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Trade facilitation implementations in U.S. Customs and Border Protection

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Thesis

**TRADE FACILITATION IMPLEMENTATIONS IN
U.S. CUSTOMS AND BORDER PROTECTION**

by

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DEDICATION

I would like to dedicate this work to my wife Yeşim and my son Ömer Tarık.

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FARUK ŞEN

ABSTRACT

More than seven decades of trade experience, since the General Agreement on Tariffs and Trade (GATT) entered in to force, has showed that the global trade brought prosperity to the nations and reduced the poverty. As a result, the importance of smooth flow of cross-border trade is well understood by all trader countries. Hence the notion of trade facilitation stays as a hot topping of international trade negotiations. Improving the hard infrastructure of trade environment is the priority focus of developing countries whereas developed countries shifted their focal point to modernize the soft infrastructure of their trade environment.

United States, who enjoys the second largest share of global trade, is one of those countries whose cross-border implementations are closely followed by the rest of the world. Trade facilitation implementations and applications of US Customs and Border Protection (CBP) is used as a base for best practices in many countries. The perfect combination of facilitation and enforcement is key to establish and sustain a global competitiveness for US companies.

After recognition of reasons behind the trade facilitation efforts around the globe and broad definition of the concept, this study explicates the background of trade facilitation and

enforcement legislations as well as current trade facilitation implementations in U.S. Customs and Border Protection.

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CHAPTER ONE

1. Introduction

In many developing countries, inefficiency and delays occur in transition points (from one mode to another), border crossings and throughout the national transport network. These delays result from insufficient infrastructure, unacceptable cargo handling equipment and transport fleets, insufficiently prepared and persuaded specialists, unacceptable work force levels, inadequately coordination, lack of data, communication delays, not utilizing containers door-to-door and cumbersome trade methods. Elimination of these causes will reduce costs and delays, thereby increasing the potential for commercial development in developing countries. Trade facilitation aims to create a steady, straightforward and predictable environment globally accepted for international trade transactions. It is based on universally recognized traditions and practices coming about from the simplification of formalities and methods, the standardization of physical facilities and means, and the harmonization of appropriate trade and transport laws and regulations. In the “Just in time” production and distribution era, such a facilitative environment for import and export not only benefits the trade of a country, but also an increasingly important factor in the private sector's investment decisions (UNCTAD, 2002).

Trade and customs procedures and practices will not only affect the price of traded goods, but also the ability of governments to collect border-related trade taxes and the geographical location of supply chains.

Chapter two deals with the landscape of international trade, and the trade cost which is at the heart of the facilitation efforts including the transportation cost, time cost, policy cost (tariffs and non-tariff barriers), and regulatory cost.

Chapter three describes the concept of the trade facilitation in a broader approach and analyzes the relation between The General Agreement on Tariffs and Trade (GATT) and the trade facilitation initiatives. The chapter also deeply explores the objectives as well as the substantial articles of the Agreement on the Trade Facilitation.

Chapter four introduces U.S. Customs and Border Protection (CBP) along with the legislative back ground of the trade facilitation and enforcement efforts in US Customs. The 9/11 effect on the trade facilitation and enforcement legislations as well as trade facilitation strategy of CBP is analyzed. The major trade enforcement and facilitation implementations of CBP including security-driven and trade-driven implementations are deeply explored.

Chapter five presents the trade facilitation performance of CBP through using the indexes that are measured by World Bank, World Economic Forum, and OECD. A comparison of rankings of those indexes over the last decade is given at the end of the chapter.

CHAPTER TWO

2. Global Economy

2.1. Historical Momentums of Trade Shape

Every nation strives to increase its prosperity which comes along with high level of Gross Domestic Product (GDP). Thus, the historical growth of global GDP is up trended and predicted to be over \$96 trillion by 2030 (Maddison, 2008). Table 2.2.1 illustrates the global grow rate by major regions. All major regions around the globe enjoy a significant increase in GDP over the time.

Table 2.2. 1: Levels of GDP, World and Major Regions 1–2030 AD (billion 1990 international Geary Khamis PPP dollars)

	1	1000	1500	1820	1950	1973	2006	2030
Western Europe	14.43	10.93	44.18	159.85	1,396	4,097	8,473	12,556
US	0.27	0.52	0.80	12.55	1,456	3,537	9,266	16,662
Other Western offshoots*	0.18	0.23	0.32	0.95	180	522	1,388	2,414
West	14.88	11.67	45.30	173.35	3,032	8,155	19,127	31,632
China	26.82	26.55	61.80	228.60	245	739	7,928	22,983
India	33.75	33.75	60.50	111.42	222	495	2,888	10,074
Japan	1.20	3.19	7.70	20.74	161	1,243	2,864	3,488
Other Asia	14.97	21.38	31.32	51.72	363	1,387	6,450	14,884
Latin America	2.24	4.56	7.29	14.92	416	1,389	3,644	6,074
Eastern Europe & former USSR	3.52	5.44	15.15	62.58	696	1,487	2,870	4,508
Africa	8.03	13.84	19.38	31.27	203	550	1,557	2,937
Rest	90.53	108.71	203.14	521.25	2,305	7,868	28,202	64,948
World	105.40	120.38	248.45	694.60	5,337	16,023	47,329	96,580

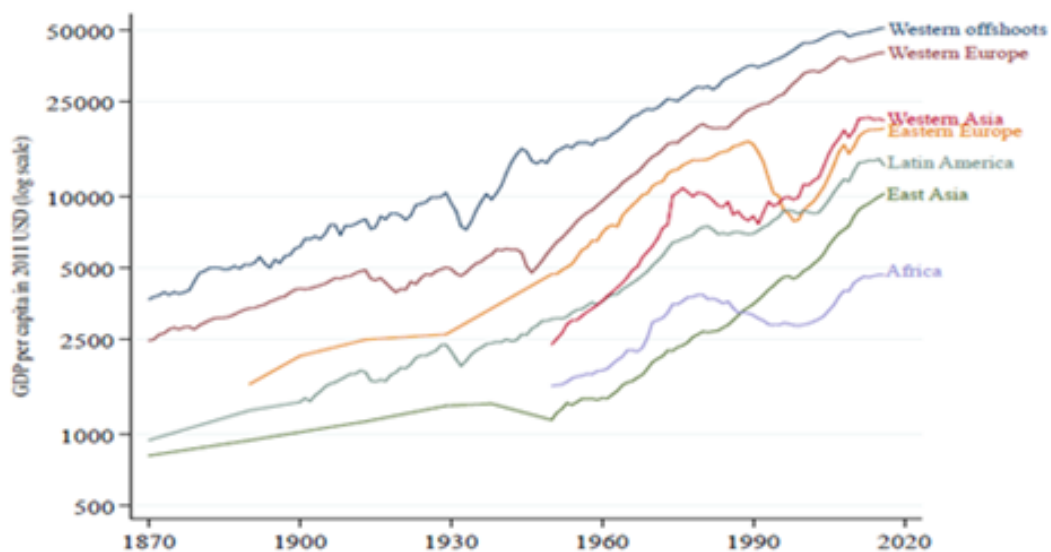
* Australia, Canada and New Zealand.

Source: Madison, Angus, 2008:

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.546.9890&rep=rep1&type=pdf>

On the other hand, the growth in global economy over the time also reflects the growth in real GDP per capita. Figure 2.2.1 illustrates the growth in average real GDP per capita over time. The figure also illustrates that patterns of rapid improvement alternate with period of relative decline at certain periods (Bolt, Inklaar, de Jong, & van Zanden, 2018). There are main two reasons that global trade increases when global GDP increases. First that one of the components of the GDP is the exports and basically the total exports over the globe reflects the total global trade. Thus, when net exports increase then GDP increases too. Second that the GDP per capita reflects the imposable income which increases the demand for foreign goods when increased in certain circumstances. The increase in demand for foreign goods in a country will result an increase in exports to that country which then will lead an increase in GDP of exporting country.

Figure 2.2. 1 Average real GDP per capita across regions, 1870–2015



Notes: Figure shows CGDPpc by region, using population to compute a regional GDP per capita level.

