



Conference Report to Accompany H.R. 644 — Trade Facilitation and Trade Enforcement Act of 2015 (Rep. Brady, R-TX)

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FLOOR SCHEDULE:

Scheduled for consideration on December 11, 2015 under a closed [rule](#)

TOPLINE SUMMARY:

[The conference report to accompany H.R. 644](#) would authorize and establish U.S. Customs and Border Protection (CBP), and includes additional provisions related to negotiating objectives in Trade Promotion Authority legislation, including provisions on intellectual property rights protection, antidumping and countervailing duty orders, and currency manipulation. The conference report would additionally make permanent the ban on states and localities taxing Internet access or placing multiple and discriminatory taxes on Internet commerce.

COST:

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation [estimate](#) that enacting the conference agreement would reduce direct spending by \$98 million and increase revenues by \$18 million over the 2016-2025 period. Taken together, those changes would decrease budget deficits by \$116 million over the ten-year period.

CONSERVATIVE CONCERNS:

There are no substantive concerns regarding this bill.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The RSC's legislative bulletins for the House-passed H.R. 644 (Trade Facilitation and Trade Enforcement Act of 2015) can be found [here](#), and for the House-passed H.R. 235 (Permanent Internet Tax Freedom Act) [here](#). A summary of the conference report and a joint explanatory statement from the conference committee provided by the House Committee on Ways and Means can be found [here](#) and [here](#) respectively.

A title-by-title summary of the conference report to accompany H.R. 644 follows below:

Title I - Trade Facilitation and Trade Enforcement:

Section 101 would require the Commissioner of U.S. Customs and Border Protection to work with the private sector and other federal agencies to ensure that all agency partnership programs provide trade benefits to participants. The commissioner is mandated to ensure that U.S. Customs and Border Protection partnership programs established before the date of the bill's enactment, such as the [Customs-Trade Partnership Against Terrorism](#) and partnership programs of U.S. Customs and Border Protection established on or after such date of enactment, provide trade benefits to private sector entities that meet the requirements for participation in those programs. Section 103 would require the CBP to establish key performance measures and requires reports to Congress on modernization, facilitation, and trade enforcement functions, the implementation of the Automated Commercial Environment (ACE), drawback modernization, in-bond merchandise movement, collection of antidumping and countervailing duties, expedited clearance of cargo, and [Centers for Excellence and Expertise](#).

Section 105 would require CBP and Immigration Customs Enforcement (ICE) to submit to Congress a biennial joint strategic plan on trade enforcement and trade facilitation.

Section 107 addresses information technology infrastructure and would require that the Secretary of Treasury to work with the head of each agency participating in [International Trade Data System](#) (ITDS) and the Interagency Steering Committee to ensure that each agency: (1) develops and maintains the necessary information technology infrastructure to support the operation of the ITDS and to submit all data to ITDS electronically; (2) enters into a memorandum of understanding to provide for the information sharing between the agency and CBP necessary for the operation and maintenance of ITDS; and (3) identifies and transmits to the Commissioner the admissibility criteria and data elements required by the agency to authorize the release of cargo by CBP for incorporation into the operational functionality of the Automated Commercial Environment (ACE) computer system.

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

Section 109 would codify and expand the role of the [Commercial Customs Advisory Committee](#) (COAC), made up of 20 members representing the trade community, which advises and provides recommendations to the Secretaries of the Treasury and Homeland Security on CBP's commercial operations, including modernization and streamlining of cargo processing.

Section 110 would require the Commissioner of CBP to develop and implement Centers of Excellence and Expertise (CEEs) within the CBP that ensure uniform implementation and enforcement of the laws and regulations of the United States across ports of entry.

Section 111 would require the National Targeting Center (NTC), in coordination with the CBP Office of Trade, to establish targeted risk assessment methodologies and standards for evaluating the risk that cargo destined for the United States may violate U.S. customs and trade laws, as well as provide enforcement alerts to the ports of entry for cargo inspection, directing further inspection of specific merchandise to ensure compliance with all applicable customs and trade laws. The section would further require that advanced trade data collected for security purposes be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and not for any commercial enforcement purposes. The section would require the NTC to notify each interested party in the private sector that has submitted an allegation of any violation of U.S. customs and trade laws or any civil or criminal action taken by CBP resulting from the allegation.

Section 112 would require the Inspector General of the Department of Treasury to conduct periodic reviews of CBP's revenue protection and enforcement measures, focusing in particular on the collection of revenue from [antidumping and countervailing duties](#), assessment and collection of penalties, and adequacy of policies regarding in-bond movements of cargo. Section 113 would require the Secretaries of Treasury and Homeland Security to jointly report on CBP improvements to internal controls over merchandise moving in-bond.

