



**Testimony of John Pickel
Senior Director, Internal Supply Chain Policy, National Foreign Trade Council**

**Before the United States Senate Committee on Finance
Hearing Entitled “Ending Trade that Cheats American Workers By Modernizing
Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits,
and Leveling the Playing Field.”**

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Introduction

Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee.

Thank you for the opportunity to appear before you today and discuss the importance of these topics.

I am John Pickel, the Senior Director of International Supply Chain Policy at the National Foreign Trade Council (NFTC). The NFTC is the premier business association advancing trade and tax policies that support access to the global marketplace. Founded in 1914, NFTC promotes an open, rules-based global economy on behalf of a diverse membership of U.S.-based businesses.

As Chairman Wyden has noted, I have served in several roles at the Department of Homeland Security and U.S. Customs and Border Protection (CBP) that promoted the development and implementation of trade facilitation and enforcement policies. The views expressed in my statement and subsequent conversation are my own and given on behalf of the NFTC. I am not representing any agencies where I was previously employed or any specific company.

The efficient and effective implementation of U.S. trade laws is a critical aspect of our economic competitiveness. The American customs framework, which dates back to the earliest days of our country, continues to be a brilliant example for the international community. Any discussion around issues of customs modernization should begin by acknowledging that this system has provided a strong foundation for the growth and diversification of trade models that meet the needs of American consumers and supplies American made manufacturing products to markets around the world.

In recent years, the trade community has worked within this system to accommodate the dramatic expansion in the volume of e-commerce shipments, overcome challenges associated with the COVID-19 pandemic, and respond to historic supply chain disruptions.

Trade is a critical driver of every aspect of the American economy. Forty million American jobs depend on trade.¹ Access to imports increases the purchasing power of the average American household by about \$18,000 annually.² Manufacturers rely on imports of intermediate goods and raw materials, which represent more than 60% of all U.S. goods imported, to provide high quality products at competitive prices.³

Government and the business community share the objective of promoting efficient, stable, and compliant supply chains. Trust and collaboration will be key in that joint pursuit as business models and global economic conditions change rapidly. A close working relationship between the private sector and U.S. government agencies, especially CBP, has led to innovations that promote both facilitation practices and compliance with U.S. trade laws. For example, the trade community has provided technical capacity in developing a single window that provides trade data to government agencies, shifted port-level processing of individual shipments to industry-based Centers of Excellence and Expertise, established trusted trader programs that provide earned benefits for certain validated parties, and many other accomplishments. The basis for this relationship is confidence in realizing that the vast majority of parties involved in trade transactions are trustworthy, compliant with the law, and eager to advance American economic security through their role in a resilient supply chain.

This committee has a well-documented history of supporting customs policies that balance the importance of facilitating legitimate trade and promoting compliance with U.S. trade laws through principles like informed compliance, cocreation between government and the private sector, and risk-based enforcement. This was most recently codified throughout the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA).

¹ Trade Partnership Worldwide LLC. (2020) *Trade and American Jobs The Impact of Trade on U.S. and State-Level Employment: 2020 Update* https://tradepartnership.com/wp-content/uploads/2020/10/Trade_and_American_Jobs_2020.pdf

² Hufbauer, Gary C, and Lu, Zhiyao (Lucy) (2017) *The Payoff to America from Globalization: A Fresh Look with Focus on Costs to Workers*. Peterson Institute For International Economics <https://www.piie.com/publications/policy-briefs/payoff-america-globalization-fresh-look-focus-costs-workers>

³ See, <https://www.uschamber.com/international/trade-agreements/the-benefits-of-international-trade> (Accessed February 14, 2023)

Customs Modernization

Since 2019, CBP has engaged the trade community to develop a 21st Century Customs Framework. NFTC has participated constructively in this process directly and in coordination with member companies.

Modernization of customs authorities should be very intentional and precise, addressing specific gaps or challenges in a way that supports well-defined outcomes. As the committee prepares to consider proposed statutory changes, I would like to offer several key areas of consideration when evaluating legislative efforts to address specific needs while preserving the foundations that have served U.S. government agencies and the trade community well for many years.

Balance the benefits of trade facilitation and the updating of enforcement authorities.

The efficient entry of legitimate merchandise into the U.S. improves economic conditions; reduces burdens on government agencies, businesses, and customers; and provides a high level of overall compliance.