Source: Bolt, Inklaar, de Jong, & van Zanden, 2018;
https://irs.princeton.edu/sites/irs/files/Rebasing%20Maddison_May_2017.pdf

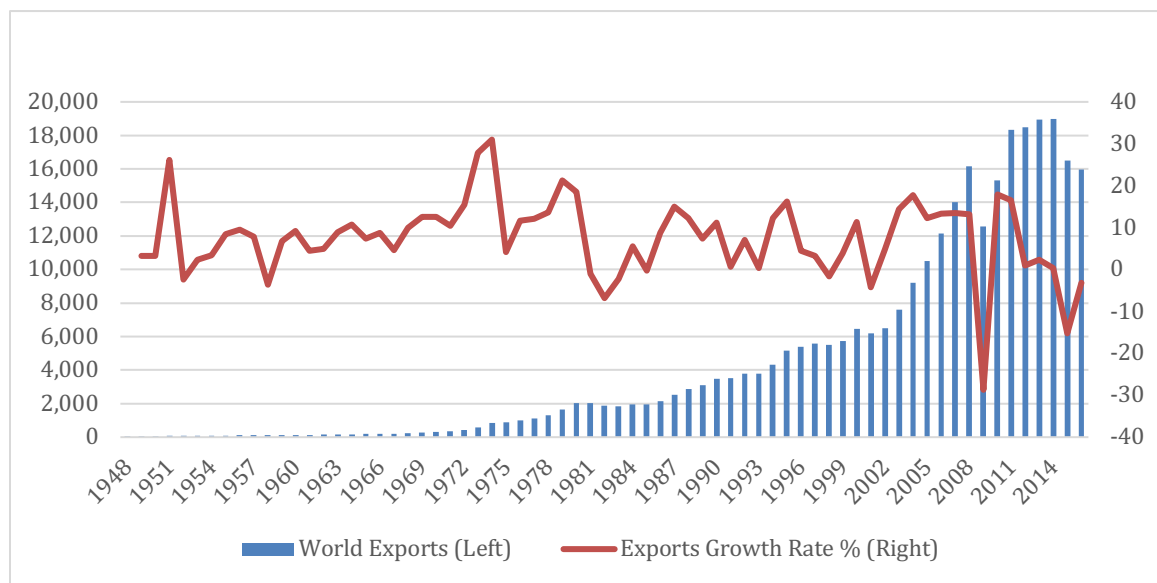
The elevate of a world trading system, like so many other features of the modern world economy, commenced largely with the industrial revolution. Since the mid-1800s, the world's population has grown roughly six-fold, world output has grown 60-fold, and world trade has grown over 140-fold. This virtuous circle of deepening integration and expanding magnification is what we now refer to as globalization (WTO, 2013), Which is defined as the tendency toward an international integration of goods, technology, information, labor, and capital, or the process of making this integration happen (Ball, 2010). It's also argued by him that there are five main drivers of globalization of firm's operations: political, technological, market, cost, and competitive. The more the operations are globalized the more the global trade is integrated.

2.2. International Trade

In general, international trade is the exchange of goods, services and capital across the borders. The exchange of capital between nations takes place within financial institutions of those countries and the exchange of services usually requires movement of people who provides the services. However, the exchange of goods between nations is mostly known as international trade and takes place in forms of imports and exports. The common trade flow direction of North-to- North is changed over the recent years by the intensive involvement of developing countries in international trade. Considering the specialization in production as well as factor endowment of developing countries, global value chains (GVCs) have significant contribution to this change. Not only the North-to South trade flows but also South-to-South trade flows have notable share in total international trade

volume.

Figure 2.2. 2: World Exports Value \$ (Billion)



Source: Created by author using WTO's and UN's database

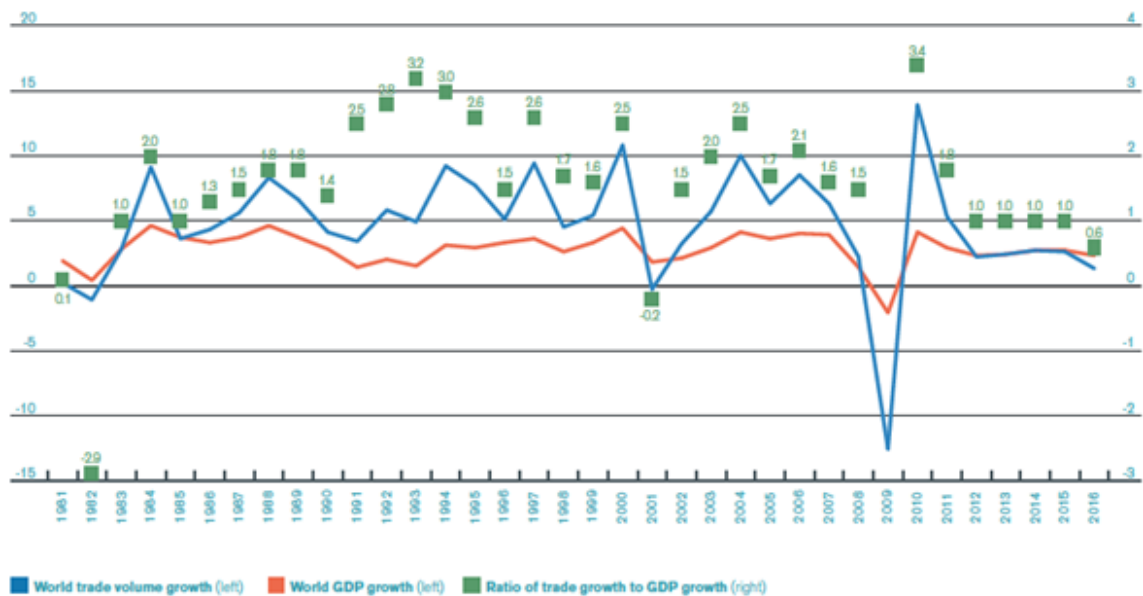
Figure 2.2.2 illustrates the \$ value of world's total merchandise exports as well as the growth rate of exports over the time. According to the World Trade Organization (WTO) the value of world merchandise exports rose from US\$ 2.04 trillion in 1980 to US\$ 15.98 trillion in 2016 which equivalent to 5.4 per cent growth per year on average whereas developing economies raised their share in world exports from 34 per cent to 41 per cent. On the other hand, with the growth of %0.1 world export of commercial services totaled \$4.8 trillion in 2016 in which developing countries had a share of %34 (WTO, 2017).

World merchandise trade increased only %1.3 in 2016 with the lowest growth rate in volume terms since the financial crisis of 2008. However, world merchandise trade in value

terms declined in 2016 mainly because of the loose import and export prices. The decrease in value of the world trade in 2016 was %3.1 which is worse than average rate of %1.1 decrease in value terms since 2008 and far behind the average grow rate of %7.4 of world merchandise trade since the establishment of General Agreement on Tariffs and Trade (GATT) in 1947.

On the other hand, the trend of growth in GDP is parallel to the trend of growth in world merchandise trade. As it is illustrated in Figure 2.2.3 the volume of world merchandise trade is tended to grow faster than world GDP although ratio after the global financial crisis is fallen prominently.

Figure 2.2. 3: Ratio of world merchandise trade volume growth to world real GDP growth, 1981-2016



Source: World Trade Statistical Report 2017:

https://www.wto.org/english/res_e/statis_e/wts2017_e/wts2017_e.pdf

As a result of technological innovations in supply chains the international fragmentation of production has been growing over time. With the push of globalization, as well as the fragmented manufacturing processes over the globe, developing countries are now using their comparative advantages to reap the benefits of interconnectedness of production processes which allow them to integrate more in to global economy.

2.3. Trade Cost.

Simple, fast, reliable, predictable and cost-effective movement of goods cross the borders is at the core of facilitation initiatives of international trade. Inefficiency in customs procedures does not only increase the time and cost burden of cross-border trade but also negatively affect the foreign direct investments due to increased risk of doing business.

Studies within the WTO ¹ indicate that, along with others, transportation cost is one of the fundamental economic factors that affects international trade and may reach as much as 15% of the value of the traded goods in some cases. However, the total value of trade cost which includes the transportation cost is far more. According to Anderson and van Wincoop, (2004) “trade costs, include all costs incurred in getting a good to a final user other than the marginal cost of producing the good itself: transportation costs (both freight costs and time costs), policy barriers (tariffs and nontariff barriers), information costs, contract enforcement costs, costs associated with the use of different currencies, legal and regulatory costs, and local distribution costs (wholesale and retail).”

¹ See World Trade Report 2013; Factors shaping the future of world trade. World Trade Organization.

In the World Trade Report of WTO (2015) it is highlighted that “trade costs in developing countries are equivalent to applying a 219 per cent ad valorem tariff on international trade. Even in high-income countries, the same product would face an ad valorem equivalent of 134 per cent in trade cost.” It also points out that with the implementation Trade Facilitation Agreement (TFA) there will be significant trade cost reduction at the range between %9.6 and %23.1. Simulations of computable general equilibrium (CGE) model predict that export gains from TFA will be up to US\$ 1 trillion dollars whereas in the gravity model the gains goes up to US\$ 3.6 trillion. per year.

CHAPTER THREE

3. Trade Facilitation

High competition in global markets forcing firms to use ‘just in time’ manufacturing systems which requires a balance of cost, speed and predictability in global supply chains which is the key for most export-oriented developing countries to success in world markets. Internationally accepted and applied legal framework that has sufficient tools to respond to global challenges is required for smooth functioning of global trade. Hence the need for global rules on trade facilitation is recognized by many countries with the spread of global value networks and increase in trade of release-time sensitive products throughout the world.

The efforts under the auspices of the World Trade Organization (WTO) to set out the global rules on trade facilitation yield its results. WTO members concluded negotiations at the 2013 Bali Ministerial Conference on the landmark Trade Facilitation Agreement (TFA), which entered into force on 22 February 2017 following its ratification by two-thirds of the WTO membership.

Efforts on trade facilitation should be seen in the perspective of Sustainable Development Goals (SDG) which was set out by United Nations on September 25th 2015, to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda. Each goal has specific targets to be achieved by 2030. In specific, SDG 16 and SDG 17 are directly related to trade facilitation.

