

native basis for valuation of articles designated by the Secretary of Treasury as provided for by act Aug. 2, 1956, ch. 887, §6(a), 70 Stat. 948, as either the foreign value or the export value, whichever is higher, or if the appropriate customs officer determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value, or if the appropriate customs officer determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production, or in the case of an article with respect to which there is in effect under section 1336 of this title a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article, defined foreign value, export value, United States value, cost of production, and American selling price, and provided for review of the decision of the appropriate customs officer.

Provisions similar to those of this section were contained in act Oct. 3, 1913, ch. 16, §III, L and R, 38 Stat. 185, 189, and in act May 27, 1921, ch. 14, title III, §§301-304, 42 Stat. 15, 16, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, §402, 42 Stat. 949, and were repealed by section 643 thereof. Section 402 of the 1922 act was superseded by section 402 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions on the subject were contained in R.S. §§2905-2907, and 2952, prior to repeal by act June 10, 1890, ch. 407, §29, 26 Stat. 141; and in act June 10, 1890, ch. 407, §§11 and 19, 26 Stat. 136, 139, as amended by act July 24, 1897, ch. 11, §32, 30 Stat. 211, and act Aug. 5, 1909, ch. 6, §28, 36 Stat. 97, 101, prior to repeal by act Oct. 3, 1913, ch. 16, §IV, S, 38 Stat. 201.

R.S. §2906, requiring the collector to cause the actual market value, or wholesale price at the period of exportation, to be appraised, and providing that such appraised value should be considered the value upon which duty should be assessed, and R.S. §2913, relative to the appraisement of gloves protected by trademark, were repealed by section 642 of the act of Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1980, see section 204(a)(2) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

SUBPART B—NATIONAL CUSTOMS AUTOMATION PROGRAM

§ 1411. National Customs Automation Program

(a) Establishment

The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

- (1) Existing components:
 - (A) The electronic entry of merchandise.
 - (B) The electronic entry summary of required information.
 - (C) The electronic transmission of invoice information.
 - (D) The electronic transmission of manifest information.
 - (E) Electronic payments of duties, fees, and taxes.
 - (F) The electronic status of liquidation and reliquidation.
 - (G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).
- (2) Planned components:

(A) The electronic filing and status of protests.

(B) The electronic filing (including remote filing under section 1414 of this title) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.

(D) The electronic filing of bonds.

(E) The electronic penalty process.

(F) The electronic filing of drawback claims, records, or entries.

(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) Participation in Program

The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. The Secretary may, by regulation, require the electronic submission of information described in subsection (a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart.

(c) Foreign-trade zones

Not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the Program.

(d) International Trade Data System

(1) Establishment

(A) In general

The Secretary of the Treasury (in this subsection, referred to as the "Secretary") shall oversee the establishment of an electronic trade data interchange system to be known as the "International Trade Data System" (ITDS). The ITDS shall be implemented not later than the date that the Automated Commercial Environment (commonly referred to as "ACE") is fully implemented.

(B) Purpose

The purpose of the ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

(C) Participation

(i) In general

All Federal agencies that require documentation for clearing or licensing the importation and exportation of cargo shall participate in the ITDS.

(ii) Waiver

The Director of the Office of Management and Budget may waive, in whole or in part, the requirement for participation for any Federal agency based on the vital national interest of the United States.

(D) Consultation

The Secretary shall consult with and assist the United States Customs and Border

Protection and other agencies in the transition from paper to electronic format for the submission, issuance, and storage of documents relating to data required to enter cargo into the United States. In so doing, the Secretary shall also consult with private sector stakeholders, including the Commercial Operations Advisory Committee, in developing uniform data submission requirements, procedures, and schedules, for the ITDS.

(E) Coordination

The Secretary shall be responsible for coordinating the operation of the ITDS among the participating agencies and the office within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(2) Data elements

(A) In general

The Interagency Steering Committee (established under paragraph (3)) shall, in consultation with the agencies participating in the ITDS, define the standard set of data elements to be collected, stored, and shared in the ITDS, consistent with laws applicable to the collection and protection of import and export information. The Interagency Steering Committee shall periodically review the data elements in order to update the standard set of data elements, as necessary.

(B) Commitments and obligations

The Interagency Steering Committee shall ensure that the ITDS data requirements are compatible with the commitments and obligations of the United States as a member of the World Customs Organization (WCO) and the World Trade Organization (WTO) for the entry and movement of cargo.

(3) Interagency Steering Committee

There is established an Interagency Steering Committee (in this section, referred to as the “Committee”). The members of the Committee shall include the Secretary (who shall serve as the chairperson of the Committee), the Director of the Office of Management and Budget, and the head of each agency participating in the ITDS. The Committee shall assist the Secretary in overseeing the implementation of, and participation in, the ITDS.

(4) Report

The President shall submit a report before the end of each fiscal year to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Each report shall include information on—

- (A) the status of the ITDS implementation;
- (B) the extent of participation in the ITDS by Federal agencies;
- (C) the remaining barriers to any agency’s participation;
- (D) the consistency of the ITDS with applicable standards established by the World Customs Organization and the World Trade Organization;

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

(F) the status of the development, implementation, and management of the Automated Commercial Environment within the United States Customs and Border Protection.

