendations for continuing or sus-
15 pending a bilateral customs partnership agreement
16 with each country and a detailed evaluation of any
17 security incident and how it was handled, as well as
18 the aggregate number and extent of trade compli-
19 ance lapses and how those lapses were handled;

20 “(3) a description of the technical assistance
21 delivered or needed at each designated port;

22 “(4) a description of the human capital man-
23 agement plan at each designated port; and

24 “(5) a description of any request made by the
25 United States to a foreign country to conduct a

1 physical and nonintrusive inspection and whether
2 that request was granted or denied by the country.

3 “(o) LESSER RISK PORTS.—The Commissioner of
4 Customs may treat a designated port as a port that pre-
5 sents a lesser risk than a port that is not a designated
6 port, for purposes of clearing cargo into the United
7 States.”.

8 **SEC. 212. MULTILATERAL CUSTOMS NEGOTIATIONS.**

9 Section 629 of the Tariff Act of 1930 (19 U.S.C.
10 1629), as amended by section 211, is amended by adding
11 at the end the following:

12 “(p) HARMONIZATION OF CUSTOMS PROCEDURES
13 AND COMMITMENTS.—

14 “(1) IN GENERAL.—The Commissioner of Cus-
15 toms, the United States Trade Representative, and
16 other appropriate Federal officials, shall work
17 through appropriate international organizations in-
18 cluding the World Customs Organization, the World
19 Trade Organization, the International Maritime Or-
20 ganization, and the Asia Pacific Economic Council,
21 to harmonize, to the extent practicable, customs pro-
22 cedures, standards, requirements, and commitments
23 in order to facilitate the efficient flow of inter-
24 national trade.

1 “(2) UNITED STATES TRADE REPRESENTA-
2 TIVE.—

3 “(A) IN GENERAL.—The United States
4 Trade Representative shall seek commitments
5 in negotiations in the WTO regarding the arti-
6 cles of GATT 1994 that are described in sub-
7 paragraph (B) that result in—

8 “(i) to the extent practicable, harmo-
9 nization of import and export data col-
10 lected by WTO members for customs pur-
11 poses;

12 “(ii) transparency, efficiency, and pro-
13 cedural fairness of WTO members;

14 “(iii) to the extent practicable, trans-
15 parent standards for the release of cargo
16 by WTO members;

17 “(iv) to the extent practicable, devel-
18 opment and harmonization of standards,
19 technologies, and protocols for physical or
20 nonintrusive examinations that will facili-
21 tate the efficient flow of international
22 trade; and

23 “(v) the protection of confidential
24 commercial data.

1 “(B) ARTICLES DESCRIBED.—The articles
2 of the GATT 1994 described in this subpara-
3 graph are the following:

4 “(i) Article V (relating to transit).

5 “(ii) Article VIII (relating to fees and
6 formalities associated with importation and
7 exportation).

8 “(iii) Article X (relating to publication
9 and administration of trade regulations).

10 “(C) GATT 1994.—The term ‘GATT 1994’
11 means the General Agreement on Tariff and
12 Trade annexed to the WTO Agreement.

13 “(3) CUSTOMS.—The Commissioner of Cus-
14 toms, in consultation with the United States Trade
15 Representative, shall work with the WCO to facili-
16 tate the efficient international flow of trade, taking
17 into account existing international agreements and
18 the negotiating objectives of the WTO. The Commis-
19 sioner shall work to—

20 “(A) harmonize, to the extent practicable,
21 import data collected by WCO members for cus-
22 toms purposes;

23 “(B) automate and harmonize, to the ex-
24 tent practicable, the collection and storage of
25 commercial data by WCO members;

1 “(C) develop, to the extent practicable,
2 transparent standards for the release of cargo
3 by WCO members;

4 “(D) develop and harmonize, to the extent
5 practicable, standards, technologies, and proto-
6 cols for physical or nonintrusive examinations
7 that will facilitate the efficient flow of inter-
8 national trade; and

9 “(E) ensure the protection of confidential
10 commercial data.”.

11 **Subtitle B—Customs Data** 12 **Collection**

13 **SEC. 221. INTERNATIONAL TRADE DATA SYSTEM.**

14 (a) IN GENERAL.—Section 411 of the Tariff Act of
15 1930 (19 U.S.C. 1411) is amended by adding at the end
16 the following new subsections:

17 “(d) INTERNATIONAL TRADE DATA SYSTEM.—

18 “(1) ESTABLISHMENT.—

19 “(A) IN GENERAL.—The Secretary of the
20 Treasury (in this section, referred to as the
21 ‘Secretary’) shall oversee the establishment of
22 an electronic trade data interchange system to
23 be known as the ‘International Trade Data Sys-
24 tem’ (ITDS). The ITDS shall be implemented
25 not later than the date that the Automated

1 Commercial Environment (commonly referred
2 to as ‘ACE’) (as defined in section 201 of the
3 Customs and Trade Facilitation Reauthoriza-
4 tion Act of 2006) is implemented.

5 “(B) PURPOSE.—The purpose of the ITDS
6 is to eliminate redundant information require-
7 ments, to efficiently regulate the flow of com-
8 merce, and to effectively enforce laws and regu-
9 lations relating to international trade, by estab-
10 lishing a single portal system, operated by the
11 Bureau of Customs and Border Protection, for
12 the collection and distribution of standard elec-
13 tronic import and export data required by all
14 United States Government agencies.

15 “(C) PARTICIPATION.—

16 “(i) IN GENERAL.—All Federal agen-
17 cies that require documentation for clear-
18 ing or licensing the importation and expor-
19 tation of cargo shall participate in the
20 ITDS.

21 “(ii) WAIVER.—The Director of the
22 Office of Management and Budget may
23 waive, in whole or in part, the requirement
24 for participation for any Federal agency
25 based on national security.

1 “(D) CONSULTATION.—The Secretary
2 shall consult with and assist agencies in the
3 transition from paper to electronic format for
4 the submission, issuance, and storage of docu-
5 ments relating to data required to enter cargo
6 into the United States.

7 “(2) DATA ELEMENTS.—

8 “(A) IN GENERAL.—The Steering Com-
9 mittee established under paragraph (3) shall, in
10 consultation with the agencies participating in
11 the ITDS, define the standard set of data ele-
12 ments to be collected, stored, and shared in the
13 ITDS. The Steering Committee shall periodi-
14 cally review the data elements in order to up-
15 date the data elements, as necessary.

16 “(B) HARMONIZATION.—The Steering
17 Committee shall ensure that the ITDS data re-
18 quirements are compatible with the commit-
19 ments or obligations established by the World
20 Customs Organization (WCO) and the World
21 Trade Organization (WTO) for the entry of
22 cargo.

23 “(C) COORDINATION.—The Secretary of
24 the Treasury shall be responsible for coordi-
25 nating operation of the ITDS among the par-

1 participating agencies and the office within the Bu-
2 ureau of Customs and Border Protection that is
3 responsible for maintaining the ITDS.

4 “(3) STEERING COMMITTEE.—There is estab-
5 lished an interagency steering committee. The mem-
6 bers of the committee shall include the Secretary of
7 the Treasury (who shall serve as the chairperson of
8 the committee), the Director of the Office of Man-
9 agement and Budget, and the head of each agency
10 participating in the ITDS. The committee shall as-
11 sist the Secretary of the Treasury in overseeing the
12 implementation of, and participation in, the ITDS.

13 “(4) REPORT.—The Steering Committee shall
14 submit a report annually to the Committee on Fi-
15 nance of the Senate and the Committee on Ways
16 and Means of the House of Representatives. Each
17 report shall include information on—

18 “(A) the status of the ITDS implementa-
19 tion;

20 “(B) the extent of participation in the
21 ITDS by Federal agencies;

22 “(C) the remaining barriers to any agen-
23 cy’s participation;

24 “(D) the extent to which the ITDS is con-
25 sistent with applicable standards established by

1 the World Customs Organization and the World
2 Trade Organization;

3 “(E) recommendations for technological
4 and other improvements to the ITDS; and

5 “(F) the status of the Bureau’s develop-
6 ment, implementation, and management of the
7 Automated Commercial Environment.

8 “(e) TREASURY OVERSIGHT.—The Secretary of the
9 Treasury shall ensure that no fewer than 5 full-time
10 equivalents in the Office of Tax, Trade, and Tariff Policy
11 are available—

12 “(1) to carry out oversight of the customs rev-
13 enue functions delegated to the Secretary of Home-
14 land Security pursuant to section 412 of the Home-
15 land Security Act of 2002 (6 U.S.C. 212); and

16 “(2) to carry out oversight of the International
17 Trade Data System established under this section.

18 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated for each of the fiscal
20 years 2007, 2008, and 2009, \$750,000 for salaries and
21 expenses required to carry out subsection (e).”.

22 **SEC. 222. AUTHORIZATION OF APPROPRIATIONS.**

23 Section 13031(f)(5) of the Consolidated Omnibus
24 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(5))
25 is amended—

1 (1) by striking “2003” each place it appears
2 and inserting “2007”;

3 (2) by striking “2004” each place it appears
4 and inserting “2008”;

5 (3) by striking “2005” each place it appears
6 and inserting “2009”; and

7 (4) by striking “2006” each place it appears
8 and inserting “2010”.