Sustainable Development Goal 16 requires promoting peaceful and inclusive societies for sustainable development and providing access to justice for all and build effective, accountable and inclusive institutions at all levels. Promoting the rule of law, sustainably reducing the bribery and corruption in all their forms, developing effective, accountable and transparent institutions at all levels, ensuring public access to information are some sub goals under the SDG 16 which are related to improving trade environment.

SDG 17 requires strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development. Moreover, SDG 17.10, 17.11 and 17.12 directly refer trade facilitation efforts within the WTO.

The goals under the subgroup of Trade of SDG 17 are set as follows: “17.10 Promote a universal, rules based, open, nondiscriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda. 17.11 Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries’ share of global exports by 2020. 17.12 Realize timely implementation of duty free and quota free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access” (UN, 2015).

3.1. The Definition of Trade Facilitation

Although The Trade Facilitation Agreement sets out the main rules to facilitate global trade it does not have a specific definition for trade facilitation. However, international organizations as well as academics have put forth different definitions for trade facilitation. These diverse definitions of trade facilitation can be classified into two dimensions: broad or narrow and soft or hard infrastructure definitions.

Narrow definitions emphasize on improvement of procedures mainly at borders whereas broad definition exceeds solely border focus and goes behind it with a whole approach that includes the all kind barriers to global trade. On the other hand, improvements on all kinds of trade procedures are classified as a soft infrastructure definition of trade while investments such as in ports, roads and other physical infrastructure are classified as hard infrastructure definition.

A general definition of Trade Facilitation is made by The United Nations Economic Commission for Europe (UNECE)² as “*Simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment*”. This broad definition can be accepted as a base for all other trade facilitation definitions. It is an end-to- end definition and covers all operations of every participant of the global supply chain that is necessary for the adequate movements of goods cross the borders. Simplification, standardization and harmonization of

² See Trade Facilitation Implementation Guide: <http://tfig.unece.org/details.html>

procedures as well as information flows require efficient management of related cost and time and provides predictability to all parties.

Similarly, United Nations Conference on Trade and Development (UNCTAD), (2006) defines it as “*Trade facilitation measures seek to establish a transparent, consistent and predictable environment for border transactions based on simple and standardized customs procedures and practices, documentation requirements, cargo and transit operations and trade and transport conventions and arrangements*”. The narrow definition made by UNCTAD mainly focus on the improvements of procedures at the border transactions. The transparency, consistency and predictability of customs procedures at the borders that UNCTAD emphasize can provide a desirable environment for smooth movement of goods between the nations.

Furthermore, according to International Chamber of Commerce (ICC)³ trade facilitation “is the general term for a package of measures to help cut red tape at borders which focuses on improvements in the efficiency of the processes associated with trading in goods across national borders”. The ICC definition is also a narrow definition that focuses solely on improvement of the customs procedures at the borders which requires simplification of transactions and reduction of transaction cost.

³ See International Chamber of Commerce Customs Trade Facilitation: <https://iccwbo.org/global-issues-trends/trade-investment/trade-facilitation/>

On the other hand, trade facilitation, in the World Customs Organization (WCO)⁴ context, means the avoidance of unnecessary trade restrictiveness. This broad definition does not limit the efforts of facilitation only to the borders and goes beyond them covering all kinds of restrictiveness including technical barriers.

Similar to the international organizations some scholars focus on the soft dimension of the definition. For instance, according to Zaki (2014) “the term ‘trade facilitation’ encompasses various important aspects such as simplification of trade procedures; harmonization of trade rules; transparent information and procedures; and the adoption of new technologies to promote trade and make payments more secure, more reliable and faster.” This broad definition emphasizes simplification and harmonization of trade rules which is the common denominator of definitions made by international organizations. Further it focuses on the implementation of new technologies to promote the global trade in all aspects.

One of the shortest yet broadest definition of trade facilitation is made by Duval (2007) as “increasing the efficiency of trading processes”. These processes consist of but not limited to customs, transport, banking, insurance and other related processes that are necessary for the trade transactions and cannot be limited to the borders.

All narrow and broad definitions mentioned above are related to ‘soft’ dimension of the definition.

⁴ See World Customs Organization: Customs Procedures and Facilitation: <http://www.wcoomd.org/en/topics/facilitation/overview/customs-procedures-and-facilitation.aspx>

However, there is also ‘hard’ dimension of the definition made by some scholars. For instance, according to Portugal-Perez and Wilson (2012) “Trade facilitation measures can be undertaken along two dimensions: a “hard” dimension related to tangible infrastructure such as roads, ports, highways, telecommunications, as well as a “soft” dimension related to transparency, customs management, the business environment, and other institutional aspects that are intangible.”

Whatever is the scope of the definitions, either Narrow-broad or soft- hard definition the they all intend to draw a conceptual framework which can be interpreted as international standards of expanding the global prosperity by increasing the volume of international trade via enabling the efficient movement of goods between the nations.

3.2. Trade Facilitation and International Organizations

International trade is the focal point of many international institutions. Fast, reliable and predictable movement of goods across the borders is the common issue that these international organizations put effort into it. Putting these issues at the center of their work they have developed many policy documents and/or tools to facilitate global trade. These international institutions include but not limited to World Trade Organization (WTO), World Customs Organization (WCO), United Nations Conference on Trade and Development (UNCTAD), United Nations Economic Commission for Europe (UNECE), International Trade Centre (ITC), and The Organisation for Economic Co-operation and Development (OECD).

3.2.1. World Trade Organization

As a result of the 1986–94 Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) World Trade Organization (WTO) was established and is the main international institution that is responsible to set out global trade rules. These rules are generally formed into agreements that are multilaterally ratified by nations. The implementation and monitoring of these agreements as well as settling the disputes arising from their application are within the WTO's legal role.

Trade Facilitation Agreement (TFA) is the first and most important multilateral agreement that was ratified under the auspices of WTO since its establishment in 1995. Within the context of the Doha Rounds which is the latest round of trade negotiations among the WTO members, the TFA which entered into force in 22 February 2017 was born as a result of 2013 Bali Ministerial Conference.

There are three sections within the TFA which consist of twenty-four articles that clarifies and improves mainly the three provisions of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. The TFA also sets forth measures for active collaboration of customs and other cross-border trade related authorities. It also comprises measures for technical assistance and capacity building both for developing countries and least developed countries.

3.2.2. World Customs Organization

With the mission of “providing leadership, guidance and support to customs administrations to secure and facilitate legitimate trade, realize revenues, protect society and build capacity” the World Customs Organization (WCO) is one of key international organization that develops instruments to facilitate global trade.

The WCO develops conventions, standards and programs to ensure the efficiency and effectiveness of Customs administrations by harmonizing and simplifying Customs procedures. One of the main conventions signed under the auspices of the WCO is the International Convention on the Simplification and Harmonization of Customs Procedures which is known as the Kyoto Convention that entered into force in 1974 and was revised in 2006. The other key conventions related to trade facilitation are The ATA System (ATA and Istanbul Conventions), The Customs Convention on Containers 1972, Conventions and Programmes Concerning Export Controls.

The Revised Kyoto Convention is the outline for modern and efficient customs procedures and strengthens the international trade system by providing predictability (WCO, 2010). It promotes trade facilitation and efficacious controls through its licit provisions that detail the application of simple yet efficient procedures and provides following inclusive set of principles⁵;

- Transparency and predictability of Customs actions;

⁵ See WCO’s Revised Kyoto Convention; http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary Customs control to ensure compliance with regulations;
- Use of risk management and audit-based controls;
- Coordinated interventions with other border agencies;
- Partnership with the trade.

Other instruments developed by the WCO include: Transparency and Predictability Guidelines which aims to provide Customs administrations with comprehensive and practical guidance on how to enhance and commit to their transparency and predictability, with a view to trade facilitation and integrity; National Committees on Trade Facilitation - A WCO Guide which shares relevant information on WCO Members' experiences and their roles in the National Committees on Trade Facilitation (NCTFs) for the implementation of the WTO Trade Facilitation Agreement (TFA); WCO Customs Risk Management Compendium that sets out the organizational framework for risk management and outlines the risk management process; ICT Guidelines that aims to help Customs Administrations implement the standards and recommended practices contained in the Revised Kyoto Convention; WCO Data Model which combines data requirements that are mutually supportive and are updated on a regular basis to meet the procedural and legal needs of cross-border regulatory agencies; Time Release Study that best guides customs administrations to review together the time required for the release of goods in a cross-

border and coordinated border management environment and to take potential corrective measures for continuous improvement; Customs International Benchmarking Manual that provides guidance to administrations for improving their efficiency and effectiveness by comparing procedures or processes with the same or similar procedures or processes carried out by others; Economic Operator (EO) Compendium that encompasses SAFE AEO programs, Compliance programs and the Authorized Operator scheme of the WTO Agreement on Trade Facilitation; Customs-Business Partnership Guidance which aims to develop a robust and sustained engagement/partnership mechanism with business.