(5) Sense of Congress

It is the sense of Congress that agency participation in the ITDS is an important priority of the Federal Government and that the Secretary shall coordinate the operation of the ITDS closely among the participating agencies and the office within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(6) Construction

Nothing in this section shall be construed as amending or modifying subsection (g) of section 301 of title 13.

(7) Definition

The term “Commercial Operations Advisory Committee” means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) or any successor committee.

(June 17, 1930, ch. 497, title IV, §411, as added Pub. L. 103–182, title VI, §631(2), Dec. 8, 1993, 107 Stat. 2188; amended Pub. L. 106–36, title II, §2405, June 25, 1999, 113 Stat. 169; Pub. L. 107–210, div. A, title III, §338, Aug. 6, 2002, 116 Stat. 980; Pub. L. 109–347, title IV, §405, Oct. 13, 2006, 120 Stat. 1929.)

REFERENCES IN TEXT

Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(7), is section 9503(c) of Pub. L. 100–203, which is set out as a note under section 2071 of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–347 added subsec. (d).

2002—Subsec. (b). Pub. L. 107–210 inserted second sentence and struck out former second sentence which read as follows: “Participation in the Program is voluntary.”

1999—Subsec. (c). Pub. L. 106–36 added subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EX. ORD. NO. 13659. STREAMLINING THE EXPORT/IMPORT PROCESS FOR AMERICA’S BUSINESSES

Ex. Ord. No. 13659, Feb. 19, 2014, 79 F.R. 10657, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources, it is hereby ordered as follows:

SECTION 1. Policy. The United States is the world's largest economy and the largest trading Nation. Trade is critical to the Nation's prosperity—fueling economic growth, supporting good jobs at home, raising living standards, and helping Americans provide for their families with affordable goods and services. It is the policy of the United States to promote commerce through the effective implementation of an ambitious 21st century trade agenda and vigorous enforcement of our Nation's laws relating to trade, security, public health and safety, the environment, and natural resources. In support of these goals, and to ensure that our Nation is well-positioned to compete in an open, fair, and growing world economy, the Federal Government must increase efforts to improve the technologies, policies, and other controls governing the movement of goods across our national borders.

In particular, we must increase efforts to complete the development of efficient and cost-effective trade processing infrastructure, such as the International Trade Data System (ITDS), to modernize and simplify the way that executive departments and agencies (agencies) interact with traders. We must also improve the broader trade environment through the development of innovative policies and operational processes that promote effective application of regulatory controls, collaborative arrangements with stakeholders, and a reduction of unnecessary procedural requirements that add costs to both agencies and industry and undermine our Nation's economic competitiveness. By demonstrating our commitment to utilizing technology, coordinating government processes, fulfilling international obligations, and embracing innovative approaches to promote new opportunities for trade facilitation in the 21st century, we can lead by example and partner with other countries willing to adopt similar programs. This will encourage compliance with applicable laws and, more broadly, result in a more prosperous, safe, secure, and sustainable trading environment for all.

SEC. 2. Policy Coordination. Policy coordination, guidance, dispute resolution, and periodic reviews for the functions and programs set forth in this order shall be provided through the interagency process established in Presidential Policy Directive-1 of February 13, 2009 (Organization of the National Security Council System), or any successor.

SEC. 3. International Trade Data System. The ITDS, as described in section 405 of the Security and Accountability for Every Port Act of 2006 (the "SAFE Port Act") (Public Law 109-347), is an electronic information exchange capability, or "single window," through which businesses will transmit data required by participating agencies for the importation or exportation of cargo. To enhance Federal coordination associated with the development of the ITDS and to provide necessary transparency to businesses, agencies, and other potential users:

(a) by December 31, 2016, participating agencies shall have capabilities, agreements, and other requirements in place to utilize the ITDS and supporting systems, such as the Automated Commercial Environment, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export;

(b) by December 31, 2016, the Department of Homeland Security shall confirm to the Secretary of the Treasury and the ITDS Board of Directors (Board), which serves as the Interagency Steering Committee established under section 405 of the SAFE Port Act, that the ITDS has the operational capabilities to enable users to:

(i) transmit a harmonized set of import and export data elements, to be collected, stored, and shared, via a secure single window, to fulfill U.S. Government requirements for the release and clearance of goods; and

(ii) transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, agencies;

(c) the Board shall, in consultation with ITDS participating agencies, define the standard set of data elements to be collected, stored, and shared in the ITDS; and continue to periodically review those data elements in order to update the standard set of data elements, as necessary;

(d) the Board shall continue to assist the Secretary of the Treasury in overseeing the implementation of, and participation in, the ITDS, including the establishment of the ITDS capabilities and requirements associated with the collection from users and distribution to relevant agencies of standard electronic import and export data; and

(e) the Board shall make publicly available a timeline outlining the development and delivery of the secure ITDS capabilities, as well as agency implementation plans and schedules. Agencies shall take such steps as are necessary to meet the timeline, including timely completion of all appropriate agreements, including memoranda of understanding, and other required documents that establish procedures and guidelines for the secure exchange and safeguarding of data among agencies and, as appropriate, with other Federal Government entities.