9 **Subtitle C—Trade Facilitation**
10 **Programs**

11 **SEC. 231. ESTABLISHMENT OF A VOLUNTARY CUSTOMS IN-**
12 **DUSTRY PARTNERSHIP PROGRAM.**

13 (a) IN GENERAL.—Section 499 of the Tariff Act of
14 1930 (19 U.S.C. 1499) is amended by adding at the end
15 the following new subsection:

16 “(d) CUSTOMS INDUSTRY PARTNERSHIP PRO-
17 GRAM.—

18 “(1) ESTABLISHMENT.—The Commissioner of
19 Customs (in this section referred to as the ‘Commis-
20 sioner’) is authorized to establish a voluntary gov-
21 ernment-private sector Customs Industry Partner-
22 ship Program to facilitate the movement of cargo
23 through the international supply chain and to pro-
24 vide benefits to eligible participants meeting or ex-

1 ceeding the program requirements. The program
2 shall be known as the ‘CIPP’.

3 “(2) ELIGIBLE PARTICIPANTS.—The Commis-
4 sioner shall establish procedures for all persons in-
5 volved in the movement of cargo in the international
6 supply chain to apply for participation in the CIPP,
7 including intermodal transportation system pro-
8 viders, contract logistics providers, air, land, and sea
9 carriers, customs brokers, importers, forwarders,
10 and other entities involved in the movement of cargo
11 in the international supply chain.

12 “(3) MINIMUM REQUIREMENTS.—The Commis-
13 sioner shall establish minimum requirements for par-
14 ticipation in the CIPP. The requirements for partici-
15 pation in the Program include the following:

16 “(A) The applicant’s history of moving
17 cargo through the international supply chain.

18 “(B) Consideration of the applicant’s com-
19 pliance with basic requirements of customs laws
20 and regulations, including the proper mainte-
21 nance of importer identification numbers on file
22 for covered business entities, the maintenance
23 of customs bonds in sufficient amount, and the
24 absence of outstanding requests from the Bu-
25reau for information, notices of action, liq-

1 uidated damages, and civil penalties unan-
2 swered by the company.

3 “(C) The applicant’s compliance with all
4 minimum physical security requirements estab-
5 lished by the Commissioner.

6 “(4) 3 TIERS OF CUSTOMS INDUSTRY PARTNER-
7 SHIP PROGRAM.—The CIPP shall include 3 levels of
8 voluntary participation.

9 “(A) TIER 1 PARTICIPANTS.—

10 “(i) REQUIREMENTS.—A ‘tier 1 par-
11 ticipant’ means a CIPP participant that
12 has certified to the Bureau of Customs and
13 Border Protection that it meets the min-
14 imum requirements of the CIPP estab-
15 lished by the Commissioner and that cer-
16 tification has been accepted by the Bureau
17 of Customs and Border Protection after a
18 review of the applicant’s trade compliance
19 history and the attestations made in the
20 application and the completion of a
21 verification under paragraph (5).

22 “(ii) BENEFITS.—The Commissioner
23 shall provide limited benefits to tier 1 par-
24 ticipants for the purpose of facilitating the

1 flow of cargo in the international supply
2 chain.

3 “(iii) CERTIFICATION.—To the extent
4 practicable, the Bureau of Customs and
5 Border Protection shall conduct the certifi-
6 cation for tier 1 participation within 90
7 days of receipt of the application for par-
8 ticipation in the CIPP.

9 “(B) TIER 2 PARTICIPANTS.—

10 “(i) REQUIREMENTS.—A ‘tier 2 par-
11 ticipant’ means a CIPP participant that
12 has been granted tier 2 status for the
13 CIPP by the Bureau of Customs and Bor-
14 der Protection, after the Bureau has com-
15 pleted an on-site validation of the partici-
16 pant’s trade compliance, cargo security
17 practices, and supply chain and completed
18 a verification under paragraph (5).

19 “(ii) BENEFITS.—The Commissioner
20 shall grant benefits in addition to the bene-
21 fits granted under subparagraph (B)(i) to
22 tier 2 participants for the purpose of facili-
23 tating the flow of cargo in the inter-
24 national supply chain.

1 “(iii) VALIDATION.—To the extent
2 practicable, the Bureau of Customs and
3 Border Protection shall conduct and com-
4 plete a validation for tier 2 participation
5 within 1 year of granting the certification
6 described in subparagraph (A).

7 “(C) TIER 3 PARTICIPANTS.—

8 “(i) REQUIREMENTS.—A ‘tier 3 par-
9 ticipant’ means a tier 2 participant who,
10 upon application for ‘tier 3’ benefits and
11 completion of a verification under para-
12 graph (5), is found by the Bureau of Cus-
13 toms and Border Protection to meet the
14 following requirements:

15 “(I) A demonstrated history of
16 trade compliance, including the con-
17 sistent payment of duties in an accu-
18 rate and timely manner.

19 “(II) The consistent provision of
20 additional advance data elements as
21 required by the Commissioner of Cus-
22 toms.

23 “(III) The consistent use of sup-
24 ply chain security best practices iden-

1 tified by the Bureau of Customs and
2 Border Protection.

3 “(IV) Participation in the Bu-
4 reau of Customs and Border Protec-
5 tion’s Importer Self-Assessment Pro-
6 gram (described in section 201 of the
7 Customs and Trade Reauthorization
8 Act of 2006).

9 “(ii) BENEFITS.—The Commissioner
10 shall grant benefits in addition to the bene-
11 fits granted under subparagraphs (A) and
12 (B) to participants in the program who
13 meet the requirements of clause (i) for the
14 purpose of facilitating the flow of cargo in
15 the international supply chain. The bene-
16 fits shall include—

17 “(I) providing feedback to tier 3
18 participants on cargo examination re-
19 sults to the extent that such feedback
20 does not compromise security;

21 “(II) notifying tier 3 participants
22 of specific alerts and post-incident
23 trade resumption procedures as ap-
24 propriate;

1 “(III) providing incident manage-
2 ment training for tier 3 participants,
3 including training with respect to pro-
4 tection, prevention, response, and re-
5 covery;

6 “(IV) permitting tier 3 partici-
7 pants to be represented in joint inci-
8 dent management exercises with trade
9 agencies and other agencies; and

10 “(V) permitting cargo clearance
11 priority for participants in the post-in-
12 cident resumption of trade to the ex-
13 tent the Commissioner deems prac-
14 ticable.

15 “(5) VERIFICATION OF PARTICIPANT STATUS.—
16 The Commissioner of Customs shall develop proce-
17 dures to verify the information provided by persons
18 who apply for participation in the CIPP, including—

19 “(A) in the case of a tier 1 participant, an
20 extensive documentation review;

21 “(B) in the case of a tier 2 participant, an
22 extensive documentation review and site valida-
23 tion; and

24 “(C) in the case of a tier 3 participant, an
25 extensive documentation review, site validation,

1 and a review by the Bureau of Customs and
2 Border Protection auditors of the internal con-
3 trols of participants with respect to commercial
4 transactions to ensure the accuracy of the data
5 that is submitted to the Bureau.

6 “(6) CONSEQUENCES FOR LACK OF COMPLI-
7 ANCE.—

8 “(A) IN GENERAL.—If a participant’s busi-
9 ness system and documentation or supply chain
10 security practices fail to meet any of the re-
11 quirements established by the Commissioner of
12 Customs under this subsection, the Commis-
13 sioner may deny the applicant all or part of the
14 benefits of the CIPP until the applicant meets
15 those requirements.

16 “(B) FALSE OR MISLEADING INFORMA-
17 TION.—If a participant intentionally provides
18 false or misleading information to the Commis-
19 sioner or a third party during the certification,
20 validation, verification, revalidation, or
21 reverification process, the Commissioner shall
22 suspend or expel the participant from the CIPP
23 for an appropriate period of time. The Commis-
24 sioner may publish a list of persons who have

1 been suspended and make such a list available
2 to other participants.

3 “(7) CIPP ELEMENTS.—The Commissioner
4 shall establish sufficient internal quality controls and
5 record management to support the Bureau of Customs and Border Protection’s management systems
6 of the CIPP. In managing the Program the Commissioner shall ensure that the Program includes the
7 following:
8
9 following:

10 “(A) STRATEGIC PLAN.—A 5-year Strategic
11 Plan to identify outcome-based goals and
12 performance measures of the Program.

13 “(B) ANNUAL PLAN.—An annual plan for
14 each fiscal year designed to match available resources to the projected workload.
15

16 “(C) STANDARDIZED WORK PROGRAM.—A
17 standardized work program to be used by personnel of the Bureau of Customs and Border
18 Protection to carry out the verifications under
19 paragraph (5), with respect to intermodal
20 transportation system providers, contract logistics
21 providers, air, land and sea carriers, customs
22 brokers, importers, forwarders, and other
23 persons involved in the movement of cargo
24 through the international supply chain. The Bu-
25

1 reau of Customs and Border Protection shall
2 keep records and monitor staff hours associated
3 with the completion of each verification.

4 “(D) DOCUMENTATION OF REVIEWS.—The
5 Commissioner shall maintain a record manage-
6 ment system to document determinations on the
7 review of each participant, including certifi-
8 cations, validations, verifications, revalidations,
9 and reverifications.

10 “(E) REVALIDATION AND REVERIFICATION
11 OF PARTICIPANTS.—The Commissioner shall
12 develop and implement—

13 “(i) a revalidation process for tier 2
14 participants;

15 “(ii) a means to include risk-based
16 and random sampling for identifying par-
17 ticipants for periodic revalidation and
18 reverification;

19 “(iii) a reverification process for tier 3
20 participants;

21 “(iv) an annual plan for revalidation
22 and reverification that includes—

23 “(I) performance measures;

1 “(II) an assessment of the per-
2 sonnel needed to perform the revalida-
3 tion or reverification; and

4 “(III) the number of companies
5 that will be revalidated or reverified
6 during the year.