Furthermore, one of the most important tool that was adopted by the WCO is the SAFE Framework of Standards to Secure and Facilitate Global Trade. According to the WCO (2012) the SAFE Framework aims to:

- Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
- Enable integrated and harmonized supply chain management for all modes of transport.
- Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.
- Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.
- Strengthen Customs/Business co-operation.

- Promote the seamless movement of goods through secure international trade supply chains.

3.2.3. United Nations Conference on Trade and Development

UNCTAD is a permanent intergovernmental body established by the United Nations General Assembly in 1964. UNCTAD assists developing countries in identifying their particular trade and transport facilitation needs and priorities, and helps them program the implementation of specific trade and transport facilitation measures.

UNCTAD has many Technical Notes related to almost every article of Trade Facilitation Agreement. These Technical Notes include enquiry points; information available through internet; publication; risk management; levy of fees and charges; freedom of transit; right of appeal; simplification of trade documentation; advance rulings; pre-arrival customs processing; border agency coordination/cooperation; separating release from clearance; post clearance audit; trade transaction modelling.

UNCTAD also has created a computerized traditions administration framework that has been embraced by over 90 nations called the Automated System for Customs Data (ASYCUDA). It is a computerized Customs information management framework that can handle all Customs clearance-related forms. This is done by implementing simplified and harmonized procedures and standardized trade documents. The system sanctions for the electronic processing of declarations, risk management, transit operations and expedited clearance of goods, in addition to amassing timely and precise statistical data for fiscal and

trade policy objectives (UNCTAD, 2011).

3.2.4. United Nations Economic Commission for Europe

The United Nations Economic Commission for Europe (UNECE) which is one of five regional commission of The UN is the most active on the trade facilitation field among others. The UNECE which aim is to promote Pan-European economic integration serves as the focal point for trade facilitation recommendations and electronic business standards, covering both commercial and government business processes that can foster growth in international trade and related services. In this context, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) was established as a subsidiary of the UNECE Trade Committee⁶ as an authorized body to develop a global working program to ensure world-wide coordination. and cooperate in these areas. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) has created a series of some 40 recommendations and standards that are utilized around the world to modify, standardize, and harmonize trade procedures and information streams. Numerous of these are currently worldwide benchmarks of the International Organization for Standardization (UNECE, 2017).

These trade facilitation related recommendations include; United Nations Layout Key for Trade Documents, Location of Codes in Trade Documents, National Trade Facilitation Bodies, Documentary Aspects of the International Transport of Dangerous Goods,

⁶ See The United Nations Economic Commission for Europe (UNECE); <https://www.unece.org/cefact/about.html>

Measures to Facilitate Maritime Transport Documents Procedures, Facilitation of Identified Legal Problems in Import Clearance Procedures, Authentication of Trade Documents, Facilitation Measures Related to International Trade Procedures, Trade and Transport Status Codes, Use of the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT), Commercial Use of Interchange Agreements for Electronic Data Interchange (EDI), Pre-shipment Inspection, Electronic Commerce Agreement, Recommendation and Guidelines on Establishing a Single Window, Data Simplification and Standardization for International Trade, Consultation Approaches Best Practices in Trade and Government Consultation on Trade Facilitation Matters, Public-Private Partnerships in Trade Facilitation, Trade and Transport Facilitation Monitoring Mechanism.

3.2.5. World Bank Group

The World Bank Group (WBG) which was established in 1944 has set two goals for the world to achieve by 2030; ending poverty and promoting shared prosperity. The WBG recognize that increasing trade is key to gain the best results out of these two goals. Hence the WBG provides technical and financial support for countries to enhance trade opportunities. These supports are usually related to the areas of customs and border management, streamlining documentary requirements, trade infrastructure investment, port efficiency, transport security, logistics and transport services, regional trade facilitation and trade corridors, and transit and multimodal transport.

Trade facilitation plays an important role in development. By increasing the

competitiveness of countries, it enables them to trade goods and services on time and at low transaction costs. Managed by the World Bank Group's Global implementation of Macroeconomics Trade and Investment (MTI) Trade & Investment (MTI) Global Practice, The Trade Facilitation Support Program (TFSP) provides support to countries seeking assistance in bringing trade practices in line with Trade Facilitation Agreement. TFSP helps developing countries take advantage of increasing trade and foreign investment, which leads to increased competitiveness in private sector trade. There are two main components of the TFSP approach, technical assistance and knowledge, learning and management⁷.

On the other hand, the WBG's Trade and Transport Facilitation Assessment (2010) includes a functional toolkit and interview guide that identifies inefficiencies in international supply chains that constrain trade competitiveness, in an attempt to assist countries, develop methods for reform and investment to boost trade competitiveness.

Moreover, The Logistics Performance Index (LPI) is an interactive benchmarking tool created by WBG to assist countries determine the challenges and opportunities they face in their performance on trade logistics and what they can do to boost their performance. The LPI measures how well countries connect with international logistics networks. It helps countries determine the challenges and opportunities they face in their trade logistics performance and what they can do to boost. based on a worldwide survey of operators on the ground—such as global freight forwarders and express carriers—the LPI provides in-

⁷ See The World Bank's Trade Facilitation Support Program (TFSP); <http://www.worldbank.org/en/programs/trade-facilitation-support-program>

depth knowledge and feedback on the logistics “friendliness” of the countries in which the operators do business and those with which they trade. It provides an informed qualitative assessment of the worldwide logistics environment for the benefit of government and trade practitioners alike⁸.

3.2.6. Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) which was established in 1960 has the mission of “promoting policies that will improve the economic and social well-being of people around the world”. In the context of the OECD facilitating trade is about streamlining and simplifying international trade procedures. The OECD analyses the benefits and costs of trade facilitation efforts with the help of its Trade Facilitation Indicators (TFIs).

According to a trade policy paper by OECD (2011), The TFIs are for use of assessing the economic and trade impact of specific trade facilitation measures in OECD countries. Twelve trade facilitation indicators (TFIs) have been constructed, corresponding to the main policy areas under negotiation at the WTO, with the aim to estimate the impact of addressing specific facilitation hurdles in the trade procedures of a given country⁹. For OECD countries, the policy areas that seem to have the greatest impact on trade volumes and trade costs are advance rulings, information availability, formalities and procedures and inter-agency cooperation (OECD, 2011).

⁸ See The World Bank’s The Logistics Performance Index; <https://lpi.worldbank.org/>

⁹ See OECD’s TFI: <http://www.oecd.org/trade/facilitation/indicators.htm>

3.2.7. International Trade Centre

The International Trade Centre (ITC) which was established in 1964, is the joint agency of the World Trade Organization and the United Nations agency that is fully dedicated to supporting the internationalization of small and medium-sized enterprises (SMEs).

The ICT has established its Trade Facilitation Programme that will assist developing countries and their businesses to better understand the Trade Facilitation Agreement (TFA) and undertake the necessary steps to effectively implement its provisions. A particular focus of the programme is about providing support to Least Developed Countries (LDCs), ensuring that their small and medium-sized enterprises have a greater chance of participating in international trade (ITC, 2014).

The essential point of ITC's Trade Facilitation Programme is to provide clear and focused technical advice to developing nations and SMEs to benefit from improved trade facilitation. The four main pillars of the program are:

- Supporting, coordination and strengthening of national trade facilitation committees.
- Assisting developing countries to categorize trade facilitation measures taking into account the views and perspectives of private sector.
- Assisting developing countries to define and build bankable projects under Category C.
- Launching a Trade Facilitation Hotline.

3.3. The General Agreement on Tariffs and Trade (GATT) and Trade

Facilitation

There was a need to end the ongoing conflicts around the globe after two world wars and a great depression. The importance of need for peace and prosperity required international institutional framework. The advent of the United Nations and the Bretton Woods institutions were a subsequent to recognition the need for global peace and prosperity for all. The Bretton Woods system was constituted of three pillars: The International Monetary Fund (IMF) to secure financial stability; the World Bank (WB) to rebuild the development related infrastructure and the International Trade Organization (ITO) to promote global trade among nations.

In 1950, the United States government, the Truman administration, announced that it would not seek Congressional ratification of the Havana Charter which had provisions for establishment of the ITO. The lack of legal institutional foundation was the reason for The General Agreement on Tariffs and Trade (GATT) to become only a multilateral instrument governing international trade.

The GATT was negotiated in Lake Success, New York and was signed on 10/30/1947 and took effect on 01/01/1948. The focal point of negotiations of the GATT was mainly on the tariffs by reducing tariff volatility, and reducing the general level of tariffs altogether (Mavroidis, 2008). There are eight different rounds of trade negotiations under the auspices of GATT since its establishment.

Table 3.3. 1: Trade Negotiations

Year	Name of the Round	Subjects covered	Number of Participant Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Dillon	Tariffs	26
1964-1967	Kennedy	Tariffs and anti-dumping measures	62
1973-1979	Tokyo	Tariffs, non-tariff measures, “framework” agreements	102
1986-1994	Uruguay	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

Source: WTO

First five rounds only emphasized on the reduction of tariff barriers. The basis of negotiations shifted from tariff barriers to non-tariff barriers with Kennedy Round. However, the first attempt for the improvement of the trading system was in the Tokyo Round. Uruguay Round was the final and most extensive negotiations under the GATT which led the establishment of World Trade Organization (WTO). Trade Facilitation Agreement is the subsequent to the Doha Round which is the first and the current trade openings within the WTO.

