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Subcommittee on International
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Competitiveness
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"Examining Trade Enforcement and Entry of Merchandise at U.S. Ports"

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Chairman Carper, Ranking Member Cornyn, distinguished members of the Subcommittee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents 29,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 328 air, sea, and land ports of entry across the United States and 16 Preclearance stations throughout the world.

CBP's mission at the ports of entry includes, but is not limited to, combating human smuggling, countering illicit drugs, and facilitating the lawful flow of trade and travel, to ensure our national and economic security. CBP employees at the ports of entry are the second largest collectors of revenue in the federal government, collecting almost $112 billion in duties, taxes, and fees in FY 2022. In addition, **CBP Office of Field Operations (OFO) personnel are on the frontline of illegal narcotics interdiction. CBP seizures of fentanyl have been escalating for several years, increasing by more than 200 percent over the last two fiscal years. In FY 2022, CBP seized approximately 14,700 pounds of fentanyl nationwide, permanently removing these drugs from the illicit supply chain,** keeping them out of our communities and denying drug trafficking organizations profits and critical operating capital.

Our air, sea and land ports of entry are in desperate need of more CBP employees to reduce wait times for international travelers and cargo shippers, improve the interdiction of illegal drugs and illicit goods, and handle the processing of migrants seeking asylum. Congress must support CBP trade enforcement personnel who save lives, save jobs and raise significant revenue every day.

According to CBP's most recent publicly released workload staffing models, **the agency needs to hire over <u>4,000 CBP Officers</u>, 250 Agriculture Specialists and at least 160 non-uniformed Trade Specialists to address staffing needs at the ports of entry.** These staffing shortages have led to longer wait times at border crossings, increased workloads, overtime for personnel and temporary duty assignments (TDYs) to southwest border ports that exacerbate staffing shortages at other ports.

Unfortunately, the final FY 2024 DHS appropriations deal only provided funding to hire 150 CBP Officers to serve at southwest border ports of entry which does not begin to meet the staffing needs at the ports of entry nationwide either to process legal international trade and travel vital to the U.S. economy or to stop deadly fentanyl and other contraband from crossing through U.S. ports of entry. Inadequate funding for these CBP employees shortchanges our economic growth and our national security.

In addition, CBP expects the staffing crisis at the ports to explode by 2028. **Acting CBP Commissioner Troy Miller testified that due to the expiration of 20-year LEO retirement coverage for CBP Officers hired prior to July 6, 2008, <u>the agency expects CBP Officer retirements will increase by 400 percent in 2028.</u> He stated that <u>this attrition will need to be addressed by over-hiring of CBP Officers in FY 2026 and 2027</u> and that we will need to also increase funding for the Federal Law Enforcement Training Centers (FLETC) because these new hires will need to be trained.**

In addition to uniformed CBP Officers responsible for trade enforcement, CBP employs non-uniformed trade personnel, including Entry Specialists, Import Specialists, Paralegal Specialists that determine and assess fines, penalties and forfeitures, Customs Auditors and Attorneys and other trade compliance personnel. These CBP trade employees are the frontline of defense against illegal imports and contraband and enforce over 400 U.S. trade and tariff laws and regulations to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stem the flow of illegal imports, such as illicit opioids, pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money.

When CBP was created in 2003, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import and antidumping and countervailing duties and ensuring importers fully comply with all applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues, and that revenue funds other federal priority programs. **CBP employees processed more than $3.35 trillion in total import value of goods and collected almost $112 billion in total revenue in Fiscal Year (FY) 2022.**

NTEU is deeply concerned with the lack of resources, both in dollars and workforce, being devoted to CBP's trade functions. Lack of sufficient focus and resources not only costs the U.S. Treasury in terms of customs duties and revenue loss, but also costs American companies in terms of lost business to unlawful imports.

Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for preventing entry of illegal transshipments; goods with falsified country of origin; goods that are misclassified; and goods produced by forced labor. CBP implements Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) through issuance of Withhold Release Orders and findings to prevent merchandise produced in whole or in part in a foreign country using forced labor from being imported into the United States, as well as the Uyghur Forced Labor Prevention Act (UFLPA) (P.L. 117-78), that prohibits the importation of goods into the United States manufactured wholly or in part with forced labor in the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region, or Xinjiang. Since the UFLPA went into effect through May 29, 2023, CBP stopped more than 4,000 shipments of goods valued at over $1.3 billion for enforcement action review.

In FY 2022, CBP added only sixty-five (65) new positions across its trade enforcement enterprise to support UFLPA efforts. This included hiring new CBP officers, import specialists, trade analysts, auditors, intelligence analysts, investigators, attorneys, and support staff. The increased enforcement scope of the UFLPA, however, has highlighted resource gaps for CBP to sustain consistent UFLPA operations across the 328 ports of entry, ten Centers of Excellence and Expertise, field offices, and headquarters.