7 “(F) RIGHT OF APPEAL.—An applicant
8 for, or participant in, the CIPP shall have the
9 right to appeal any decision by the Commis-
10 sioner denying or suspending benefits under the
11 Program. An appeal shall be filed with the
12 Commissioner not later than 90 days after the
13 date of the suspension or denial that is being
14 appealed. The Commissioner shall make a final
15 decision with respect to the appeal within 180
16 days after the date the appeal is filed.

17 “(8) RESOURCE MANAGEMENT STAFFING
18 PLAN.—The Commissioner shall—

19 “(A) develop a staffing plan to recruit,
20 train, and retain staff (including a formalized
21 training program) to meet the objectives identi-
22 fied in the strategic plan of the CIPP;

23 “(B) conduct a study of the Program’s
24 training needs and develop a comprehensive
25 training program to support the certification,

1 validation, verification, revalidation, and
2 reverification processes of the Program; and

3 “(C) provide cross-training in post-incident
4 trade resumption for personnel engaged in the
5 Program.

6 “(9) THIRD-PARTY VALIDATION.—The Commis-
7 sioner shall consult with the Customs Commercial
8 Operations Advisory Committee (COAC), and con-
9 duct a feasibility study regarding the use of third
10 parties to conduct validations, verifications, revalida-
11 tions, and reverifications for participation in the
12 CIPP.

13 “(10) GAO REPORT.—Not later than 1 year
14 after the date of the enactment of this Act, the
15 Comptroller General shall conduct a study of the
16 CIPP. The study shall include a review of the inter-
17 nal controls, documentation, validation, verification,
18 revalidation, and reverification processes of the Pro-
19 gram. The Comptroller General shall submit a re-
20 port of the results of the study to the Committee on
21 Finance of the Senate and the Committee on Ways
22 and Means of the House or Representatives.

23 “(11) CONFIDENTIAL INFORMATION SAFE-
24 GUARDS.—In consultation with COAC, the Commis-
25 sioner shall develop and implement procedures to en-

1 sure the protection of confidential data collected,
2 stored, or shared with government agencies or as
3 part of the application, validation, verification, re-
4 validation, or reverification processes. The proce-
5 dures shall include—

6 “(A) measures for protecting data shared
7 with any government agency;

8 “(B) measures for providing a secure sys-
9 tem for document storage accessible only to the
10 appropriate personnel;

11 “(C) measures for storing all electronic
12 files in a manner that prevents theft, copying,
13 or deletion; and

14 “(D) measures for labeling all records to
15 clearly mark what is considered confidential or
16 a trade secret.

17 “(12) DEFINITIONS.—In this subsection:

18 “(A) CONTRACT LOGISTICS PROVIDER.—
19 The term ‘contract logistics provider’ means an
20 entity that provides supply chain management
21 services to third parties. Such services include
22 the design of a third party’s domestic or inter-
23 national supply chain (including integrated in-
24 formation, consolidation, and deconsolidation),
25 as well as the actual receipt, exportation, trans-

1 portation, brokerage, warehousing, or distribu-
2 tion of a third party's goods.

3 “(B) COAC.—The term ‘COAC’ means
4 the Advisory Committee, established pursuant
5 to section 9503(c) of the Omnibus Budget Rec-
6 onciliation Act of 1987, or any successor Com-
7 mittee (19 U.S.C. 2071 note).

8 “(C) IMPORTER SELF-ASSESSMENT PRO-
9 GRAM.—The term ‘importer self-assessment
10 program’ means the program of the Bureau of
11 Customs and Border Protection in effect on the
12 date of the enactment of this Act that provides
13 benefits to those persons who have made a com-
14 mitment of resources and assumed responsi-
15 bility for—

16 “(i) monitoring their own compliance
17 and business practices with respect to es-
18 tablishing, documenting, and implementing
19 adequate internal controls;

20 “(ii) performing periodic testing of
21 transactions based on risk;

22 “(iii) sharing test results with the Bu-
23 reau;

24 “(iv) making appropriate adjustments
25 to internal controls; and

1 “(v) maintaining an audit trail of fi-
2 nancial records and Customs declarations,
3 or, an alternate system that ensures accu-
4 rate values are reported to the Bureau.

5 “(D) INTERNATIONAL SUPPLY CHAIN.—
6 The term ‘international supply chain’ means the
7 end-to-end process for shipping goods to or
8 from the United States from the point of origin
9 (including manufacturer, supplier, or vendor)
10 through the point of distribution.

11 “(E) REVALIDATION; REVERIFICATION.—
12 The terms ‘revalidation’ and ‘reverification’
13 mean the process by which the Bureau of Cus-
14 toms and Border Protection reviews the quali-
15 fications of a participant to continue to partici-
16 pate as a tier 2 or tier 3 participant in the
17 CIPP, either on a periodic or risk management
18 basis, to determine if the participant continues
19 to adhere to established business and cargo se-
20 curity practices.

21 “(F) VALIDATION AND VERIFICATION.—
22 The terms ‘validation’ and ‘verification’ mean
23 the processes by which the Bureau of Customs
24 and Border Protection determines an appli-
25 cant’s qualifications to participate in the CIPP

1 by reviewing the applicant’s trade compliance
2 history and conducting an on-site review of doc-
3 umentation and practices of the applicant relat-
4 ing to the importation of cargo, in order to de-
5 termine if the applicant’s cargo security and
6 business practices are reliable, accurate, and ef-
7 fective.”.

8 (b) **ADDITIONAL PERSONNEL.**—In each of the fiscal
9 years 2007 through 2009, the Secretary shall increase by
10 not less than 50 (over the previous fiscal year) the number
11 of positions for validation, verification, revalidation, and
12 reverification activities of the CIPP, and shall provide ap-
13 propriate training and support for the positions.

14 (c) **AUTHORIZATION OF APPROPRIATIONS.**—In addi-
15 tion to any monies hereafter appropriated to the Bureau
16 of Customs and Border Protection of the Department of
17 Homeland Security, there are authorized to be appro-
18 priated for the purpose of meeting the staffing require-
19 ment provided for in subsection (b), to remain available
20 until expended, the following:

- 21 (1) \$8,500,000 in fiscal year 2007.
- 22 (2) \$17,600,000 in fiscal year 2008.
- 23 (3) \$27,300,000 in fiscal year 2009.
- 24 (4) \$28,300,000 in fiscal year 2010.
- 25 (5) \$29,200,000 in fiscal year 2011.

1 (d) REPORT.—

2 (1) IN GENERAL.—Not later than November
3 30, 2007, and annually thereafter, the Commissioner
4 shall report to the appropriate committees on the
5 progress of CIPP validations, verifications, revalida-
6 tions, and reverifications established under section
7 499(d) of the Tariff Act of 1930.

8 (2) APPROPRIATE COMMITTEES.—The term
9 “appropriate committees” means the Committee on
10 Finance of the Senate and the Committee on Ways
11 and Means of the House of Representatives.

12 **SEC. 232. TRADE RESUMPTION PLAN.**

13 Title III of the Tariff Act of 1930 is amended by
14 inserting after section 318 the following new section:

15 **“SEC. 318A. TRADE RESUMPTION PLAN.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) INSPECTION.—The term ‘inspection’
18 means the comprehensive process used by the per-
19 sonnel of the Bureau of Customs and Border Protec-
20 tion to assess goods entering the United States for
21 duty purposes, to detect the presence of restricted or
22 prohibited items, or to ensure compliance with appli-
23 cable laws. The process may include screening, con-
24 ducting an examination, or conducting a search.

1 “(2) TARGETING.—The term ‘targeting’ means
2 the process used by the personnel of the Bureau of
3 Customs and Border Protection to determine the
4 risk of security or trade violations associated with
5 cargo bound for the United States.

6 “(3) TRANSPORTATION DISRUPTION.—The
7 term ‘transportation disruption’ means any signifi-
8 cant delay, interruption, or stoppage in the flow of
9 international trade caused by a natural disaster,
10 labor dispute, heightened threat level, an act of ter-
11 rorism, or any transportation security incident de-
12 fined in section 1572.3 of title 49, Code of Federal
13 Regulations.

14 “(b) TRADE RESUMPTION PLAN.—Not later than 1
15 year after the date of enactment of this Act, the Commis-
16 sioner of Customs shall develop a Trade Resumption Plan
17 to provide for the resumption of trade in the event of a
18 transportation disruption. The Plan shall include—

19 “(1) a program to redeploy resources and per-
20 sonnel, as necessary, to reestablish the flow of inter-
21 national trade in the event of a transportation dis-
22 ruption;

23 “(2) a training program to periodically instruct
24 personnel of the Bureau of Customs and Border

1 Protection in trade resumption functions in the
2 event of a transportation disruption;

3 “(3) a plan to revise cargo targeting and in-
4 spection protocols to meet the security and trade fa-
5 cilitation needs of the United States following a
6 transportation disruption, including, to the extent
7 practicable, giving priority to—

8 “(A) cargo originating from a designated
9 port described in section 629(j);

10 “(B) cargo that has been handled, stored,
11 shipped, and imported by, or otherwise proc-
12 essed by, a tier 3 participant in the Customs
13 Industry Partnership Program established
14 under section 499(d) (CIPP);

15 “(C) cargo that has undergone nuclear or
16 radiological detection scan, x-ray or density
17 scan, and optical character recognition scan, at
18 the last port of departure prior to arrival in the
19 United States;

20 “(D) cargo transported in containers with
21 tamper-proof seals;

22 “(E) perishable cargo; and

23 “(F) any other cargo the Commissioner
24 considers appropriate;

1 “(4) a plan to communicate any revised proce-
2 dures or instructions to the private sector, and in
3 particular to tier 3 participants in the CIPP estab-
4 lished pursuant to section 499(d), following a trans-
5 portation disruption; and

6 “(5) a plan to coordinate trade facilitation ef-
7 forts among affected ports of entry following a
8 transportation disruption.