WTO provides necessary legal institutional coverage for the GATT. Agreement establishing the WTO known as the Marrakesh Agreement is the main agreement and the GATT is one of its annexes. The GATT 1994 which is a new agreement that substantially modified during the Uruguay round is no longer the same agreement as the GATT 1947 and legally distinct from it which comprises the below components:

The General Agreement on Tariffs and Trade 1994 ("GATT 1994") shall consist of:

- (a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;
- (b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:
 - (i) protocols and certifications relating to tariff concessions;
 - (ii) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);
 - (iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement 1;

(iv) other decisions of the CONTRACTING PARTIES to GATT 1947;

(c) the Understandings set forth below:

(i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;

(ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;

(iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;

(iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;

(v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;

(vi) Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994; and

(d) the Marrakesh Protocol to GATT 1994.

The main objectives of the GATT are: raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and

exchange of goods¹⁰. On the other hand, trading according to the most favourite nation treatment clause, national treatment rule, protecting domestic industry by only tariffs, and the reduction in tariffs are the four main principles of the GATT.

The GATT has provisions in regard with trade facilitation. However, the edifice was built back in 1940s and was not able to response the challenges of today's trade and technological changes. As it is indicated on its preamble, one of the objective of Agreement on Trade Facilitation is to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.

3.3.1. Article V of the GATT 1994: Freedom of Transit

Article V of the GATT 1994 defines the term of transit traffic and requires freedom of transit for all goods passing through the territory of each contracting party and restrict the distinction based on origin of goods or vessels. It requires exemption from custom duties for such goods and limits the administrative related charges and demands most favourable treatment for all parties and comprises the following elements:

- 1) Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and

¹⁰ See WTO's Sustainable Development Agenda;
https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm

terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

- 2) There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.
- 3) Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
- 4) All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
- 5) With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

- 6) Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.
- 7) The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

3.3.2. Article VIII of the GATT 1994: Fees and Formalities Connected with Importation and Exportation

Article VIII of the GATT 1994 is directly related to the cost of trade transaction and requires all trade related transaction fees and charges to be limited to the amount of average cost of services provided and not either represent an indirect protection to domestic products nor a taxation of imports or exports for fiscal purposes. It also imposes obligations on contracting parties to decrease the number and diversity of fees and charges as well as to simplify the trade related documentation requirements. Furthermore, it requires proportional balance between penalties and behaviors that breach the customs regulations and comprises the following elements:

- 1) (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

(c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.
- 2) A contracting party shall, upon request by another contracting party or by the Contracting Parties, review the operation of its laws and regulations in the light of the provisions of this Article.
- 3) No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
- 4) The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

(a) consular transactions, such as consular invoices and certificates;

- (b) quantitative restrictions;
- (c) licensing;
- (d) exchange control;
- (e) statistical services;
- (f) documents, documentation and certification;
- (g) analysis and inspection; and
- (h) quarantine, sanitation and fumigation.

3.3.3. Article X of the GATT 1994: Publication and Administration of Trade Regulations

Article X of the GATT 1994 is about the transparency of customs administration and predictability of customs procedures which is directly related to trade facilitation and requires the promptly publication of any cross- border trade related rules and regulations including laws and bilateral or multilateral agreements in a manner that all related parties can be acquainted with them. It requires all kind of measures that may impose financial burden on traders to be officially published before they enter in to force. Moreover, it requires a mechanism which can be summarized as the ‘right of appeal’ and it comprises the following elements:

- 1) Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
- 2) No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.
- 3) (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in

paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; *Provided* that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the Contracting Parties with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

3.4. Agreement on Trade Facilitation

World Trade Organization's (WTO) engagement in trade facilitation goes back to the Singapore Ministerial Conference in December 1996. The focus only gets closer on trade facilitation by 2001 Doha Ministerial Conference. It took more than a decade to negotiate Trade Facilitation Agreement (TFA) under the auspices of WTO whom members concluded on the Agreement at the Ninth Ministerial Conference held in Bali, Indonesia in December 2013. The TFA entered into force on 22/02/2017 when the two-thirds of WTO members ratified the TFA and deposited their instruments of acceptance with the WTO Secretariat.

The TFA¹¹ has three substantial objectives that comprises below elements:

- 1) Clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;
- 2) Recognize the particular needs of developing and especially least-developed country Members and enhance the assistance and support for capacity building in this area;
- 3) Provide effective cooperation among Members on trade facilitation and customs compliance issues.

¹¹ See WTO's Agreement On Trade Facilitation; https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm

There are three sections and twenty-four articles within the TFA. First section which consist of twelve articles focus on the clarification of Articles V, VIII and X of the GATT 1994 with provisions that enables further expediting the movement, release and clearance of goods, including goods in transit; Second section which consist of eleven articles comprises special and differential treatment provisions for developing country members and least-developed country members as well as provisions to assure effective collaboration of Members in regard with cross border trade. The last section which consist of two articles comprises institutional arrangements including National Committees on Trade Facilitation.

3.4.1. Publication and Availability of Information

Article 1 of the TFA is directly related to the Article X of the GATT 1994 and clarifies and improve its provisions in regard with publication and availability of information to ensure the transparency and predictability of the cross-border trade. It requires that all cross-border trade related information to be promptly published available through internet that all interested parties can access it in timely, accurately and easily manner.

This information includes primary and secondary trade legislation; levied rates of duties and taxes and imposed fees and charges in connection with importation, exportation or transit; rules and regulations in regard with classification, valuation, and origin of traded goods including tariff quotas; penalty provisions, trade restrictions and prohibitions; and procedures for appeal or review. Furthermore, in terms of increasing the communication and collaboration of related parties it requires each member to have at the least one inquiry

point to address these issues. To enhance this cooperation, it also requires each member to notify WTO in regards with requisitions mentioned above.

3.4.2. Opportunity to Comment, Information Before Entry into Force, And Consultations

Article 2 of the TFA is about collaboration, communication, and partnership of public agencies and private sector. It requires not only publicly availability of new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit before their entry into force but also opportunity for related parties to comment on them at the stage of their proposition as well as an environment of consultation whenever needed by where traders or other related parties.

3.4.3. Advance Rulings

Article 3 of the TFA requires issuing binding ruling on tariff classification and the origin of goods and encourages to enhance it on the customs value, exemption from customs duties, quotas including tariff quotas in a reasonable, time-bound manner upon written request containing all necessary information. It states that an advance ruling should be valid for a reasonable time period and any change to the ruling including revoking, modification, or invalidation of it shall be in a written manner.

3.4.4. Procedures for Appeal or Review

Article 4 of the TFA requires a mechanism that guarantees the right of independent appeal or review by a higher administrative authority or a judicial authority to anyone who are

affected from an administrative decision by customs authority or any other border agency. Furthermore, it indicates that all related administrative decisions shall include its reasons so the petitioner can recourse to an appeal or review when necessary. In the case of not giving a decision on appeal or review within the time periods specified in laws and regulations or without undue delay, then the petitioners shall be provided with the right for filing further appeal or review.

3.4.5. Other Measures to Enhance Impartiality, Non-Discrimination and transparency

Article 5 of the TFA is about the issuance, termination, or suspension of sanitary and phytosanitary measures for protecting human, animal and plant life or health and requires to well communicate and apply these measures only at the borders where necessary on the bases of risk in a non-discriminatory manner for only periods of time that's necessary.

Furthermore, it requires importers or carriers to be promptly notified of the detention of goods for further inspections. It also requires customs authorities to provide an opportunity for a second test if the results of the first test contain adverse findings. In such cases the traders shall be provided with the information about the name and address of the laboratory where the second test can be conducted in a non-discriminatory and easily accessible manner.

3.4.6. Disciplines On Fees and Charges Imposed On or in Connection with Importation and Exportation and Penalties

Article 6 of the TFA is directly related to the trade transaction cost that further clarifies the Article VIII of the GATT and applies to all kinds of cross-border trade related fees and charges other than duties and taxes. It requires the publication and communication of the information about the reasons for such fees and charges, responsible authorities and payment conditions as well as periodic review of their necessity and restricts the application of new or amended fees and charges before publication of the information. It seeks that all trade related transaction fees and charges to be limited to the amount of average cost of services provided.

It also requires that in the case of breach of customs regulations the penalties to be imposed only on the person responsible for such breach and are commensurate with the degree and severity of the breach. Moreover, it seeks to ensure that conflicts of interest or intensives that are inconsistent with it does not exist in terms of assessment and collection of penalties and duties. It also pursues that a written explanation to be provided to the person concerned in the case of penalty imposition and considers as a mitigating factor for the voluntary disclosure of a breach priory to discovery of such breach by customs administration.