As the committee considers statutory changes to existing authorities, please consider three questions:

- What specific non-compliance is being addressed and what information about volume and means of penetrating supply chains is available to inform the most effective response?
- How does the proposal impact the flow of commerce into and out of the U.S.?
- Can an updated authority be structured in a way that reduces red tape in the entry process? (For example, collection of unnecessary data could be difficult for small and medium businesses to comply with and overwhelming for government agencies to ingest and effectively utilize.)

Clearly articulate the roles and responsibilities of actors throughout the import process.

Clearly and specifically identifying roles and responsibilities, with an emphasis on the value of information throughout the import process, will promote effective partnership between the government and the private sector. For example, information requirements should be targeted to address specific risks and be developed in partnership with the trade community to ensure the right information is being collected from the right party and at the right point in the process. Information is likely to come from multiple parties throughout the process, so avoiding assumptions about the level of information available to each actor and ensuring the ability to consolidate information from disparate entities is crucial.

This process will continue to set an example for the world, with interest from our trade partners and strategic competitors alike. Promoting a rules-based system that supports a nimble and effective customs framework to serve as this example will be an effective

way to promote similar practices among our international trading partners. In practical terms, we can expect other countries to adopt some of the same practices, so American exporters will be expected to comply with the evolving U.S. standards as they are adopted by other countries.

Promote partnership between government agencies and the private sector, with a particular emphasis on sharing information.

Both government regulators and private industry interests are served by effective collaboration. Government and the private sector have a shared goal of fostering efficient, resilient, and compliant supply chains. Reimagining the exchange of information between government agencies and the private sector by reconsidering current statutory restrictions will allow the private sector to remove risk from its supply chains and make government enforcement more efficient. For example, jointly identifying meaningful information that can be provided on a voluntary basis, will improve effectiveness for all parties.

Embrace automation to simplify the processing of cargo and promote transparency.

This committee has consistently supported the automation of the entry process and should continue to prioritize the ability to automate proposed changes to trade laws. Automation makes the government more effective and allows the private sector to provide better service to American consumers. The effective adoption of automation and other forms of technology is a tool – a means to an end. In other words, please keep in mind that systems still rely upon information generated and entered by multiple parties throughout trade transactions. Rather than a “more is always better” approach, please know that sometimes “more is just more.” Information and data requirements can be onerous on all parties involved and may not have a clear benefit to specific objectives.

Apply trusted trader principles to address emerging risk factors.

This committee codified, as the first substantive section of TFTEA, the importance of embracing partnership programs that advance the trade enforcement and trade facilitation missions of CBP. Existing programs have served their national security objectives well and should be constantly re-evaluated to address the equally important goals of promoting trade facilitation and jointly vetting supply chains to ensure compliance with U.S. trade laws – particularly as government and industry confront new challenges in an ever-changing global trading environment. Current trusted trader programs were developed in partnership with private industry stakeholders and need to be adapted to meet emerging demands through the same spirit of collaboration and trust. Participants in these programs dedicate significant resources to attain membership and complete recurring evaluations. Another critical aspect of examining trusted trader programs, which promote sustainability, is understanding the value of benefits provided to participants. These parties have demonstrated a willingness to

open their processes to government evaluation and should be seen as a cadre of constructive experts that have worked alongside the government to address past challenges and will continue to do so in the future.

Whether in the context of a comprehensive Authorized Economic Operator program or more targeted approaches, the “trust” aspect of trusted trader programs should be fully embraced in order to share information, develop best practices, and foster a constant dialogue between the private sector and the government to truly support our joint objective of securing resilient supply chains.

Again, this is an area where the world is watching. Trusted trader programs are used by many of our trading partners to facilitate low-risk shipments and many of those programs have Mutual Recognition Arrangements with the United States that provide reciprocal benefits for program participants. Continuing to set an evolving global standard for trusted trader programs around the world to address emerging needs and promote viability of membership will support the adoption of compliance standards with our trading partners and facilitate transactions for American importers and exporters.