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

Section 115 would authorize CBP to strengthen internal controls over "new importers" to ensure collection of revenue through risk-based bonding for duties, fees, and penalties, by establishing a new importer program that directs CBP to adjust bond amounts for new importers based on the level of risk assessed by the agency. The section would mandate that the CBP Commissioner establish a program to adjust bond amounts for importers, including new importers and non-resident importers, based on the level of risk assessed by CBP for revenue protection.

Section 116 would require the Secretary of Homeland Security to prescribe regulations setting minimum standards for customs brokers and importers regarding the identity of the importer. These regulations would: (1) identify the information that an importer must submit to a broker in order to verify the identity of the importer; (2) identify the reasonable procedures that a broker must perform to verify the authenticity of such information; and, (3) require the broker to maintain records of the information collected.

Section 117 would require the Commissioner of CBP to establish the following as priority trade issues within CBP: (1) agriculture programs; (2) antidumping and countervailing duties; (3) import safety; (4) intellectual property rights; (5) revenue; (6) textiles and wearing apparel; and (7) trade agreements and preference programs. The section would further require CBP to notify Congress of: (1) new priority trade issues no later than 30 days after their establishment, and (2) a summary of proposals to eliminate, consolidate or modify existing priority trade issues no later than 60 days before the proposed changes are to take effect.

Title II-Import Health and Safety:

Section 201 would establish an interagency import safety working group, chaired by the Secretary of Homeland Security, which would be required to: (1) consult on the development of a joint import safety rapid response plan; (2) evaluate federal government and agency resources, plans, and practices to ensure the safety of U.S. imports and the expeditious entry of such merchandise; (3) review the engagement and cooperation of foreign governments and manufacturers; (4) consult with the private sector to identify best practices in import health and safety; (5) identify best practices to improve Federal, state, and local coordination in responding to import health and safety threats; and (6) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

Section 202 would require the Secretary of Homeland Security, in consultation with the import safety working group, to develop and review a joint import safety rapid response plan that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers, and requires the CBP Commissioner to conduct exercises to test the plan in conjunction with Federal, state, and local agencies.

Section 203 would require the commissioner to ensure that CBP port personnel are trained to effectively enforce U.S. import health and safety laws. The commissioner shall ensure that CBP personnel assigned to United States ports of entry are trained to effectively administer the provisions of this title and to

otherwise assist in ensuring the safety of merchandise imported into the United States and the expeditious entry of such merchandise.

Title III-Import-Related Protection of Intellectual Property:

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

Section 303 would authorize a seizure if CBP determines suspect merchandise is a [circumvention device](#), and directs CBP to notify an injured rightholder of the seizure, if the rightholder is included on a list maintained by CBP that is revised annually.

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

Section 305 would establish within ICE the [National Intellectual Property Rights Coordination Center](#). Section 306 would require the commissioner and Director of ICE to include in the joint strategic plan the following: (1) a description of the Department of Homeland Security's Intellectual Property Rights (IPR) enforcement efforts; (2) a list of the top ten ports, by volume and value, where CBP seized IPR infringing goods in the preceding two years; and (3) a recommendation for the optimal allocation of personnel to ensure CBP and ICE are effectively enforcing IPR. Section 307 would require the commissioner to ensure sufficient personnel are assigned throughout CBP with responsibility to enforce IPR with respect to U.S. imports.

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

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

Section 311 would require the Secretary of Homeland Security to develop and implement an educational campaign for travelers entering or departing the United States on the legal, economic, and public health and safety implications of importing IPR infringing goods into the United States, and to ensure that all versions of [CBP Form 6059B](#) include a written warning to inform travelers arriving in the United States that importation of merchandise that infringes IPR may subject travelers to civil or criminal penalties and may pose serious risks to health and safety.

Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders:

Section 403 would clarify that all titles and provisions of the bill would apply with respect to goods from Canada and Mexico, the two additional members of North American Free Trade Agreement (NAFTA).

Section 411 would establish a Trade Remedy Law Enforcement Division, within the Department of Homeland Security's Office of Trade. The division would: be dedicated to the development and administration of policies to prevent and counter evasion; direct enforcement and compliance assessment

activities concerning evasion; would ensure the development and conduct of commercial risk assessment targeting with respect to cargo destined for the United States; and issue trade alerts. Section 412 would authorize the CBP to collect information to determine whether covered merchandise is entering into the customs territory of the United States through evasion. Section 413 would authorize the Department of Commerce and the International Trade Commission to transfer information designated proprietary by the person submitting the information to CBP for investigations of negligence, rather than just for fraud. Section 414 would require the negotiation of bilateral agreements with other countries' customs authorities to cooperate on preventing evasion. Section 415 would establish obtaining the commitments for cooperation on evasion as a negotiating objective for current trade agreements under negotiation and future agreements.