3.4.7. Release and Clearance of Goods

Article 7 of the TFA is about the expediting release and clearance of goods. The WCO Revised Kyoto Convention (RKC) defines Customs clearance as “the accomplishments of

the Customs formalities necessary to allow goods to enter home use to be exported or to be placed under another Custom procedure”, and release as “the action by the Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned” (WCO, 2006)

It requires Members to establish and maintain the procedures for pre-arrival processing which allows to submit the import documentation and other required information in order to begin processing prior to the arrival of goods; maintain procedures that allows the option of electronic payment for duties, taxes, fees, and charges collected by customs; maintain procedures that allows the release of goods prior to the final determination of customs duties, taxes, fees, and charges; maintain a risk management system for customs controls; maintain post-clearance audit to ensure compliance with customs and other related laws and regulations; measure and publish the release time of goods periodically and in a consistent manner; provide additional trade facilitation measures related to import, export, or transit formalities and procedures to authorized operators; maintain procedures which allows to expedite the release of goods for air cargo shipments; and develop specific measures to expedite the release of perishable goods.

3.4.8. Border Agency Cooperation

Article 8 of the TFA requires cooperation and collaboration of border agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods to facilitate trade. It also seeks cooperation and coordination of agencies from different countries who share the same border to facilitate cross-border trade in terms of;

alignment of working days and hours; alignment of procedures and formalities; development and sharing of common facilities; joint controls; establishment of one stop border post control. Single Window is a tool to enable the first type of internal coordination and One Stop Border Post is a tool used for the second type of external coordination.

3.4.9. Movement of Goods Intended for Import Under Customs Control

Article 9 of the TFA requires Members to enable the movement of goods under customs control within its territory from the point of entry customs office to another point of customs office where goods are intended to be imported.

3.4.10. Formalities Connected with Importation, Exportation and Transit

Article 10 of TFA aims to minimize the incidence and complexity of import, export, and transit formalities and to decrease and simplify import, export, and transit documentation requirements in a way that a rapid release and clearance of goods as well as a reduced burden of time and cost of compliance can be achieved.

It requires Members to accept both paper and electronic copies of documents, not to seek original copy of any document that's already hold by other government agency, not to seek original copy of export declarations as a requirement for importation; use international standards and best practices in respect of customs procedures; establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods

through a single entry point to the participating authorities or agencies; not require the use of preshipment inspections in relation to tariff classification and customs valuation; not introduce the mandatory use of customs brokers; apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory: allow the

importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter; establish or maintain processes for temporary admission of goods and inward and outward processing.

3.4.11. Freedom of Transit

Article 11 of the TFA is directly related to the Article 5 of the GATT 1994 with a further view of facilitating cross-border trade. It requires Members not to maintain any regulation that its objectives can be achieved in a less trade-restrictive manner nor do Members maintain any regulation that has disguised restriction on traffic in transit. It also requires Members not to condition the transit upon collection of any fees or charges related with transit; not to maintain any voluntary restraints or any other similar measures on traffic in transit; not to be discriminatory in respect with transit; not to have documentation requirements that's more burdensome than necessary; not to levy any customs charges on goods in traffic; not to apply any procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.

Furthermore, it seeks Members to have physically separate infrastructure traffic in transit; procedures for pre-arrival processing and a promptly termination of transit at the destination point; procedures to allow and discharge guarantees-sureties and comprehensive guarantees that are only limited to transit requirements; procedures allow customs escort only with high risk transits; cooperation and coordination with other Members' authorities to enhance freedom of transit; appoint a national transit coordinator to which all enquiries and proposals by other Members can be addressed.

3.4.12. Customs Cooperation

Article 12 of the TFA obliges Members to share information in respect of compliance with customs laws and regulations. It contains provisions on measures promoting compliance and cooperation; exchange of information; verification prior to a request; the format of a request; protection and confidentiality; provision of information; postponement or refusal of a request; application of reciprocity; administrative burden of responding to request for information; limitations on information provided; unauthorized use or disclosure of information.

CHAPTER FOUR

4. Trade Facilitation in U.S. Customs and Border Protection

Trade facilitation refers to efforts to simplify and streamline international trade procedures to sanction for the more facile flow of legitimate goods across international boundaries and thereby to reduce the costs of trade. Trade facilitation includes the availability of advanced customs rulings, transparent and efficient procedures, elimination of “red tape,” clear information, efficacious communications, and cooperation between border agencies, among other provisions (Library of Congress. Foreign Affairs Division, 2013).

With the production of goods increasingly organized into global supply chains, in which the manufacture and final product assembly often occur in two or more countries, intermediate components during the manufacturing process are a significant percentage of total exports in most countries, and a wide variety of U.S. manufacturers depend on the efficient import and export of these inputs.

Trade facilitation is a priority for CBP and the trade community because trade represents a key component of the U.S. economy. International trade accounts for about a quarter of the U.S. economy, with merchandise trade (i.e., cargo) accounting for more than three-quarters of all U.S. trade flows.

Trade Facilitation efforts of CBP was a result of pure administrative customs approach before the events of 9/11. However, the U.S.’ overall response to these events have dramatically changed the CBP’s facilitation strategy. Contemporary conventional trade

facilitation efforts of CBP goes back to The Customs Modernization and Informed Compliance Act (Mod Act). Post 9/11 efforts of CBP resets the trade facilitation concept and puts forth a ‘whole’ approach. This new approach emphasizes on three aspect of the concept of the trade facilitation; import security, enforcement, and facilitation. Most recent regulation in regard is the Trade Facilitation and Trade Enforcement Act of 2015, which is also designed as a part of over all three aspect approach (import security, enforcement, and facilitation)

4.1. U.S. Foreign Trade

The United States is the second largest international trader after China. It ranks number 2 with the value of \$1.5 trillions of merchandise exports and number 1 with the value of \$2.4 trillions of merchandise imports in world trade in 2017. In 2017 with the trade share of %21.8 China is the largest trader partner of the United States followed by European Union (%18.5), Mexico (%13.2), Canada (% 12.7), and Japan (5.8). Petroleum oils (other than crude), motor cars for transport of persons, parts for motor vehicles, electronic integrated circuits, radio-telephony transmission tools are the respectively top exported products. On the other hand, motor cars for transport of persons, petroleum oils (crude), radio-telephony transmission tools, automatic data processing machines, and parts for motor vehicles are the most imported products respectively¹².

¹² See WTO’s Trade Statistics;
<http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Country=US,CN&Language=S>

4.2. U.S. Customs and Border Protection

Customs and Border Protection's (CBP) history of service dates back to July 4, 1789, to the establishment of a system of tariffs on imports which then led to the creation of the U.S. Customs Service (USCS) . Since then the U.S. Customs have gone through different institutional changes to address cross-border trade related issues including revenue collection and border protection. However, the most comprehensive organizational change was as a result of the terrorist attacks of September 11, 2001, which brought to light the need for unifying law enforcement and homeland security efforts. As a result of these efforts the Department of Homeland Security (DHS) was established by the enactment of Homeland Security Act of 2002.

CBP was established on March 1, 2003, by merging the legacy organizations of U.S. Customs Service, major elements of the U.S. Immigration and Naturalization Service, including the Immigration Inspections Program, the U.S. Border Patrol, and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. CBP also developed an air and marine monitoring capability with the formation of its third uniformed division, the Office of Air and Marine in 2006, and most recently, it added select functions of DHS's former U.S. Visitor and Immigration Status Indicator Technology (US-VISIT).

The resulting unified Federal law enforcement agency as an operational and support component of the DHS now called CBP became the nation's first comprehensive border security agency focused on securing the country's borders while facilitating legal trade and travel with the mission of safeguarding America's borders thereby protecting the public

from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel (CBP, 2015).

CBP's approximately 59,000 employees manage, control, and protect the Nation's borders at and between 328 ports of entry. CBP is responsible for protecting more than 5,000 miles of border with Canada, 1,900 miles of border with Mexico, and 95,000 miles of shoreline. In 2016, CBP processed more than \$2.4 trillion imports which accounts for more than 32.4 trade entries and 390 million passengers, while collecting nearly \$44.6 billion in revenue (CBP, 2016).

4.3. Legislative Background of U.S. Trade Facilitations and Enforcement Efforts

Trade facilitation efforts in U.S. Customs Services will be analyzed in two totally different time frames; before 9/11 and after 9/11 legislation. The traditional role of the U.S. Customs Services was to gather customs tariffs that were the main revenue source for the U.S. government till the federal income tax was established in 1913. Traditional trade facilitation efforts dates back to the Tariff Act of 1930 and evolve since then with the gaining additional trade functions by the enactment of the Customs Simplification Act of 1953, the Reorganization Plan of 1965 and eventually Customs Modernization and Informed Compliance Act of 1993 that additionally referred to as 'Mod' act (Library of Congress. Foreign Affairs Division, 2013).

Post 9/11 trade facilitation and enforcement legislations mainly focus on import security, trade enforcement and homeland security. Trade Act of 2002, Maritime Transportation

Security Act of 2002, Homeland Security Act of 2002, Coast Guard and Maritime Transportation Act of 2004, Security and Accountability for Every (SAFE) Port Act of 2006, and Implementing Recommendations of the 9/11 Commission Act of 2007 are the main post 9/11 legislation that address issue of homeland security through trade security. U.S response to WTO’s Trade Facilitation Agreement is the Trade Facilitation and Trade Enforcement Act of 2015 which is the backbone of trade facilitation and enforcement efforts within the CBP.