9 “(c) CONSULTATIONS.—

10 “(1) IN GENERAL.—The Commissioner of Cus-
11 toms shall consult with appropriate government
12 agencies, port authorities, terminal operators, and
13 the Customs Commercial Operations Advisory Com-
14 mittee (COAC) in the development of the Trade Re-
15 sumption Plan.

16 “(2) PUBLIC COMMENT.—The Commissioner of
17 Customs shall afford port authorities, terminal oper-
18 ators, and the COAC 60 days in which to comment
19 on a draft Trade Resumption Plan before finalizing
20 such plan.

21 “(d) EXERCISES.—The Commissioner of Customs
22 shall coordinate annual exercises with appropriate Fed-
23 eral, State, and local agencies, port authorities, terminal
24 operators, and tier 3 participants in the CIPP to practice
25 and prepare for implementation of the Trade Resumption

1 Plan. Such exercises shall be coordinated with the Coast
2 Guard's port incident management plan exercises.

3 “(e) **REPORT AND CONSULTATION.**—Not later than
4 180 days after the date that the annual exercises described
5 in subsection (d) are completed, the Commissioner of Cus-
6 toms shall submit a report to the Committee on Finance
7 of the Senate and the Committee on Ways and Means of
8 the House of Representatives on the status of the Trade
9 Resumption Plan required by subsection (b) and the result
10 of exercises required by subsection (d), and shall consult
11 with the committees regarding any proposals to revise the
12 Plan.”.

13 **SEC. 233. AUTOMATED TARGETING SYSTEM.**

14 Title III of the Tariff Act of 1930 is amended by
15 inserting after section 318A, as added by section 232 of
16 this Act, the following new section:

17 **“SEC. 318B. AUTOMATED TARGETING SYSTEM.**

18 “(a) **COMPONENT.**—The Automated Targeting Sys-
19 tem used by the Bureau of Customs and Border Protec-
20 tion to identify cargo for increased inspection prior to the
21 clearance of such cargo into the United States shall in-
22 clude a component to permit—

23 “(1) the electronic comparison of similar mani-
24 fest and available entry data for cargo entered into
25 or bound for the United States, in order to effi-

1 ciently identify cargo for increased inspection or ex-
2 peditious release following a transportation disrup-
3 tion; and

4 “(2) the electronic isolation of select data ele-
5 ments relating to cargo entered into or bound for
6 the United States, in order to efficiently identify
7 cargo for increased inspection or expeditious release
8 following a transportation disruption.

9 “(b) TRADE RESUMPTION PLAN.—The plan required
10 by subsection (b)(3) of section 318A shall incorporate use
11 of the component of the Automated Targeting System re-
12 quired by subsection (a) in order to minimize the disrup-
13 tion to the efficient flow of international trade following
14 a transportation disruption.”.

15 **SEC. 234. DRAWBACK FOR EXPORTED MERCHANDISE.**

16 (a) IN GENERAL.—Section 313 of the Tariff Act of
17 1930 (19 U.S.C. 1313) is amended to read as follows:

18 **“SEC. 313. DRAWBACK FOR EXPORTED MERCHANDISE.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) BILL OF MATERIALS.—The term ‘bill of
21 materials’ means records kept in the ordinary course
22 of business that identify each component incor-
23 porated into an article.

24 “(2) DESTROYED.—The term ‘destroyed’ means
25 a process by which merchandise or an article loses

1 all commercial value. Merchandise or an article may
2 be destroyed even if valuable material is recovered
3 from the merchandise or article.

4 “(3) DIRECTLY.—The term ‘directly’ means a
5 transfer of merchandise or an article from 1 person
6 to another person without any intermediate transfer.

7 “(4) FORMULA.—The term ‘formula’ means
8 records kept in the ordinary course of business that
9 identify the quantity of each element, material,
10 chemical, mixture, or other substance incorporated
11 into a manufactured article.

12 “(5) FUNGIBLE.—The term ‘fungible’ means
13 goods that are commercially identical to 1 another in
14 all instances.

15 “(6) GOOD SUBJECT TO CHILE DRAWBACK.—
16 The term ‘good subject to Chile drawback’ has the
17 meaning given that term in section 203(a) of the
18 United States-Chile Free Trade Agreement Imple-
19 mentation Act (19 U.S.C. 3805 note).

20 “(7) GOOD SUBJECT TO NAFTA DRAWBACK.—
21 The term ‘good subject to NAFTA drawback’ has
22 the meaning given that term in section 203(a) of the
23 North American Free Trade Agreement Implemen-
24 tation Act (19 U.S.C. 3333(a)).

1 “(8) HTS.—The term ‘HTS’ means the Har-
2 monized Tariff Schedule of the United States (19
3 U.S.C. 1202).

4 “(9) INCORPORATED INTO.—The term ‘incor-
5 porated into’ means any operation by which mer-
6 chandise or an article becomes classifiable in a dif-
7 ferent 8-digit HTS subheading number.

8 “(10) INDIRECTLY.—The term ‘indirectly’
9 means a transfer of merchandise or an article from
10 1 person to another person with 1 or more inter-
11 mediate transfers.

12 “(11) LINE ITEM.—

13 “(A) IMPORT ENTRY.—The term ‘line
14 item’ means, for an import entry filed pursuant
15 to section 484, the identification of a com-
16 modity from 1 country by net quantity, entered
17 value, HTS subheading number, and applicable
18 duties, fees, and taxes.

19 “(B) DESIGNATED EXPORT.—Line item
20 means, for a designated export, the identifica-
21 tion of a commodity by HTS subheading num-
22 ber, Schedule B number, declared value, and
23 quantity.

24 “(12) NAFTA COUNTRY.—The term ‘NAFTA
25 country’ has the meaning given that term in section

1 2 of the North American Free Trade Agreement Im-
2 plementation Act (19 U.S.C. 3301).

3 “(13) SCHEDULE B.—The term ‘Schedule B’
4 means the Department of Commerce Schedule B,
5 Statistical Classification of Domestic and Foreign
6 Commodities Exported from the United States.

7 “(14) SUBSTITUTE MERCHANDISE; SUBSTITUTE
8 ARTICLE.—The terms ‘substitute merchandise’ and
9 ‘substitute article’ mean—

10 “(A) a good that is classifiable within the
11 same 8-digit HTS subheading number as an-
12 other good (the Schedule B number may be
13 used to demonstrate this fact);

14 “(B) a good demonstrated to have been
15 classifiable within the same 8-digit HTS sub-
16 heading number as another good at some point
17 during the 5-year period beginning on the date
18 of importation of the designated imported mer-
19 chandise (the Schedule B number may be used
20 to demonstrate this fact); or

21 “(C) for goods classifiable under headings
22 2710 or 3901 through 3914, HTS, a good dem-
23 onstrated to have been classifiable under the
24 same 8-digit HTS subheading number as an-
25 other good according to the HTS in effect on

1 January 1, 2000 (the Schedule B number may
2 be used to demonstrate this fact).

3 “(b) IN GENERAL.—

4 “(1) DRAWBACK.—If merchandise is imported
5 into the United States and that merchandise, or
6 substitute merchandise, is then exported, or is incor-
7 porated into an article that is exported, or a sub-
8 stitute article that is exported, duties, fees, and
9 taxes paid upon entry or importation of the mer-
10 chandise shall be refunded as drawback pursuant to
11 this section.

12 “(2) ELIGIBILITY FOR DRAWBACK FOR MER-
13 CHANDISE INCORPORATED INTO MULTIPLE ARTI-
14 CLES.—Merchandise described in paragraph (1) that
15 is incorporated into an article that is exported shall
16 be eligible for drawback under this section regardless
17 of the number of times that the merchandise is in-
18 corporated into an article or an article is incor-
19 porated into another article.

20 “(c) ELIGIBILITY TO CLAIM DRAWBACK.—

21 “(1) PERSON MAKING CLAIM.—A person may
22 claim drawback under this section if the person—

23 “(A)(i) imports the merchandise on which
24 the claim is based; or

1 “(ii) obtains the importer’s permission to
2 claim the drawback and meets the requirements
3 of paragraph (2); and

4 “(B) exports the merchandise or article on
5 which the claim is based or obtains the export-
6 er’s permission to claim drawback.

7 “(2) SPECIAL RULES FOR NONIMPORTERS.—

8 “(A) IN GENERAL.—An exporter who
9 claims drawback pursuant to paragraph
10 (1)(A)(ii), shall have received the imported mer-
11 chandise, substitute merchandise, imported or
12 substitute merchandise incorporated into an ar-
13 ticle, or substitute article, directly or indirectly
14 from the importer.

15 “(B) RULES FOR TRANSFER.—The trans-
16 fer of a claim for drawback under this section
17 shall be a private transaction between parties
18 that may not be required to be governed by this
19 section or by regulations promulgated under the
20 authority of this section, and the Secretary may
21 not require such parties to verify any transfer
22 of drawback rights, merchandise, or article
23 under this subsection.

24 “(3) CLAIM FOR DRAWBACK ON MERCHANDISE
25 INCORPORATED.—If drawback is claimed for mer-

1 chandise incorporated into an article, the person
2 making the claim shall submit a bill of materials or
3 formula identifying the merchandise and article by
4 the 8-digit HTS subheading number and the quan-
5 tity of the merchandise. Merchandise shall be
6 deemed incorporated into an article if the bill of ma-
7 terials or formula for that article includes such mer-
8 chandise.