SEC. 4. Establishment of the Border Interagency Executive Council. (a) There is established the Border Interagency Executive Council (BIEC), an interagency working group to be chaired by the Secretary of Homeland Security or a senior-level designee from the Department. The BIEC shall also have a Vice Chair, selected every 2 years from among the members of the BIEC by a process determined by the members. The BIEC shall develop policies and processes to enhance coordination across customs, transport security, health and safety, sanitary, conservation, trade, and phytosanitary agencies with border management authorities and responsibilities to measurably improve supply chain processes and improve identification of illicit shipments.

(b) The Department of Homeland Security shall provide funding and administrative support for the BIEC, to the extent permitted by law.

(c) In addition to the Chair and Vice Chair, the BIEC shall include designated senior-level representatives from agencies that provide approval before goods can be imported and exported, including the Departments of State, the Treasury, Defense, the Interior, Agriculture, Commerce, Health and Human Services, Transportation, and Homeland Security, the Environmental Protection Agency, and other agencies with border management interests or authorities, as determined by the Chair and Vice Chair. The BIEC shall also include appropriate representatives from the Executive Office of the President.

SEC. 5. Functions of the BIEC. The BIEC shall:

(a) develop common risk management principles and methods to inform agency operations associated with the review and release of cargo at the border and encourage compliance with applicable law;

(b) develop policies and processes to orchestrate, improve, and accelerate agency review of electronic trade data transmitted through relevant systems and provide coordinated and streamlined responses back to users to facilitate trade and support and advance compliance with applicable laws and international agreements, including (in coordination with, and as recommendations to, the Board) policies and processes designed to assist the Secretary of the Treasury, as appropriate, with activities related to the ITDS;

(c) identify opportunities to streamline Federal Government systems and reduce costs through the elimination of redundant capabilities or through enhanced utilization of the Automated Commercial Environment capabilities as a means of improving supply chain management processes;

(d) assess, in collaboration with the Board, the business need, feasibility, and potential benefits of developing or encouraging the private-sector development of web-based interfaces to electronic data systems, including the ITDS, for individuals and small businesses;

(e) engage with and consider the advice of industry and other relevant stakeholders regarding opportunities to improve supply chain management processes, with the goal of promoting economic competitiveness through enhanced trade facilitation and enforcement;

(f) encourage other countries to develop similar single window systems to facilitate the sharing of relevant data, as appropriate, across governmental systems and with trading partners; and

(g) assess, in consultation with the Department of the Treasury, opportunities to facilitate electronic payment of duties, taxes, fees, and charges due at importation. The Federal Government endorses electronic payment of duties, taxes, fees, and charges due at importation, and currently allows payment electronically through various systems.

SEC. 6. *Regulatory Review.* To support the Federal Government's rapid development of the ITDS that, to the greatest extent possible, relies upon the collection, exchange, and processing of electronic data, each agency that utilizes the ITDS shall:

(a) as part of the retrospective review report due to the Office of Information and Regulatory Affairs (OIRA) on July 14, 2014, pursuant to Executive Order 13610 of May 10, 2012 (Identifying and Reducing Regulatory Burdens), unless directed otherwise through subsequent guidance from OIRA, determine whether any regulations should be modified to achieve the requirements set forth in this order; and

(b) promptly initiate rulemaking proceedings to implement necessary regulatory modifications identified pursuant to subsection (a) of this section.

SEC. 7. *Reports.* (a) Within 180 days of the date of this order, agencies with border management interests or authorities shall report to the Board on their anticipated use of international standards for product classification and identification.

(b) By July 1, 2014, and every year thereafter until July 2016, the BIEC, in consultation with the Board, shall provide to the President, through the Assistant to the President for Homeland Security and Counterterrorism, a report on the implementation of section 5 of this order.

SEC. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law, and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this order.

BARACK OBAMA.

DELEGATION OF AUTHORITY FOR DRAFTING AND SUBMISSION OF THE INTERNATIONAL TRADE DATA SYSTEM ANNUAL REPORT TO THE CONGRESS

Memorandum of President of the United States, Oct. 20, 2015, 80 F.R. 64305, provided:

Memorandum for the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the reporting function conferred upon the President by section 405 of the SAFE Port Act of 2006, Public Law 109-347.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 1412. Program goals

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

(June 17, 1930, ch. 497, title IV, § 412, as added Pub. L. 103-182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2189.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1413. Implementation and evaluation of Program

(a) Overall Program plan

(1) In general

Before the 180th day after December 8, 1993, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 1411(a)(1) of this title; and

(C) estimates regarding the stages on which planned components of the Program listed in section 1411(a)(2) of this title will be brought on-line.

(2) Additional information

In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 1412 of this title; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) Implementation plan, testing, and evaluation

(1) Implementation plan

For each of the planned components of the Program listed in section 1411(a)(2) of this title, the Secretary shall—