According to CBP's most recent Resource Optimization Model (ROM) for Trade issued in 2021, there are 2,349 CBP revenue occupations personnel onboard**, 154 positions short of the CBP revenue staff authorized by Congress.** These occupations include Import (937), Entry (395), Fines, Penalties and Forfeiture (84) National Import (89) and International Trade Specialists (197); Customs Auditors (321), Attorneys (111) and Chemists (106).

By law, CBP must submit to Congress its Trade ROM every two years. It is our understanding that CBP has not yet provided its FY 23 Trade ROM to Congress and NTEU urges the Committee to request CBP to provide FY 23 Trade ROM to the Committees on Ways and Means and Finance as soon as possible.

Continuing staffing shortages, inequitable compensation, and lack of mission focus are the main reason experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving, or have left the agency. Further, more than twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the DHS, the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service…on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347**).** Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied. CBP satisfied this statutory requirement by freezing the number of "maintenance of revenue function" positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11.

In March of 2003 when CBP stood up, there were only 984 Import Specialists on board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of "maintenance of revenue function" positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP was established. Section 412(b) of the HSA reflected Congress' concern regarding this diminishing number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fears that erosion in revenue functions would continue and be exacerbated in the future by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the "March FY 2003 Staff On-Board" numbers "maintenance of revenue function" positions, including vital trade facilitation and enforcement positions as Entry and Import Specialists**, as a staffing ceiling rather than a floor.** CBP did not even achieve that threshold number of Import Specialists positions in FY 2021. As stated in the FY 2021 ROM, the HSA threshold for import specialists is 984 positions; in FY 2021, there were only 937 positions onboard.

Despite the significant investment in forced labor trade intervention, prevention and enforcement, **the number of CBP's non-uniformed trade personnel has not materially increased since CBP was established in 2003 even though inbound trade volume multiplied 32 times between FY 2003 and FY 2023.**

De Minimis **Entry and CBP Synthetic Opioid Interdiction**

The vast majority of all illicit drug entering the U.S. are seized by CBP at the ports of entry. Between 2013 and 2017, approximately 25,405 pounds, or 88% of all opioids seized by CBP, were seized at ports of entry. CBP plays a leading role in addressing the nation's opioid epidemic--a crisis that is getting worse, as the deadly chemical fentanyl is being manufactured in China and is either funneled through Mexico in regular cargo or sent by mail and express consignment operators directly to addresses in the U.S. **One of the main arteries of illicit precursor drugs to and through the U.S. to Mexico for processing is by *de minimis* shipments.**

The increase in *de minimis* shipments is linked directly to the passage of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), P.L 114-125, which was signed into law on February 24, 2016. **In Section 321 of TFTEA, Congress significantly changed the way "low value" imports enter into the U.S. by raising the *de minimis* threshold from $200 to $800**. The *de minimis* threshold was first enacted in 1938 at $5 to avoid administrative expense to the government disproportionate to the amount of revenue realized from inspecting low value goods.

In 2015, before TFTEA, shipments valued at $200 or less were approximately 134 million. In 2016, the year after the passage of TFTEA, *de minimis* shipments increased by 65% to nearly

220 million. **Between 2016 and 2022, the number of *de minimis* shipments had increased to 685 million —a 410% increase in seven years and the number of *de minimis* shipments topped one billion in 2023.**

According to CBP Acting Commissioner Troy Miller, every day, nearly 4 million low value *de minimis* shipments arrive at CBP facilities for targeting, review, and potential physical examination. Once a shipment qualifies as *de minimis*, it may automatically be declared under Section 321 during import. In terms of imports, it would still require inspection (per law) but there is less paperwork involved. Because there are no duties or taxes owed at arrival, these shipments speed through the clearance process and are seldom held for inspection. And even though *de minimis* packages are low value, they pose the same potential health, safety, economic security, and forced labor risks as larger and more traditional cargo and containerized shipments. **Low value does not mean low risk.** And in actuality, these packages are not only not inspected, but their paperwork is rarely reviewed by CBP due to overwhelming volume and severe CBP understaffing at the ports.

In April, CBP Acting Commissioner Miller testified that "the small package environment skyrocketed in FY 2023…with over one billion packages claiming *de minimis* preferences in the U.S. Currently, CBP processes approximately 4 million *de minimis* packages per day, up from 2.8 million this time last year. This poses significant challenges for all of us as bad actors exploit this explosion in volume to traffic illicit goods."