9 “(4) ELECTRONIC FILING.—A claim for draw-
10 back under this section shall be made through an
11 electronic data interchange system authorized by the
12 Secretary. Such system may include an Internet-
13 based system.

14 “(5) TIME LIMIT FOR CLAIM.—Drawback may
15 be paid under this section for merchandise only if
16 the claim for drawback is filed within 5 years after
17 the date the merchandise was imported. If the mer-
18 chandise has multiple dates of importation, the ear-
19 liest date of importation shall be used for purposes
20 of this paragraph.

21 “(d) AMOUNT OF DRAWBACK.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (2) and except for drawback claims filed pur-
24 suant to subsection (g)(2), the amount of a draw-

1 back made pursuant to this section shall be the
2 number of units claimed times the lesser of—

3 “(A) the average of the duties, taxes, and
4 fees paid per unit of the designated import line
5 item; or

6 “(B) the average declared value per unit of
7 the designated export line item times the duties,
8 taxes, and fees that applied to the designated
9 import line item, less 1 percent.

10 “(2) EXCEPTION.—Where drawback is claimed
11 based upon imported merchandise or substitute mer-
12 chandise being incorporated into an article, the
13 drawback amount shall be the number of units of
14 merchandise claimed times the average duties, taxes,
15 and fees per unit of the designated import line item,
16 less 1 percent.

17 “(3) LIMITATION.—The amount of duties,
18 taxes, and fees to be refunded pursuant to this sub-
19 section for merchandise shall not include any duties,
20 taxes, and fees previously refunded to any person for
21 such merchandise.

22 “(e) REFUNDS, WAIVERS, OR REDUCTIONS UNDER
23 CERTAIN FREE TRADE AGREEMENTS.—

24 “(1) IN GENERAL.—If an article that is ex-
25 ported to a NAFTA country is a good subject to

1 NAFTA drawback, no customs duties on the good
2 may be refunded, waived, or reduced in an amount
3 that exceeds the lesser of—

4 “(A) the total amount of customs duties
5 paid or owed on the good on importation into
6 the United States; or

7 “(B) the total amount of customs duties
8 paid on the good on importation into the
9 NAFTA country.

10 “(2) SPECIAL RULE FOR CANADA.—If Canada
11 ceases to be a NAFTA country and the suspension
12 of the operation of the United States-Canada Free-
13 Trade Agreement thereafter terminates, then for
14 purposes of subsection (b), the shipment to Canada
15 during the period such Agreement is in operation of
16 an article made from or substituted for, as appro-
17 priate, a drawback eligible good under section
18 204(a) of the United States-Canada Free-Trade Im-
19 plementation Act of 1988 (19 U.S.C. 1212 note)
20 does not constitute an exportation.

21 “(3) SPECIAL RULE FOR CHILE.—

22 “(A) IN GENERAL.—For purposes of sub-
23 sections (a) and (h), if an article that is ex-
24 ported to Chile is a good subject to United
25 States-Chile Free Trade Agreement drawback,

1 no customs duties on the good may be re-
2 funded, waived, or reduced, except as provided
3 in subparagraph (B).

4 “(B) AMOUNT OF CUSTOMS DUTIES.—The
5 customs duties referred to in subparagraph (A)
6 may be refunded, waived, or reduced by—

7 “(i) 100 percent during the 8-year pe-
8 riod beginning on January 1, 2004;

9 “(ii) 75 percent during the 1-year pe-
10 riod beginning on January 1, 2012;

11 “(iii) 50 percent during the 1-year pe-
12 riod beginning on January 1, 2013; and

13 “(iv) 25 percent during the 1-year pe-
14 riod beginning on January 1, 2014.

15 “(4) FUNGIBLE MERCHANDISE EXPORTED TO
16 NAFTA COUNTRY.—

17 “(A) IN GENERAL.—The exportation to a
18 NAFTA country of merchandise that is fungible
19 with and substituted for imported merchandise,
20 other than merchandise described in paragraphs
21 (1) through (8) of section 203(a) of the North
22 American Free Trade Agreement Implementa-
23 tion Act (19 U.S.C. 3333(a)), shall not con-
24 stitute an exportation for purposes of sub-
25 section (b).

1 “(B) FUNGIBLE MERCHANDISE EXPORTED
2 TO CHILE.—Beginning on January 1, 2015, the
3 exportation to Chile of merchandise that is fun-
4 gible with, and substituted for imported mer-
5 chandise, other than merchandise described in
6 paragraphs (1) through (5) of section 203(a) of
7 the United States-Chile Free Trade Agreement
8 Implementation Act (19 U.S.C. 3805 note),
9 shall not constitute an exportation for purposes
10 of subsection (b). The preceding sentence shall
11 not be construed to permit the substitution of
12 unused drawback under subsection (b) of this
13 section with respect to merchandise described in
14 paragraph (2) of section 203(a) of the United
15 States-Chile Free Trade Agreement Implemen-
16 tation Act.

17 “(f) PROOF OF EXPORTATION.—A person claiming
18 drawback under this section shall submit proof of the ex-
19 portation of the merchandise or an article that the mer-
20 chandise was incorporated into by submitting at least 1
21 of the following:

22 “(1) The appropriate record from the United
23 States Government automated export system, unless
24 such system was unable to report the exportation.

1 “(2) If the drawback claims filed pursuant to
2 subsection (e), the Canadian or Mexican entry
3 records.

4 “(3) For a deemed exportation, any record that
5 establishes the fact of deemed exportation that in-
6 cludes a description of the article or merchandise by
7 the 8-digit HTS subheading number (or equivalent
8 Schedule B number) under which the article or mer-
9 chandise would be classifiable, quantity, and de-
10 clared value.

11 “(g) SPECIAL ELIGIBILITY RULES.—

12 “(1) VESSELS BUILT FOR RESIDENTS OF A
13 FOREIGN COUNTRY.—Drawback under this section
14 may be claimed for materials imported and used in
15 the construction and equipment of vessels built for
16 foreign account and ownership, or for the govern-
17 ment of any foreign country, notwithstanding that
18 such vessels may not within the strict meaning of
19 the term be exported.

20 “(2) DESTROYED MERCHANDISE.—

21 “(A) ELIGIBILITY FOR DRAWBACK.—
22 Drawback under this section may be claimed
23 for merchandise or an article incorporating the
24 merchandise that is not exported because it was
25 destroyed if the person seeking the drawback

1 uses direct identification or another approved
2 accounting method to identify the merchandise
3 that is destroyed or the merchandise incor-
4 porated into the article that is destroyed.

5 “(B) AMOUNT OF DRAWBACK.—Subject to
6 subparagraph (C), the amount of drawback
7 paid for a claim filed pursuant to subparagraph
8 (A) shall be—

9 “(i) the average entered value per unit
10 of merchandise, multiplied by

11 “(ii) the duty, tax, and fee applicable
12 to the designated line item of the merchan-
13 dise, multiplied by

14 “(iii) the number of units claimed,
15 minus 1 percent.

16 “(C) OFFSETTING AMOUNTS.—The
17 amount of duties, taxes, and fees to be refunded
18 pursuant to this paragraph shall not include
19 any duties, taxes, and fees previously refunded
20 to an importer of record or the person claiming
21 drawback. The value of the imported merchan-
22 dise on which drawback is claimed shall be re-
23 duced by the value of any recovered materials
24 (including the value of any tax benefit or roy-
25 alty payment).

1 “(3) AGRICULTURAL PRODUCTS.—No drawback
2 under this section may be claimed for an agricul-
3 tural product subject to over-quota rate of duty es-
4 tablished under a tariff-rate quota, except under a
5 direct identification basis and when such product
6 has not been used in the United States.

7 “(4) MERCHANDISE NOT REGULARLY EN-
8 TERED.—Imported merchandise that has not been
9 regularly entered or withdrawn for consumption
10 shall not satisfy the exportation requirement of this
11 section.

12 “(5) FLAVORING EXTRACTS; MEDICINAL OR
13 TOILET PREPARATIONS; BOTTLED DISTILLED SPIR-
14 ITS AND WINES.—

15 “(A) IN GENERAL.—Upon the exportation
16 of flavoring extracts, medicinal, or toilet prep-
17 arations (including perfumery) manufactured or
18 produced in the United States in part from do-
19 mestic alcohol on which an internal revenue tax
20 has been paid, there shall be allowed a draw-
21 back equal in amount to the tax found to have
22 been paid on the alcohol so used.

23 “(B) BOTTLED DISTILLED SPIRITS AND
24 WINES.—Upon the exportation of bottled dis-
25 tilled spirits and wines manufactured or pro-

1 duced in the United States on which an internal
2 revenue tax has been paid or determined, there
3 shall be allowed, under regulations to be pre-
4 scribed by the Commissioner of Internal Rev-
5 enue, with the approval of the Secretary, a
6 drawback equal in amount to the tax found to
7 have been paid or determined on such bottled
8 distilled spirits and wines. In the case of dis-
9 tilled spirits, the preceding sentence shall not
10 apply unless the claim for drawback is filed by
11 the bottler or packager of the spirits and unless
12 such spirits have been stamped or restamped,
13 and marked, especially for export, under regula-
14 tions prescribed by the Commissioner of Inter-
15 nal Revenue, with the approval of the Secretary
16 of the Treasury.

17 “(h) PROHIBITION ON OTHER CLAIMS FOR DRAW-
18 BACK.—Merchandise that is exported or destroyed to sat-
19 isfy any claim for drawback shall not be the basis of any
20 other claim for drawback, except that appropriate credit
21 and deductions for claims covering components or ingredi-
22 ents of such merchandise shall be made in computing
23 drawback payments.