Importance of Trade Facilitation

The reduction of administrative and financial challenges encountered when importing into the United States promotes product availability, purchasing power, and lowers transaction costs for businesses and consumers. Conversely, increasing red tape in the importation process is a regressive tax on the American middle class that increases the cost of products they purchase for personal and business use. This committee has a strong history of promoting trade facilitation and encouraging government partnership with the private sector to address supply chain challenges. However, as we learned during the COVID-19 pandemic, facilitating the importation of critical supplies like medical products continues to be a challenge and will be a determining factor in the success of U.S. supply chain resiliency programs and emergency response.

Trade facilitation measures create jobs and promote innovation through the availability of product inputs. A recent report by the Third Way found that **reducing administrative burdens throughout our supply chain has the potential to save the United States \$88 billion in export costs and create just under 1 million jobs nationwide – benefitting every state in the country.**⁴ This report outlines clear guidance in three areas of trade facilitation that increase compliance and resiliency, while reducing costs:

Simplify Border Processes

The foundation of trade facilitation is ensuring clarity and predictability of rules, fees, and processes that incorporate the expertise of the trade community before being

⁴ Horowitz, Gabe (2022) *Reducing the Red Tape Around Supply Chains*. Third Way <http://thirdway.imgix.net/pdfs/reducing-the-red-tape-around-supply-chains.pdf>

finalized. Penalties for not following the rules should be clear and enforcement regimes should provide a process for traders to review and appeal determinations. Incorporating international standards and commitments in trade agreements, such as the trade facilitation provisions of the U.S.-Mexico-Canada Agreement, is also important.

Embrace Digitization

Promoting the use of single window systems creates a unified method of providing information to the government. The U.S. single window has saved the government \$1.75 billion and saved the trading community 775,000 hours.⁵ As you evaluate single window functionality in the U.S., and how to promote this best practice among our trading partners, please consider several important elements. First, ensure that this is a government-wide system built to provide all agencies with information imports and exports, and enable release via that system. Second, ensure clarity of downtime procedures in the case of system failure or a cyber security event. Third, the lack of acceptance of digital payments is still a significant barrier. Domestically, digital payments save the government and the trade community a significant amount of processing costs and staff time. Internationally, digital payments reduce the risk of corruption and remove the burdens of exchanging money for local currency. Finally, single windows should have transparent governance structures that allow for existing functionality to be improved and new capabilities to be added, with a clear source of funding.

Focus on Speed and Security

Promoting simplified processes that provide the quick processing of compliant shipments is both a key ingredient and result of effective trade facilitation. Employing effective risk management programs to assess threat levels allows government agencies to release low-risk shipments and focus enforcement resources more quickly on goods that are more likely to be noncompliant. The adoption of “de minimis” and “informal entry” treatment of certain entries helps to facilitate lower-value shipments that do not pose a risk to revenue collection.

Notably, TFTEA took the important step of increasing “de minimis” - the threshold for items to enter the U.S. free of taxes - from \$200 to \$800 and suggested that the U.S. Trade Representative encourage trading partners to adopt similar policies.⁶ In doing so, Congress found that “Higher thresholds for the value of articles that may be entered informally and free of duty provide significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs.”⁷ This de minimis policy, also a

⁵ *ibid* 6.

⁶ The Trade Facilitation and Trade Enforcement Act of 2015, 19 U.S.C. § 1321(a) (C) *et seq* (2016) <https://www.govinfo.gov/content/pkg/USCODE-2021-title19/pdf/USCODE-2021-title19-chap4-subtitleI-partI-sec1321.pdf>

⁷ The Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125 § 901(a) (2016)

longstanding U.S. trade agreement negotiating objective, has been instrumental in supporting the dramatic expansion of online shopping and the e-commerce models used by American businesses and consumers every day.

Low value shipments coming into the country are subject to enforcement. Significant volumes of de minimis shipments entering the U.S. come through express carriers that provide significant information for government agencies to use when targeting inspection and enforcement resources – a practice that dates to the 1980s, and have CBP officers co-located within their facilities.

In addition, this committee played a critical role in the passage of the Synthetic Trafficking and Opioid Prevention (STOP) Act. Through STOP Act mandates, shipments that arrive in the U.S. through foreign postal operators are supposed to be subject to comparable information sharing requirements.⁸ However, work remains to be done to achieve full implementation of the STOP Act.