Section 421 would require that if the CBP Commissioner makes an affirmative determination of evasion, the Commissioner would be directed to: (1) suspend the liquidation of any unliquidated entries of the covered merchandise entered between the date of initiation and the date of the determination; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the investigation's initiation; (3) notify Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; and (4) require importers of such covered merchandise to post cash deposits and assess duties on the covered merchandise as directed by Commerce. The Commissioner would have 15 business days after receiving an evasion allegation or a referral to determine whether to initiate an investigation.

Section 431 would require the CBP to provide adequate training and assign sufficient personnel responsible for preventing and investigating evasion.

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

Title V- Small Business Trade Issues and State Trade Coordination:

Section 502 would require the Chief Counsel for Advocacy of the Small Business Administration to convene an Interagency Working Group (IWG) not later than 30 days after the date on which the President submits a notification to Congress. The IWG would include representation from the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture, and any other federal agencies.

Section 503 would authorize the State Trade Expansion Program grants at \$30 million per year through fiscal year 2020.

Section 504 would establish a State and Federal Export Promotion Coordination Working Group under the [Trade Promotion Coordinating Committee](#) (TPCC). Section 505 would add one or more new members to the TPCC appointed by the President who are representatives of state trade promotion agencies.

Title VI-Additional Enforcement Provisions:

Section 601 would require the President to identify enforcement priorities and to more regularly consult with Congress on the Administration's enforcement strategy. Section 602 would authorize the President to reinstate a retaliatory action if the action has terminated previously. The provision pertains to trade agreement concessions under the World Trade Organization framework.

Section 603 would require the International Trade Commission to make a web-based import monitoring tool available that provides public access to data on the volume and value of goods imports. Section 604 would establish the Interagency Center on Trade Implementation, Monitoring, and Enforcement (ICTIME) in the office of the United States Trade Representative.

Section 605 would direct CBP to include in all distributions of collected antidumping and countervailing duties any interest earned on such duties. Section 606 would require the CBP and ICE to ensure that appropriate personnel are trained in the detection, seizure, and forfeiture of cultural property and archaeological or ethnological materials, and fish, wildlife and plants, the trafficking of which violates the laws of the United States.

Section 607 would modify the types of conduct that are unreasonable for purposes of taking discretionary action related to certain violations of U.S. rights under a trade agreement and unreasonable or discriminatory practices that restrict U.S. commerce.

Section 608 would require CBP to direct personnel and resources to address concerns that honey is being imported into the United States in violation of U.S. customs and trade laws.

Section 609 would establish a Chief Innovation and Intellectual Property Negotiator at US Trade Representative (USTR) office with the rank of Ambassador, appointed by the President, by and with the advice and consent of the Senate.

Section 610 would require USTR to identify foreign countries that deny adequate and effective protection of trade secrets.

Section 611 would establish the Trade Enforcement Trust Fund through 2026, requiring the Treasury to transfer \$15 million each fiscal year to the Trust Fund of receipts from antidumping and countervailing duties. The United States Trade Representative, on the basis of advice from the Trade Policy Committee, would be authorized to use amounts in the Trust Fund, only as provided in appropriation acts, to enforce obligations under WTO Agreements and free trade agreements to which the United States is a party of.

Title VII-Currency Manipulation:

Section 701 would require the Secretary of the Treasury to submit a report to Congress on the macroeconomic and currency exchange rate policies of each country that is a major trading partner of the United States and to take specific steps if it finds that a currency is undervalued. Section 702 would create a nine-member Advisory Committee on International Exchange Rate Policy to advise Treasury on international exchange rates and financial policies and their impact on the United States.

Title VIII-Matters Relating to U.S. Customs and Border Protection:

Section 802 would formally establish and reauthorize U.S. Customs and Border Protection (CBP) in [title 6 of the United States Code](#). The section further establishes operational offices within CBP. These include: U.S. Border Patrol; Office of Air and Marine Operations; the Office of Field Operations; the Office of Intelligence; the Office of International Affairs; and the Office of Internal Affairs.

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

Section 813 would authorize CBP to operate preclearance locations, provided an aviation security preclearance agreement is in effect, in foreign countries. Section 815 would require the TSA to rescreen passengers and their baggage arriving from a foreign country if the Administrator of TSA determines that the foreign government has not maintained security standards and protocols comparable to those at U.S. airports at the airports at which preclearance operations have been established. Section 816 would prohibit the establishment or renewal of a preclearance location with a foreign country unless the Secretary certifies to Congress that the foreign country routinely provides stolen passport information to INTERPOL's Stolen and Lost Travel Document database or provides the information to the United States

through comparable reporting. Section 817 would allow CBP to enter into a cost sharing agreement with airport authorities in foreign countries for new preclearance locations or to maintain existing operations. Section 818 would authorize CBP to be reimbursed in advance of providing immigration and agricultural inspection services for preclearance operations.