24 “(i) LIABILITY FOR CLAIM.—Importers, up to the
25 amount of duties, taxes, and fees on the designated import

1 permitted by the importer for drawback by the claimant,
2 and drawback claimants, for the full amount of the claim,
3 are jointly and severally liable to the United States for
4 drawback claims. In implementing this section, the Sec-
5 retary shall provide by regulation that the United States
6 attempt to recover from the drawback claimant before at-
7 tempting to recover from the importer.

8 “(j) PAYMENT FROM RECEIPTS OF PUERTO RICO.—
9 A drawback under this section for merchandise shall be
10 paid from the customs receipts of Puerto Rico if the duties
11 for such merchandise were originally paid into the Treas-
12 ury of Puerto Rico.”.

13 (b) REPORT.—Not later than 1 year after the date
14 the drawback processing module is operational and the
15 ACE (as defined in section 201) becomes the exclusive sys-
16 tem of record nationally for drawback entries, the Com-
17 missioner of the Bureau of Customs and Border Protec-
18 tion shall submit to the Committee on Finance of the Sen-
19 ate and the Committee on Ways and Means of the House
20 of Representatives a report that evaluates the utilization
21 of direct identification in drawback claims, including
22 measurement of the number of non-NAFTA, nondestruc-
23 tion claims filed using direct identification, and the impact
24 on personnel allocation within the Bureau.

25 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) REFUNDS.—Section 505(b) of the Tariff
2 Act of 1930 (19 U.S.C. 1505(b)), is amended by
3 adding at the end the following: “Refunds of excess
4 moneys deposited, as determined on a liquidation or
5 reliquidation, shall be reduced by any amount paid,
6 on an accelerated basis or otherwise, to a drawback
7 claimant pursuant to section 313.”.

8 (2) REVIEW OF PROTESTS.—The second sen-
9 tence of section 515(a) of the Tariff Act of 1930 (19
10 U.S.C. 1515(a)) is amended by striking the period
11 at the end and inserting “in accordance with section
12 505.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date that the Commis-
15 sioner of the Bureau of Customs and Border Protection
16 publishes a finding that the Automated Commercial Envi-
17 ronment is the exclusive system of record in the United
18 States for entry summaries and shall apply to drawback
19 claims designating import entry summaries or reconfig-
20 ured entries that are filed on or after that date.

21 **SEC. 235. FINAL AUTHORITY OVER MATTERS RELATING TO**
22 **CUSTOMS BROKERS.**

23 (a) IN GENERAL.—Section 641(a) of the Tariff Act
24 of 1930 (19 U.S.C. 1641(a)) is amended by striking para-
25 graph (3) and inserting the following:

1 “(3) The term ‘Commissioner’ means the Com-
2 missioner of Customs.”.

3 (b) CONFORMING AMENDMENTS.—Section 641 of the
4 Tariff Act of 1930 (19 U.S.C. 1641) is amended by strik-
5 ing “Secretary” each place it appears and inserting “Com-
6 missioner”.

7 **SEC. 236. ADVISORY COMMITTEE.**

8 Section 9503(c) of the Omnibus Budget Reconcili-
9 ation Act of 1987 (19 U.S.C. 2071 note) is amended—

10 (1) in paragraph (1), by striking “Advisory
11 Committee on Commercial Operations of the United
12 States Customs Service” and inserting “Customs
13 Commercial Operations Advisory Committee”;

14 (2) by striking “commercial operations of the
15 United States Customs Service” each place it ap-
16 pears and inserting “customs commercial oper-
17 ations”;

18 (3) by inserting “, in consultation with the Sec-
19 retary of Homeland Security,” after “Secretary of
20 the Treasury” each place it appears; and

21 (4) by amending paragraph (4) to read as fol-
22 lows:

23 “(4) The Deputy Secretary of the Treasury and
24 the Deputy Secretary of Homeland Security, or their

1 designees, shall jointly preside over meetings of the
2 Advisory Committee.”.

3 **SEC. 237. STUDY AND REPORT.**

4 (a) FEASIBILITY STUDY.—Not later than 1 year
5 after the date of the enactment of this Act, the Commis-
6 sioner of Customs shall conduct a study and report to the
7 appropriate committees (as defined in section 231(d)(2))
8 regarding the feasibility of developing and employing non-
9 intrusive scanning systems in foreign ports to examine and
10 analyze containerized cargo destined for the United
11 States. The report shall include an assessment of any such
12 systems currently used for—

13 (1) detecting and analyzing nuclear or radio-
14 logical materials;

15 (2) producing density scans or x-ray scans of
16 containerized cargo; and

17 (3) recording unique identification information
18 for specific containerized cargo.

19 (b) ELEMENTS OF THE REPORT.—The report re-
20 quired by subsection (a) shall take into account—

21 (1) the infrastructure requirements and limita-
22 tions of a port;

23 (2) the size of a port;

1 (3) the maintenance or improvement of the cur-
2 rent average processing speed of containerized cargo
3 through a port;

4 (4) the scalability of a nonintrusive scanning
5 system to meet both current and future forecasted
6 trade flows;

7 (5) the ability of a nonintrusive scanning sys-
8 tem to automatically detect and analyze anomalies
9 between information collected for specific container-
10 ized cargo and established baselines for such or simi-
11 lar cargo;

12 (6) the ability of a nonintrusive scanning sys-
13 tem to automatically maintain and catalog appro-
14 priate data for reference and analysis in the event
15 of a transportation disruption;

16 (7) the potential costs of installing and main-
17 taining a nonintrusive scanning system in a port;

18 (8) the ability of administering personnel to ef-
19 ficiently manage and utilize the data produced by a
20 nonintrusive scanning system;

21 (9) the ability to safeguard commercial data
22 generated by or submitted to a nonintrusive scan-
23 ning system; and

24 (10) the reliability of currently available tech-
25 nology.

1 **Subtitle D—Staffing and Resources**

2 **SEC. 241. STAFFING FOR COMMERCIAL OPERATIONS AND**
3 **REVENUE FUNCTIONS OF THE BUREAU OF**
4 **CUSTOMS AND BORDER PROTECTION.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) The Homeland Security Act of 2002 prohib-
7 ited the Secretary of Homeland Security from reduc-
8 ing the staffing levels attributable to the customs
9 revenue functions described in section 412(b)(2).

10 (2) Since the creation of the Department of
11 Homeland Security in 2003, staffing levels for var-
12 ious personnel in the Bureau of Customs and Border
13 Protection dedicated to customs revenue, trade fa-
14 cilitation, and trade enforcement functions have de-
15 clined by as much as 16 percent.

16 (3) Since 2004, the number of full-time equiva-
17 lents performing commercial investigations within
18 the Bureau of Immigration and Customs Enforce-
19 ment declined by as much as 15 percent.

20 (4) In 2006, customs revenue collections are ex-
21 pected to reach \$31,500,000,000, a 25 percent in-
22 crease over revenue collected when the Department
23 of Homeland Security was created in 2003.

24 (5) More than 11,000,000 commercial cargo
25 containers entered the United States in 2005. The

1 number of containers entering the United States is
2 expected to increase by 10 percent in 2006, and by
3 2010, containerized traffic flows into the United
4 States are expected to double.

5 (6) International trade accounted for $\frac{1}{10}$ of
6 United States economic growth 50 years ago, and
7 today accounts for $\frac{1}{4}$ of that growth.

8 (7) An 11-day labor dispute at the Port of
9 Long Beach, California, cost the United States econ-
10 omy at least \$1,000,000,000 per day, highlighting
11 the need for trade resumption preparedness among
12 United States Government agencies, ports, and port
13 users.

14 (8) Dedicating sufficient resources to customs
15 revenue and commercial trade facilitation and en-
16 forcement functions is critical to the economic secu-
17 rity and well-being of the United States.

18 (b) AUTHORIZATION FOR COMMERCIAL OPERATIONS
19 AND REVENUE FUNCTIONS.—The Act of February 13,
20 1911 (36 Stat. 901, chapter 46; 19 U.S.C. 267) is amend-
21 ed by inserting after section 5 the following new section:

22 **“SEC. 5A. AUTHORIZATION FOR COMMERCIAL OPERATIONS**
23 **AND REVENUE FUNCTIONS.**

24 “(a) IN GENERAL.—In addition to any monies here-
25 after appropriated to the Bureau of Customs and Border

1 Protection of the Department of Homeland Security, there
2 are authorized to be appropriated for the purpose of in-
3 creasing the number of personnel in the Bureau available
4 to perform commercial operations and customs revenue
5 functions, described in section 412(b)(2) of the Homeland
6 Security Act of 2002 (6 U.S.C. 212(b)(2)), to remain
7 available until expended, the following:

8 “(1) \$105,000,000 in fiscal year 2007.

9 “(2) \$162,500,000 in fiscal year 2008.

10 “(3) \$168,000,000 in fiscal year 2009.

11 “(4) \$174,000,000 in fiscal year 2010.

12 “(5) \$180,000,000 in fiscal year 2011.

13 “(b) ADDITIONAL PERSONNEL.—The additional per-
14 sonnel authorized under subsection (a) shall include:

15 “(1) An increase of 4 percent in the number of
16 Customs and Border Protection Officers over the
17 number of officers employed on the day before the
18 date of the enactment of this Act to assist in the
19 commercial operations of the Bureau, including in-
20 spection and cargo clearance at ports of entry, of
21 which the Commissioner of Customs shall assign—

22 “(A) at least 1 additional officer at each
23 port of entry in the United States; and

24 “(B) the balance of the additional officers
25 authorized by this subsection among ports of

1 entry in the United States based upon the vol-
2 ume of trade and the incidence of nonvolun-
3 tarily disclosed trade and customs law violations
4 observed among such ports of entry.