In FY 2022, the majority of CBP seizure cases originated in the *de minimis* environment, including those related to narcotics (including fentanyl), agriculture, intellectual property rights, and health and safety. ***De minimis* now represents 85% of shipments entering the U.S. and the primary mode of transportation is air (express and postal), though *de minimis* cargo coming in through ocean and truck shipments are steadily increasing.**

In September 2019, CBP began requiring the electronic filing of necessary documents for *de minimis* packages. Entry Type (ET) 86 allows CBP to "ensure regulatory requirements are met while expediting clearance." In other words, ET 86 allows CBP to electronically clear low value freight at express consignment speeds in all cargo environments, but without paying express consignment fees.

The shippers' desire to move things as fast as possible is in direct conflict with CBP's ability to conduct enforcement. The main problem is that CBP is severely understaffed in the regular cargo environment where most of ET 86 freight is being processed.

NTEU fought to increase CBP staffing at express consignment hubs where the highest volume of de minimis packages have been entering the U.S. over the past several years. For example, NTEU worked to more than double the CBP Officers at the Cincinnati DHL hub from 20 to 47 CBP Officers. Now more and more of de minimis packages are coming through regular air cargo and CBP has only three CBP Officers inspecting regular cargo at the Cincinnati airport.

Also, ET 86 packages and freight that go through cargo modes other than express consignment are not subject to the Express Consignment Carrier Facilities (ECCF) fee that reimburses CBP for costs incurred at and in support of operations at express consignment facilities.

Section 337 of the Trade Act of 2002 (P.L. 107-210), codified as 19 USC 58c (b) (9) (A) (ii) and (b) (9) (B), authorizes the establishment and use of the Express Consignment Carrier Facilities (ECCF) fee to fully reimburse CBP for costs incurred at and in support of operations at express consignment facilities. Congress mandated that 50 percent of ECCF fee collections (along with the inflation amounts) be paid to the Secretary of the Treasury. The balance is used to reimburse CBP for the cost of providing inspection services to express consignment operators or carriers.

The FY 2025 President's Budget includes a proposal for a *De Minimis* User Fee that would cover CBP's costs for the staff and tools needed to better identify, and seize, illicit fentanyl being shipped in small packages. There would be a $2.00 fee per non-ECCF and non-mail package lower than $800 and CBP would maintain this fee. This new $2.00 *de minimis* user fee proposed in the FY 25 budget request must first be authorized by the House Ways and Means and the Senate Finance Committee.

NTEU fully supports the establishment of the $2.00 *de minimis* user fee but urge Congress to make sure that this user fee goes 100 percent to reimburse CBP for the cost of providing inspection services to ET 86 shippers—in other words fund new CBP Officers and other trade enforcement personnel to handle the increasing volume of ET 86 shipments at the ports that are seeing the dramatic increases. **Additional CBP trade enforcement staff will not only help to stop the flow of undervalued, illicit, and counterfeit shipments currently flowing into the U.S. but also increase trade revenue collections and penalizing violators of the Trade Act of 2002.**

Trade Act of 2002 and Electronic Advance Data

Under Section 343 of the **Trade Act of 2002** (P.L. 107-210) as amended, and under the SAFE Port Act, CBP has the legal authority to collect Electronic Advance Data (EAD) provided by air, sea, and land commercial transport companies, including Express Consignment Carriers and importers. In the postal environment, bilateral agreements regarding EAD between the U.S. Postal Service (USPS) and foreign postal operators have increased CBP's ability to target high-risk shipments. Additionally, the Synthetics Trafficking and Overdose Prevention (STOP) Act (P.L. 115-271) requires that DHS prescribe regulations requiring the USPS to transmit advance electronic information for international mail to CBP consistent with the statute. Currently, USPS provides EAD from more than 129 foreign postal services, and CBP utilizes EAD to actively target international mail shipments at seven International Mail Facilities.

For cargo arriving by aircraft, express consignment operators are required to provide EAD to CBP prior to the scheduled arrival of express cargo in the U.S. Express consignment operators accept items for delivery to the U.S. at points of sale in foreign countries and maintain control of items until they are delivered to the addressees.

Analysis of EAD is one of the tools that helps CBP identify threats in inbound international express cargo items and includes the sender's name and address, recipient's/consignee's name and address, contents' description, number of pieces, and total weight. Express consignment operators found in violation of these requirements are subject to a penalty. EAD requirements were to be implemented by CBP in three phases.