4.3.1. Customs Modernization and Informed Compliance Act

The Customs Modernization and Informed Compliance Act which is known as The Mod Act, implemented on December 8, 1993, amended many sections of the Tariff Act of 1930 that applied to USCS’s role in trade enforcement. The Act was the culmination of a multi-year effort among Congress, the USCS, and the Joint Industry Group (a coalition of private-sector firms involved in international trade), to develop legislation on Customs modernization. While the main purpose of the Act was to contour, automate, and modernize USCS’s commercial operations, The Act was additionally meant to enhance compliance with U.S. customs laws, and to produce safeguards, uniformity, and due process rights for importers (Library of Congress. Foreign Affairs Division, 2013).

The Mod Act addressed the stress between trade facilitation and trade enforcement by commutation the historical “agency-centric” model of trade enforcement with a “shared responsibility” approach. Thus, whereas USCS previously had monitored imports and determined the amount of customs duties owed by every importer, beneath the shared

responsibility approach USCS is needed to inform importers of their rights and responsibilities under the customs laws and related laws; and importers of record are needed to bear in mind of their legal obligations and to form their own duty determinations through the concept of “informed compliance”. Importers are needed to exercise “reasonable care” once classifying and determining the value of imported merchandise. If importers have questions on the country of origin, classification, or valuation of merchandise, they may apply to CBP for a binding determination (known as a customs ruling) before importation (Library of Congress. Foreign Affairs Division, 2013).

The Mod Act set a more noteworthy regulatory burden on the importer, and moved USCS’s focus to the collection of information and post-entry enforcement (i.e., audits) to guarantee that all lawful necessities have been met. By diminishing USCS’s role in obligation assurance, the Act freed up organization resources to modernize the import process and move forward post-entry enforcement. Private industry partners accepted these expanded obligations since the law moreover given for a faster and more transparent import processes through streamlined and computerized customs operations (Library of Congress. Foreign Affairs Division, 2013).

4.3.2. Trade Act of 2002

Customs reauthorization legislation in the Trade Act of 2002 (Title III of P.L. 107-210, the Customs Border Security Act of 2002) authorized appropriations for a number of noncommercial and commercial CBP programs as well as CBP’s air and marine interdiction program. Funds were also authorized to be appropriated for the Automated

Commercial Environment for equipment and programs for drug enforcement, and for the detection of terrorists and illicit narcotics along the U.S. borders with Mexico and Canada, and in Florida and Gulf Coast seaports. The Trade Act also included one of the most significant additions to the customs clearance process since 9/11: a requirement that importers and exporters submit advance cargo manifest information prior to cargo arriving at a U.S. port of entry (POE).

The law approved the Secretary of the Treasury to publish regulations requiring the submission of this data, and directed the Secretary to consult with a broad range of import and export stakeholders and to base the regulations on the Secretary's determination of what's "reasonably necessary to confirm aviation, maritime, and surface transportation safety and security." CBP uses this advance cargo data to conduct risk-based targeting through the automated Targeting System (Library of Congress. Foreign Affairs Division, 2013).

4.3.3. Maritime Transportation Security Act of 2002

The Maritime Transportation Security Act of 2002 (MTSA, P.L. 107-295) expanded DHS's authority under the Trade Act of 2002 to collect and share advance cargo data, and took several steps to strengthen port security. Section 102 of the MTSA established a new chapter of the U.S. Code (46 U.S.C. 701) to establish DHS's overall role in port security. Among other things, the law required DHS to assess vessel and port security and to develop national and regional maritime transportation security plans, required certain ports and vessels to develop security and incident response plans to be approved by DHS, and

established a Department of Transportation grant program to help ports implement their security plans.

The MTSA moreover set up modern security prerequisites for U.S. and foreign ports and for ships working in U.S. waters. Within the United States, the law required DHS to set up controls to prevent people from entering secure zones of vessels or ports unless the people hold security cards. The port security cards are known as Transportation Worker Identity Credential (TWIC) cards, and are managed by the Transportation Security Administration (TSA) along with the U.S. Coast Guard. With regard to foreign ports, law required DHS to evaluate port security at foreign ports and to inform foreign ports in the event that they are found to need appropriate counter-terrorism measures. DHS is authorized to restrict the entry of vessels arriving from foreign ports that come up short to preserve compelling counterterrorism measures. With regard to ships and other vessels operating in U.S. waters, the law required that certain vessels be equipped with an automatic identification system while operating in U.S. waters, and that DHS also develop and implement a long-range automated vessel tracking system for certain vessels (Library of Congress. Foreign Affairs Division, 2013).

4.3.4. Homeland Security Act of 2002

The Homeland Security Act of 2002 (HSA, P.L. 107-296) created a framework for the transfer of all or part of 22 different federal departments into the Department of Homeland Security (DHS), including the USCS and the U.S. Coast Guard. Title IV of the act created within DHS a Directorate of Homeland Security headed by the Under Secretary for Border

and Transportation Security. The Directorate was given responsibility for preventing the entry of terrorists and the instruments of terrorism into the United States, and for ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce, among other things. Title IV also established the U.S. Customs Service and the office of the Commissioner of Customs within DHS (Library of Congress. Foreign Affairs Division, 2013).

The act indicated that certain customs income capacities would be held by the Secretary of the Treasury, who may designate the specialist to the Secretary of Homeland Security. In spite of the fact that the customs inspection and enforcement authority of the previous USCS were transferred to CBP, Section 412(b) of the HSA mandated that DHS could not “consolidate, discontinue, or diminish” the trade and customs income capacities of the USCS, or decrease staffing levels or the resources inferable to these capacities (Library of Congress. Foreign Affairs Division, 2013).

4.3.5. Coast Guard and Maritime Transportation Act of 2004

The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) contained a number of maritime security provisions that amended the MTSA. Title VIII of the law added security requirements to the import process provisions, including amendments to certain long-range vessel tracking system requirements. DHS was also required to submit a plan for implementation of a maritime intelligence system (previously authorized in the MTSA) to incorporate information on vessel movements and assign incoming vessels a terrorism risk rating.

Section 808 of the law required the Department of Transportation to “conduct investigations, fund pilot programs, and award grants” to examine and develop certain equipment to enhance the investigative ability of CBP, including equipment to accurately detect nuclear, chemical, or biological materials; and tags and seals equipped with sensors that are able to track marine containers throughout their supply chains and to detect hazardous and radioactive materials within containers (Library of Congress. Foreign Affairs Division, 2015).

The law moreover required DHS to report on a few cargo import security issues, counting the costs to the government of vessel and container inspections, plans for actualizing secure systems of transportation, progress on the establishment of radiation detectors at all major U.S. seaports, the eagerness of foreign seaports to utilize non-intrusive inspection (NII) methods to examine cargo bound for the United States, and assessment of the existing cargo inspection targeting system for international intermodal cargo containers (Library of Congress. Foreign Affairs Division, 2013).

4.3.6. Security and Accountability for Every (SAFE) Port Act of 2006

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) published its report on the circumstances surrounding the 9/11 attacks and made recommendations to guard against future attacks. The report expressed concern that the United States lacked “a forward-looking strategic plan” that devoted adequate attention to maritime and surface transportation. Congress responded by passing the Security and Accountability for Every Port Act of 2006 (SAFE Port Act, P.L. 109-347)

and the Implementing Recommendations of the 9/11 Commission Act of 2007 (The 9/11 Act, P.L. 110-53).

The SAFE Port Act focused on international supply chain security that it defines it as the “end-to-end process for shipping merchandise to or from the United States starting at the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination.” With regard to maritime cargo security: authorized cargo to be screened through CBP’s Automated Targeting System (ATS); authorized the Container Security Initiative (CSI) that is intended to spot and examine or search maritime containers that create a security risk before loading such containers in a foreign port for shipment to the United States; authorized the Customs-Trade Partnership Against Terrorism (C-TPAT) as Trusted Trader Program and set forth C-TPAT program parameters; directed DHS to determine pilot programs know as Secure Freight Initiative (SFI) in three foreign seaports to conduct non-intrusive inspection (NII) and radiation detection scanning of cargo containers; and required that 100% of cargo containers originating outside the United States and imported into the United States be screened by DHS to spot risky containers (Library of Congress. Foreign Affairs Division, 2013).

4.3.7. Implementing Recommendations of the 9/11 Commission Act of 2007

The 9/11 Act of 2007 included two provisions with respect to the import process. First it required that 100% of air cargo bound for the United States or traveling within the United States be subject to scanning or inspection commensurate with standards established for passenger checked baggage; second it required that 100% of maritime containers imported

to the United States—that is, whether or not they are identified as high-risk during the ATS screening process—be scanned by NII and radiation detection equipment before being loaded onto a vessel in a foreign port (Library of Congress. Foreign Affairs Division, 2015).