5 “(2) An increase of 15 percent over the number
6 of nonsupervisory import specialists employed at the
7 end of fiscal year 2002 for the purpose of per-
8 forming trade facilitation and enforcement functions.

9 “(3) An increase of 15 percent over the number
10 of auditors employed at the end of fiscal year 2002
11 for the purpose of validating, verifying, revalidating,
12 and reverifying CIPP participants pursuant to sec-
13 tion 499(d) of the Tariff Act of 1930.

14 “(c) RESOURCE ALLOCATION MODEL.—Not later
15 than 1 year after the date of the enactment of this Act,
16 and every 2 years thereafter, the Commissioner of Cus-
17 toms shall prepare and submit to the Committee on Fi-
18 nance of the Senate and the Committee on Ways and
19 Means of the House of Representatives a Resource Alloca-
20 tion Model to determine the optimal staffing levels re-
21 quired to carry out the commercial operations of the Bu-
22 reau of Customs and Border Protection, including inspec-
23 tion and cargo clearance and the revenue functions de-
24 scribed in section 412(b)(2) of the Homeland Security Act
25 of 2002 (6 U.S.C. 212(b)(2)). The model shall comply

1 with the requirements of section 412(b)(1) of such Act
2 and shall take into account previous staffing models and
3 historic and projected trade volumes and trends. The Re-
4 source Allocation Model shall apply both risk-based and
5 random sampling approaches for determining adequate
6 staffing needs for priority trade functions, including—

7 “(1) performing revenue functions;

8 “(2) enforcing antidumping and countervailing
9 laws;

10 “(3) protecting intellectual property rights;

11 “(4) enforcing provisions of law relating to tex-
12 tiles;

13 “(5) conducting agricultural inspections; and

14 “(6) enforcing penalties.

15 “(d) INTELLECTUAL PROPERTY RIGHTS ENFORCE-
16 MENT DIVISION.—

17 “(1) ESTABLISHMENT.—There shall be estab-
18 lished within the Bureau of Customs and Border
19 Protection Office of Regulations and Rulings an In-
20 tellectual Property Rights Enforcement Division (in
21 this section referred to as the ‘Division’). The Divi-
22 sion shall be headed by a Director.

23 “(2) PURPOSE.—Oversight of all activities re-
24 lated to intellectual property rights within the Bu-

1 reau of Customs and Border Protection shall be cen-
2 tralized in the Division.

3 “(3) DUTIES OF THE DIRECTOR.—The Director
4 shall—

5 “(A) increase enforcement cooperation be-
6 tween customs agencies of foreign governments
7 and the United States;

8 “(B) assist in intellectual property rights
9 enforcement capacity building in countries iden-
10 tified as either a ‘Priority Foreign Country’, or
11 on the ‘Priority Watch List’ or the ‘Watch List’
12 pursuant to section 182 of the Trade Act of
13 1974 (19 U.S.C. 2242);

14 “(C) consult with the private sector in
15 training officers of the Bureau of Customs and
16 Border Protection in the detection and identi-
17 fication of counterfeit products;

18 “(D) assist in the development and coordi-
19 nation of intellectual property rights training at
20 the United States ports; and

21 “(E) coordinate with other agencies, de-
22 partments, and personnel of the United States
23 Government with respect to the enforcement of
24 intellectual property rights.

25 “(4) STAFFING.—

1 “(A) CUSTOMS AND BORDER PROTEC-
2 TION.—The Commissioner shall increase the
3 staff and resources of the Bureau of Customs
4 and Border Protection that are assigned to en-
5 force intellectual property rights—

6 “(i) by hiring 10 additional attorneys
7 and assigning at least 10 attorneys to the
8 Division; and

9 “(ii) by hiring 5 additional auditors
10 and assigning at least 5 auditors to the Di-
11 vision.

12 “(B) BUREAU OF IMMIGRATION AND CUS-
13 TOMS ENFORCEMENT.—The Director of Immi-
14 gration and Customs Enforcement shall assign
15 a senior investigative liaison to be stationed
16 within the Division with responsibility for co-
17 ordinating the intellectual property rights en-
18 forcement efforts of the Bureau of Immigration
19 and Customs Enforcement with the enforce-
20 ment efforts of the Division.

21 “(5) AUTHORIZATION OF APPROPRIATIONS.—In
22 addition to any sums hereafter authorized to be ap-
23 propriated, there are authorized to be appropriated
24 to the Department of Homeland Security for the op-
25 erations of the Division within the Bureau of Cus-

1 toms and Border Protection the following sums, to
2 remain available until expended:

3 “(A) \$3,000,000 for fiscal year 2007.

4 “(B) \$3,400,000 for fiscal year 2008.

5 “(C) \$3,800,000 for fiscal year 2009.

6 “(D) \$4,200,000 for fiscal year 2010.

7 “(E) \$4,600,000 for fiscal year 2011.

8 “(e) ENFORCEMENT OTHER THAN INTELLECTUAL
9 PROPERTY RIGHTS ENFORCEMENT.—The Director of Im-
10 migration and Customs Enforcement shall assign a senior
11 investigative liaison to be stationed within the Office of
12 Field Operations of the Bureau of Customs and Border
13 Protection with responsibility for coordinating the enforce-
14 ment efforts of the Bureau of Immigration and Customs
15 Enforcement, other than enforcement efforts relating to
16 the protection of intellectual property rights, with the en-
17 forcement efforts of the Bureau of Customs and Border
18 Protection.

19 “(f) REGULATIONS TO IMPLEMENT TRADE AGREE-
20 MENTS.—The Commissioner of Customs shall designate
21 no less than 5 attorneys within the Bureau of Customs
22 and Border Protection with primary responsibility for the
23 prompt development and promulgation of regulations nec-
24 essary to implement any trade agreement entered into by
25 the United States.”.

1 (c) REPORT BY THE COMPTROLLER GENERAL.—Not
2 later than 1 year after the date of the enactment of this
3 Act, the Comptroller General of the United States shall
4 assess and report to Congress regarding—

5 (1) the allocation of personnel and resources of
6 the Bureau of Customs and Border Protection to
7 commercial operations, including inspection and
8 cargo clearance at ports of entry and revenue func-
9 tions described in section 412(b)(2) of the Homeland
10 Security Act of 2002;

11 (2) the effectiveness of the Bureau of Customs
12 and Border Protection’s enforcement of the priority
13 trade functions described in section 5A of the Act of
14 February 13, 1911, as added by section 241 of this
15 Act;

16 (3) any recommendations for the further dedi-
17 cation of resources needed to facilitate trade, ensure
18 compliance with United States trade laws, and pro-
19 tect customs revenue; and

20 (4) in consultation with the COAC, the extent
21 to which the merchandise processing fee and other
22 user fees are sufficient to pay for the related services
23 provided by personnel of the Bureau of Customs and
24 Border Protection and recommendations for adjust-
25 ing such fees.

1 (d) HOURS OF OPERATION.—

2 (1) STUDY.—The Commissioner of Customs
3 shall study the feasibility of extending the hours of
4 operation at ports of entry into the United States,
5 taking into account differentiating factors such as
6 geographic location, actual and projected trade vol-
7 ume, infrastructure, and staffing level, and report
8 the results of the study to the Committee on Fi-
9 nance of the Senate and the Committee on Ways
10 and Means of the House of Representatives no later
11 than September 30, 2007.

12 (2) PILOT PROGRAM.—During fiscal year 2007,
13 the Commissioner of Customs shall extend the hours
14 of commercial operation at the Santa Teresa Port-
15 of-Entry to a minimum of 16 hours per day. The
16 Commissioner shall report to the Committee on Fi-
17 nance of the Senate and the Committee on Ways
18 and Means of the House of Representatives no later
19 than September 30, 2007, on the impact of such ex-
20 tended hours of operation on the port facility, staff,
21 and trade volume handled by the port, and shall de-
22 termine whether to extend such hours of operation
23 beyond fiscal year 2007.

1 **TITLE III—AUTHORIZATION OF**
2 **APPROPRIATIONS FOR**
3 **OTHER TRADE AGENCIES**

4 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS FOR**
5 **UNITED STATES INTERNATIONAL TRADE**
6 **COMMISSION.**

7 (a) FISCAL YEAR 2007.—There are authorized to be
8 appropriated for the salaries and expenses of the United
9 States International Trade Commission not to exceed
10 \$64,200,000 for fiscal year 2007.

11 (b) FISCAL YEARS 2008 AND 2009.—Section
12 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C.
13 1330(e)(2)(A)) is amended by striking clauses (i) and (ii)
14 and inserting the following:

15 “(i) \$67,100,000 for fiscal year 2008.

16 “(ii) \$69,600,000 for fiscal year
17 2009.”.

18 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS FOR THE**
19 **OFFICE OF THE UNITED STATES TRADE REP-**
20 **RESENTATIVE.**

21 (a) FISCAL YEAR 2007.—There are authorized to be
22 appropriated for the salaries and expenses of the Office
23 of the United States Trade Representative not to exceed
24 \$47,800,000 for fiscal year 2007.

1 (b) FISCAL YEARS 2008 AND 2009.—Section
2 141(g)(1)(A) of the Trade Act of 1974 (19 U.S.C.
3 2171(g)(1)(A)) is amended by striking clauses (i) and (ii)
4 and inserting the following:

5 “(i) \$49,700,000 for fiscal year 2008.

6 “(ii) \$51,600,000 for fiscal year
7 2009.”.