Phase 1 required complete electronic manifests provided to CBP for international cargo four hours prior to arrival from most of the world and for Canada, Mexico, the Caribbean, parts of Central and South America at wheels up from the foreign airport. However, every day these manifests are inaccurate with countless overages, which are shipments that are not included on the manifest. In other words, an overage is an un-manifested, unknown shipment which is in violation of the law. A manifest may have 1 or 500 overages, but the highest penalty for all overages is $5,000, and this penalty is routinely mitigated to $50 for a first violation and $100 for subsequent violations.

Phase 2 required air carriers, including express consignment operators to provide quality shipper/consignee data. These addresses should show that the packages are received from legitimate businesses/addresses and are delivered to legitimate end consumers/addresses. If not, the carrier or express consignment operator is subject to a penalty.

In 2007, CBP drafted the Phase 3 implementation plan, but to date has not implemented it. Phase 3 would allow CBP Officers to impose a monetary penalty for incorrect manifest descriptions and false value declarations. Without implementation of Phase 3, CBP Officers cannot penalize carriers for bringing in items manifested as one thing that turn out to be another. Many of these shipments are not concealed well and are often simply mislabeled. For example, narcotic chemicals may be labeled car parts or supplement powder, and CBP cannot impose a penalty for this type of mislabeling.

GAO reports that express consignment operators have reported that "they are able to individually scan each item upon arrival, providing an opportunity to identify and set aside express cargo targeted for CBP inspection based on EAD." (GAO-17-606, page 29) However, CBP Officers tell NTEU that this is not the case for overages that arrive unmanifested or for mislabeled packages. These CBPOs report that express consignment operators rely on Phase 1 electronic manifests to be accurate when they frequently are not. Also, when first rolled out, Trade Act violations were required to be reported to HQ. That is no longer the case.

Also, according to GAO, "although CBP has been using EAD to target express cargo for inspection since approximately 2004, it has not evaluated whether this method results in benefits relative to other methods of choosing express cargo…for inspection" (GAO-17-606, page 28.)

For these reasons, **NTEU recommends that Congress direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the Senate Committee on Ways and Means and Finance.** This report should include the violator's name; the violation committed; the port of entry/location through which the items entered; an inventory of the items seized including description of the item and quantity; place of origination including address of the violator; the amount in penalties assessed by CBP for each violation by violator name and port of entry/location; the amount of penalties that CBP could have levied for each violation by violator name and port of entry/location and the rationale for negotiating down the penalty for each violation by violator name and port of entry/location.

Congress, by requiring CBP to report this useful information on violators and violator penalty assessments, would enhance CBP's interdiction of prohibited items from entering the

U.S. through express consignment operators.

Lastly, even though accurate and reliable advance information is critical to CBP's targeting efforts to ascertain legitimate shipment transactions from those involved in illegal and illicit business transactions utilizing the U.S. Postal Service and private carriers, the ability to assess penalties for violations of Section 343 of the Trade Act is equally important. Unfortunately, penalties are routinely mitigated to a fraction of the full penalty and are now just considered the cost of doing business.

Imposing proper penalties would not only increase compliance but would also provide significant revenue. For example, at one express consignment port of entry where penalties had previously been mitigated to 1% of the maximum penalty, they have recently been mitigated to 10%. In 2023**, 97 penalties were assessed at that port for a total of $1,821,098. Of these 97 penalties, 42 were Trade Act violations.** But many ports do not have as robust a penalty effort as this express consignment hub because of staffing limitations. It is unclear to what extent the original Trade Act penalties were mitigated from the original penalty amount and how much could have been collected in penalty if not mitigated. **A penalty is not an effective deterrent if it is mitigated to a token amount that is just seen as the cost of doing business.**

RECOMMENDATIONS

The more than 29,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea, and land ports. These men and women deserve more staffing and more resources to perform their jobs and fulfill their trade enforcement mission of stopping illicit drugs and illegal goods from entering U.S. commerce thereby saving lives, saving jobs, and raising revenue.

Therefore, **NTEU urges the Committee to:**

- **support FY 2024 funding for at least 1,000 new CBP Officers, 240 Agriculture Specialists and 100 non-uniformed CBP trade operations personnel;**

- **authorize a $2.00 *De Minimis* User Fee and ensure that this user fee goes 100 percent to reimburse CBP for the cost of providing inspection services to ET 86 shippers;**

- **reevaluate the *de minimis* threshold and reform the process that verifies the valuation of cargo entering the U.S. under Section 321;**

- **support a requirement for CBP to provide a report on an annual basis on the individuals and companies that violate the Uyghur Forced Labor Prevention Act and the Trade Act of 2002 to the House Committee on Ways and Means and Senate Committee on Finance; and**

- **support legislation to end the mitigation of Trade Act penalties.**

Thank you for the opportunity to submit this statement for the Record to the Committee.