Title IX- Miscellaneous Provisions:

Section 904 would: (1) reduce record-keeping requirements on goods returned to the United States without improvement abroad so that duties are not assessed twice; and (2) would modernize existing inventory management rules by subtracting the value of U.S. components assembled into the final product that would be entered into U.S. commerce for articles exported and returned after being improved abroad.

Section 908 would permit CBP employees to provide customs services for passengers and baggage on charter flights that arrive at U.S. ports of entry after normal operating hours, if the air carrier specifically requests the services at least four hours before the flight arrives and pays any overtime fees.

Section 909 would clarify U.S. policy identifying the importance of the bilateral U.S.-Israel trade relationship and establishes principal trade negotiating objectives, statements of policy, findings, and other provisions related to trade and commercial activities affecting the United States and Israel. This section would: (1) state that among the U.S. principal trade negotiating objectives for proposed trade agreements with foreign countries is the discouragement of politically motivated actions to boycott, divest from, or sanction Israel; (2) set forth various statements of policy regarding trade with and commercial activities affecting Israel, including Congress's opposition to politically motivated Boycott Divestment Sanctions (BDS) actions against Israel; (3) require the President to report annually to Congress on politically motivated BDS actions against Israel; and (4) require that no U.S. court recognize or enforce any judgment by a foreign court against a U.S. person doing business in Israel, or any territory controlled by Israel, if the U.S. court determines that the foreign judgment is based on a determination by a foreign court that the U.S. person's mere conduct of business operations therein or with Israeli entities constitutes a violation of law.

Section 910 would strike the "consumptive demand" exception to the prohibition on importing goods made by convict, forced, or indentured labor.

Section 914 would specify that trade agreements do not require changes to U.S. immigration law or obligate the United States to grant access or expand access to visas. The section would further add a negotiating objective related to fisheries, to obtain competitive opportunities for United States exports of fish, seafood, and shellfish products in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports of fish, seafood, and shellfish products in United States markets.

Section 915 would create additional trade preferences for Nepal. The program would require Nepal to satisfy the eligibility criteria of the [Africa Growth and Opportunity Act](#) to be eligible for duty-free treatment of certain articles imported from Nepal.

Section 917 would require certain castings, including inlet frames, tree and trench grates, lampposts, lamppost bases, cast utility poles, bollards, hydrants, and utility boxes in the list of products which must be imprinted with a country of origin marking.

Section 920 would authorize the Secretary of the Treasury to charge and collect fees for the provision of certain customs services for imported goods.

Section 921 would serve as an offset by modifying the penalty under the Internal Revenue Code that applies to a taxpayer who fails to file a tax return within 60 days of the due date, which is currently equal to the lesser of \$135 (indexed for inflation) or 100 percent of the amount required to be shown on the return. This section would increase the dollar threshold to \$205. The provision would be effective for tax returns due to be filed (including extensions) after 2015.

Section 922 would make permanent an existing moratorium on states and localities taxing Internet access or placing multiple and discriminatory taxes on Internet commerce. The section would allow grandfathered states and localities through June 2020 to phase-out existing taxes. This section's language reflects H.R. 235, the Permanent Internet Tax Freedom Act with a slight modification extending the phase-out time for states to June 2020. H.R. 235 passed the House under suspension by voice vote on June 9, 2015. The RSC's legislative bulletin for H.R. 235 can be found [here](#).

OUTSIDE GROUPS IN SUPPORT:

- [National Taxpayers Union](#)
- [Competitive Enterprise Institute](#)
- [Americans for Tax Reform](#)
- [Taxpayers Protection Alliance](#)
- [R Street Institute](#)
- [Council for Citizens Against Government Waste](#)

COMMITTEE ACTION:

H.R. 644 was introduced on February 2, 2015 and was referred to the House Committee on Ways and Means. The bill passed the House on February 12, 2015 by the yeas and nays: [279 – 137](#). On May 14, 2015 the bill passed the Senate having achieved 60 votes in the affirmative, with an amendment and an amendment to the Title by yea-nay vote: [78 – 20](#). On June 12, 2015, the House voted on a motion that the House agree with an amendment to the Senate amendments by recorded vote: [240 – 190](#).

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

According to the bill's sponsor: "Congress has the power to enact this legislation pursuant to the following: Clause 1 of Section 8 of Article I of the United States Constitution and Amendment XVI of the United States Constitution."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*