As one aspect of trade facilitation, de minimis treatment of low-value entries promotes sourcing choices for American consumers and producers. Eliminating or reducing the threshold for de minimis treatment of low-value goods could make over a billion shipments every year subject to tariffs, a tax that disproportionately impacts low-income households⁹ and African American and Hispanic families.¹⁰ Furthermore, increasing costs for small businesses to source products would negatively impact inflation reduction efforts and stifle innovation among our economy's most dynamic entrepreneurs.

In considering changes to trade facilitation and enforcement authorities, I encourage the committee to prioritize consistency between enforcement efforts and our trade agreements. This is another area where the world is watching, and the U.S. should take the opportunity to lead. Promoting adherence and commitment to a rules-based international system of trade will promote the adoption of those standards by our trading partners abroad and give predictability to American companies doing business around the world.

The advancement of the trade facilitation elements described above should also be embraced during ongoing trade negotiations such as the Indo-Pacific Economic Framework for Prosperity (IPEF) and the Americas Partnership for Economic Prosperity (APEP), and as part of regular U.S. government engagement at international trade

⁸ SUPPORT for Patients and Communities Act P.L. 115-271 § 8003 (2018)

⁹ Russ, Katherine N.; Shambaugh, Jay; and Furman, Jason. *US Tariffs are an Arbitrary and Regressive Tax* (2017) Centre for Economic Policy Research <https://cepr.org/voxeu/columns/us-tariffs-are-arbitrary-and-regressive-tax#:~:text=Tariffs%20%E2%80%93%20taxes%20on%20imported%20goods,on%20some%20key%20consumer%20goods.>

¹⁰ Gresser, Ed. *Trade Policy, Equity, and the Working Poor* (2022) Progressive Policy Institute <https://www.progressivepolicy.org/publication/trade-policy-equity-and-the-working-poor/>

organizations including the World Trade Organization and the Asia-Pacific Economic Cooperation forum, especially during the 2023 U.S. host year.

Forced Labor

There is no place for forced labor in American supply chains. In recent years, this committee has advanced significant changes in prohibitions on the importation of goods made using forced labor. Specifically, removal of the “consumptive demand exception”¹¹ and enactment of the Uyghur Forced Labor Prevention Act (UFLPA) have mandated the use of border measures to prevent the importation of these goods. The global trade community has responded quickly to shift supply chains from areas where forced labor is a high risk. We have seen this happen when CBP issues Withhold Release Orders and during implementation of the UFLPA. It is clear that there is a sincere commitment by responsible U.S. companies to minimize the risk of forced labor from infiltrating supply chains.

The noble objectives of current U.S. trade laws related to forced labor are clear, and responsible American importers want to utilize those constructs in a way that addresses global supply chain risk. Those companies want to work with the committee to identify ways that partnership programs and information sharing authorities, for example, can be used in new and creative ways that promote compliance before goods arrive in the U.S. – making it clear that forced labor is not only inhumane, but also bad for business. As we work together toward that shared goal, the trade community craves transparency and predictability in understanding what is a feasible level of due diligence in minimizing risks within supply chains that, for example, can include complicated machines containing thousands of components, some of which cross borders many times before being incorporated into a finished product. Recognizing that government has many of the same gaps in visibility when it comes to nuanced supply chains, the seamless sharing of meaningful information, and confidence that we are jointly moving in the direction of mitigating the presence of forced labor in U.S. supply chains is the best approach to joint success.

Further, as forced labor efforts relate to countries that are willing to partner with the U.S., bilateral and multilateral efforts should be used to address the root causes of forced labor and systemic factors that contribute to these terrible practices. For example, the U.S. Government has an opportunity to work with foreign governments to implement best practices related to labor recruitment and basic governance that support existing labor laws. Additionally, working with foreign partners to promote congruent standards for addressing forced labor concerns in supply chains would further the global interest in enforcing forced labor prohibitions and promote predictability for U.S. businesses exporting to other countries.

¹¹ The Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125 § 910 (2016)

Conclusion

Thank you for the Committee's attention to these important topics. Continued partnership between government and the private sector will be critical to supporting a comprehensive, predictable customs framework that provides for compliance with U.S. trade laws and supply chain resiliency. This partnership will continue to promote our shared objectives of fostering efficient and compliant supply chains that support American economic security. NFTC and our member companies look forward to working with the Committee going forward, and I welcome your questions.