8 **TITLE IV—MISCELLANEOUS** 9 **PROVISIONS**

10 **SEC. 401. METHAMPHETAMINE AND METHAMPHETAMINE** 11 **PRECURSOR CHEMICALS.**

12 (a) DEFINITION.—In this section, the term “meth-
13 amphetamine precursor chemicals” means the chemicals
14 ephedrine, pseudoephedrine, or phenylpropanolamine, in-
15 cluding each of the salts, optical isomers, and salts of opti-
16 cal isomers of such chemicals.

17 (b) COMPLIANCE WITH PERFORMANCE PLAN RE-
18 QUIREMENTS.—For each of the fiscal years of 2007
19 through 2011, as part of the annual performance plan re-
20 quired in the budget submission of the Bureau of Customs
21 and Border Protection under section 1115 of title 31,
22 United States Code, the Commissioner of Customs shall
23 establish performance indicators relating to the seizure of
24 methamphetamine and methamphetamine precursor
25 chemicals in order to evaluate the performance goals of

1 the Bureau with respect to the interdiction of illegal drugs
2 entering the United States.

3 (c) STUDY AND REPORT RELATING TO METH-
4 AMPHETAMINE AND METHAMPHETAMINE PRECURSOR
5 CHEMICALS.—

6 (1) ANALYSIS.—The Commissioner of Customs
7 shall, on an annual basis, analyze the movement of
8 methamphetamine and methamphetamine precursor
9 chemicals into the United States. In conducting the
10 analysis, the Commissioner shall—

11 (A) consider the entry of methamphet-
12 amine and methamphetamine precursor chemi-
13 cals through ports of entry, between ports of
14 entry, through the mails, and through inter-
15 national courier services;

16 (B) examine the export procedures of each
17 foreign country where the shipments of meth-
18 amphetamine and methamphetamine precursor
19 chemicals originate and determine if changes in
20 the country's customs provisions would alleviate
21 the export of methamphetamine and meth-
22 amphetamine precursor chemicals; and

23 (C) identify emerging trends in smuggling
24 techniques and strategies.

1 (2) REPORT.—Not later than September 30,
2 2007, and annually thereafter, the Commissioner
3 shall submit a report to the Committee on Finance
4 and the Committee on Foreign Relations of the Sen-
5 ate, and the Committee on Ways and Means and the
6 Committee on International Relations of the House
7 of Representatives, that includes—

8 (A) the analysis described in paragraph
9 (1); and

10 (B) the Bureau’s utilization of the analysis
11 to target shipments presenting a high risk for
12 smuggling or circumvention of the Combat
13 Methamphetamine Epidemic Act of 2005 (Pub-
14 lic Law 109–177).

15 (3) AVAILABILITY OF ANALYSIS.—The Commis-
16 sioner shall ensure that the analysis described in
17 paragraph (1) is made available in a timely manner
18 to the Secretary of State to facilitate the Secretary
19 in fulfilling the Secretary’s reporting requirements in
20 section 722 of the Combat Methamphetamine Epi-
21 demic Act of 2005 (22 U.S.C. 2291h).

22 **SEC. 402. UNITED STATES PORT AND TERMINAL OPERATOR**
23 **COMPETITIVENESS.**

24 (a) REVIEW AND REPORT ON PORT COMPETITIVE-
25 **NESS.**—The Commissioner of Customs, in consultation

1 with the Secretary of the Treasury and the United States
2 Trade Representative, shall review and compare the fees,
3 charges, and standards imposed on United States ports,
4 port terminal operators, and persons who use United
5 States ports with the fees, charges, and standards imposed
6 on ports and port terminal operators in Canada or Mexico
7 and persons who use those ports.

8 (b) CONTENT OF REVIEW.—The review described in
9 subsection (a) shall include an assessment of the impact
10 of the fees, charges, and standards on the competitiveness
11 of United States ports and an analysis of whether the fees,
12 charges, and standards result in the diversion of cargo
13 from United States ports to ports in Canada or Mexico.

14 (c) REPORT.—Not later than 1 year after the date
15 of the enactment of this Act, the Commissioner shall sub-
16 mit a report on the results of the review conducted under
17 subsection (a) along with recommendations for addressing
18 any negative impact the fees, charges, and standards have
19 on the competitiveness of United States ports and port
20 terminal operators. The report shall be submitted to the
21 Committee on Finance of the Senate and the Committee
22 on Ways and Means of the House of Representatives.

1 **SEC. 403. CHARTER FLIGHTS.**

2 Section 13031(e)(1) of the Consolidated Omnibus
3 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1))
4 is amended—

5 (1) by striking “(1) Notwithstanding section
6 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or
7 any other provision of law (other than paragraph
8 (2))” and inserting the following:

9 “(1) IN GENERAL.—

10 “(A) SCHEDULED FLIGHTS.—Notwith-
11 standing section 451 of the Tariff Act of 1930
12 (19 U.S.C. 1451) or any other provision of law
13 (other than subparagraph (B) and paragraph
14 (2))”; and

15 (2) by adding at the end the following:

16 “(B) CHARTER FLIGHTS.—If a charter air
17 carrier (as defined in section 40102(13) of title
18 49, United States Code) specifically requests
19 that customs border protection services for pas-
20 sengers and their baggage be provided for a
21 charter flight arriving after normal operating
22 hours at an airport that is an established port
23 of entry serviced by the Bureau of Customs and
24 Border Protection and overtime funds for those
25 services are not available, the appropriate cus-
26 toms border protection officer may assign a suf-

1 sufficient number of employees from the Bureau of
2 Customs and Border Protection (if available) to
3 perform any service that could lawfully be per-
4 formed during regular hours of operation, and
5 any overtime fees incurred in connection with
6 such service shall be paid by the charter air
7 carrier.”.

8 **SEC. 404. TECHNICAL AMENDMENTS TO CUSTOMS MOD-**
9 **ERNIZATION.**

10 (a) ENTRY OF MERCHANDISE.—Section 484(a) of
11 the Tariff Act of 1930 (19 U.S.C. 1484(a)) is amended—

12 (1) in paragraph (1), by amending subpara-
13 graph (A) to read as follows:

14 “(A) make entry therefor by filing with the
15 Bureau of Customs and Border Protection such
16 documentation or, pursuant to an authorized
17 electronic data interchange system, such infor-
18 mation as is necessary to enable the Bureau of
19 Customs and Border Protection to determine
20 whether the merchandise may be released from
21 custody of the Bureau of Customs and Border
22 Protection;”;

23 (2) in paragraph (2)(A), in the second sentence,
24 by inserting after “covering” the following: “mer-

1 chandise released under a special delivery permit
2 pursuant to section 448(b) and”.

3 (b) REFUNDS AND ERRORS.—Section 520(a) of the
4 Tariff Act of 1930 (19 U.S.C. 1520(a)) is amended—

5 (1) in paragraph (1), by striking the semicolon
6 at the end and inserting a period;

7 (2) in paragraph (2), by striking “; and” at the
8 end and inserting a period; and

9 (3) in paragraph (4)—

10 (A) by inserting “an importer of record de-
11 clares or” before “it is ascertained”; and

12 (B) by striking “by reason of clerical
13 error”.

14 (c) ENTRY FROM WAREHOUSE.—Section 557(a) of
15 the Tariff Act of 1930 (19 U.S.C. 1557(a)) is amended—

16 (1) in paragraph (1)—

17 (A) in the second sentence, by inserting
18 after “the date of importation” the following: “,
19 or such longer period of time as the Bureau of
20 Customs and Border Protection may at its dis-
21 cretion permit upon proper request being filed
22 and good cause shown”; and

23 (B) in subparagraph (A), by inserting after
24 “the date of importation” the following: “or
25 such longer period of time as the Bureau of

1 Customs and Border Protection may at its dis-
2 cretion permit upon proper request being filed
3 and good cause shown”; and

4 (2) in paragraph (2), by inserting after “the
5 date of importation” the following: “, or such longer
6 period of time as the Bureau of Customs and Border
7 Protection may at its discretion permit upon proper
8 request being filed and good cause shown,”.

9 (d) ABANDONED GOODS.—Section 559 of the Tariff
10 Act of 1930 (19 U.S.C. 1559) is amended by inserting
11 after “the date of importation” each place it appears the
12 following: “, or such longer period of time as the Bureau
13 of Customs and Border Protection may at its discretion
14 permit upon proper request being filed and good cause
15 shown”.

16 (e) MANIPULATION IN WAREHOUSE.—Section 562 of
17 the Tariff Act of 1930 (19 U.S.C. 1562) is amended—

18 (1) by amending the first sentence to read as
19 follows: “Merchandise shall only be withdrawn from
20 a bonded warehouse in such quantity and in such
21 condition as the Secretary of the Treasury shall by
22 regulation prescribe.”; and

23 (2) in the second sentence, by striking “All
24 merchandise so withdrawn” and all that follows

1 through “except that upon permission therefor” and
2 inserting “Upon permission”.

3 **SEC. 405. ARTICLES REPAIRED OR ALTERED.**

4 (a) IN GENERAL.—U.S. Note 3 to subchapter II of
5 chapter 98 of the Harmonized Tariff Schedule of the
6 United States is amended by adding at the end the fol-
7 lowing:

8 “(f) For purposes of subheading 9802.00.40 or
9 9802.00.50, an article exported and subsequently
10 imported into the United States shall be considered
11 to retain its identity notwithstanding that it may
12 contain one or more essential components recovered
13 from other such or similar articles exported from the
14 United States.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section applies to articles classifiable under sub-
17 heading 9802.00.40 or 9802.00.50 of the Harmonized
18 Tariff Schedule of the United States that are entered, or
19 withdrawn from warehouse for consumption, on or after
20 the date that is 60 days after the date of the enactment
21 of this Act.

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