4.3.8. The Trade Facilitation and Trade Enforcement Act of 2015

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was signed into law P.L. 114-125 on February 24, 2016. It is the first comprehensive authorization of U.S. Customs and Border Protection (CBP) since the Department of Homeland Security was created in 2003, with the overall objective to ensure a fair and competitive trade environment. This Act supports CBP’s efforts to protect U.S. Economic Security through Trade Enforcement; collaborate with the Private Sector through direct engagement; and streamline and modernize processes through Business Transformation initiatives to meet the demands and complexities of a rapidly evolving global supply chain ¹³.

The Trade Facilitation and Trade Enforcement Act of 2015 defines the term “trade facilitation” as the policies and activities of U.S. Customs and Border Protection with respect to facilitating the movement of merchandise into and out of the United States in a manner that complies with the customs and trade laws of the United States (TFTEA, 2015). The Act strengthens enforcement capabilities and methods—including increased bonding, enhanced targeting of high-risk imports, and swift and thorough review of allegations to

¹³ See CBP’s Trade Facilitation and Trade Enforcement Act of 2015; <https://www.cbp.gov/trade/trade-enforcement/tftea>

better enforce U.S. trade laws and regulations; establishes a new administrative procedure for investigating allegations of evasion of Antidumping and Countervailing Duty (AD/CVD) orders, including an ability to draw adverse inferences for failing to provide information; enhances CBP's efforts to combat the import of counterfeit goods and protect Intellectual Property Rights (IPR) holders, and to improve enforcement of AD/CVD laws; and prohibits all products made by forced labor, including forced or indentured child labor, from being imported into the United States.

The Act reinforces collaboration with both Partner Government Agencies (PGAs) and the private sector; authorizes the Commercial Customs Operations Advisory Committee (COAC) to advise on CBP's regulations, policies, and practices; formalizes CBP's industry seminar programs through which CBP selects interested parties to provide educational trade enforcement seminars to the agency's personnel; and codifies the requirement for CBP's longstanding consultation with PGAs, private sector entities, and the public to ensure that CBP partnership programs provide significant benefits to the commercial industry.

It additionally extends the funding through 2018 for the Automated Commercial Environment (ACE)—the backbone of the U.S. Government's "Single Window" system of imports and exports—which transmits the private sector's import-export information to 47 PGAs, eliminating over 200 totally different forms, and streamlining trade processes; supports CBP's efforts to develop and implement the Centers of Excellence and Expertise (Centers) — nationwide, industry-specific centers that enhance the enforcement of trade

laws and regulations, provide uniformity of trade practices across U.S. Ports of Entry, and build industry expertise within CBP; acknowledges the authority to determine and maintain CBP's preclearance program for international travelers, authorizing immigration, customs, and agriculture examination of every U.S. bound traveler before boarding a direct flight to the United States; simplifies and modernizes drawback legislation governing the refund of relevant duties, taxes, and fees to increase efficiencies for the trade community; and raises the de minimis value from \$200 per shipment to \$800 per shipment¹⁴ .

4.4. Trade Facilitation Strategy of CBP

CBP has a mission of protecting American people, economy and borders by enhancing Nations' safety, security, and prosperity through collaboration, innovation and integration. Strategic trade goal of CBP is to 'Enhance U.S. Economic Competitiveness by Enabling Lawful Trade and Travel'. Advancing U.S. economic competitiveness and promoting economic prosperity requires not only public-private partnerships but also international partners. Efficiently and effectively processing goods and people across borders is crucial to support the Nation's economy, promote job growth, and help the private sector remain competitive in an evolving global economy. This requires reducing barriers to the efficient flow of trade and travel, streamlining and unifying processes and procedures, and managing the volume of cargo and passengers by separating goods and travelers according to the risks they pose. CBP has three trade facilitation objectives; reducing trade cost;

¹⁴ See CBP's Trade Facilitation and Trade Enforcement Act of 2015—Overview; <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Trade%20Facilitation%20and%20Trade%20Enforcement%20Act%20of%202015%20-%20Overview.pdf>

promoting harmonization; and expanding risk segmentation (CBP, 2015).

4.4.1. Reducing Cost of Trade

The first trade facilitation objective of CBP is to reduce costs for the U.S. government and therefore the trade and travel communities by streamlining processes in collaboration with public and private sector partners. Eliminating barriers to the flow of lawful cargo and passengers can help create a contemporary, efficient, and cost-effective international trade and travel system. By making a common-sense approach that complements the international environment, CBP provides businesses and individuals with greater predictability and transparency to advance economic competitiveness. This needs transformative thinking in collaboration with the private sector to leverage innovative technology and processes. CBP strengthen its focus on integrating process capabilities for trade and travel across the Federal enterprise to cut back administrative burdens. In addition, leading a unified whole-of-government approach to maneuver lawful product and passengers more quickly across borders can support a dynamic and resilient economy (CBP, 2015).

4.4.2. Promoting Harmonization

The second trade facilitation objective of CBP is to promote harmonization throughout ports of entry and other U.S. government agencies. In a fast-paced, interconnected world economy, uniform and predictable decision-making is crucial to making the business certainty necessary to support economic competitiveness. This needs that CBP harmonize

processes across the ports of entry supporting a unified facilitation and enforcement posture. It additionally requires that CBP lead efforts to unify approaches across the Federal enterprise to confirm a whole-of-government approach and to guide the international development of common practices (CBP, 2015).

4.4.3. Expanding Risk Segmentation

The third trade facilitation objective of CBP is to expand risk-segmentation through advanced technology to enable low-risk trade and travel. The majority of cross-border traffic consists of lawful and compliant trade and travel. Categorizing merchandises and travelers in consistent with the risks they create through risk segmentation allows CBP to expedite legitimate passengers and cargo. Enhancing identification of the portion of border traffic that ought to be expedited needs an accurate risk assessment for each traveler and cargo shipment over land, water, or air that crosses the U.S. border. information and data are central to the analysis of risk and therefore the useful assessment of actionable intelligence (CBP, 2015).

4.5. Trade Facilitation Implementations of CBP

Facilitating trade without securing trade environment results vulnerabilities for national economies. The American nation is the one that has experienced this exposure through 9/11 events. Facilitating trade while enforcing trade laws and assuring import security is one of key components of CBP's roles to ensure fair and competitive trade environment. One needs to understand the trade enforcement implementations of CBP to better

understand the trade facilitation implementations of CBP.

4.5.1. Major Trade Enforcement Implementations of CBP

The enforcement of trade laws designed to protect U.S. consumers and business against illegal imports and to collect customs revenue. In general, U.S. trade laws seek to protect U.S. consumers by enforcing health and safety standards, and to protect U.S. businesses by enforcing patent, trademark, and copyright laws and by collecting anti-dumping and countervailing duties (AD/CVD) (Library of Congress. Foreign Affairs Division, 2015). Trade enforcement policies also govern the collection of tariffs, fees, and taxes; CBP generated more than \$44 billion in revenue in FY2016, including more than \$34 billion in customs duties (CBP, 2016). Main trade enforcement implementations are formed in the Trade Facilitation and Trade Enforcement Act of 2015. Two major trade enforcement implementations that comprise the Act are the import-related protection of intellectual property rights, and prevention of evasion of antidumping and countervailing duty orders and prohibition of imports of all merchandise made by forced labor.

4.5.1.1. Intellectual Property Rights Enforcement

According to Title III of the Trade Facilitation and Trade Enforcement Act of 2015 intellectual property rights refers to copyrights, trademarks, and other forms of intellectual property rights that are enforced by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement. The Act authorizes and directs 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; authorizes a seizure if CBP determines suspect merchandise is a circumvention device, and directs CBP to notify an injured right holder of the seizure and provide information required by CBP regulations; and establishes within Immigration and Customs Enforcement (ICE) the National Intellectual Property Rights Coordination Center (TFTEA, 2015).

CBP employs a multi-layered, risk-based approach to enforce intellectual property rights at the border. This strategy, that mitigates the risk of fraudulent shipments coming into the country, depends on two key elements: enforcement and partnership. At the border, CBP is authorized to exclude, detain and/or seize imported merchandise that infringes federally registered and recorded trademarks and copyrights and/or is covered by an exclusion order issued by the U.S. International Trade Commission.

CBP collaborates with other federal agencies and foreign governments to guard America's innovation and competitiveness. One in all these vital partnerships is with the National Intellectual Property Rights Coordination Center (IPR Center). Through the IPR Center, CBP conjointly participates in multi-agency operations targeting counterfeit and pirated merchandise. CBP is the number one source for criminal investigative leads referred to Immigration and Customs Enforcement/Homeland Security Investigations.

One of CBP's most significant cooperative partnerships is with the trade community. enforcing intellectual property rights is a complex process and partnering with rights holders and industry organizations is vital to CBP's success. The flow of counterfeit and pirated merchandise is a international downside that requires vigorous collaboration

between customs agencies and rights holders to confirm effective intellectual property enforcement at the border. Collaborating with CBP provides several advantages for rights owners of patents, copyrights, and trademarks to ensure maximum intellectual property rights protection. CBP provides three main tools for such collaboration; e-Recordation, e-Allegations, and information sharing.

e-Recordation is that the platform that trademarks and copyrights registered with the U.S. Patent and Trademark Office or U.S. Copyright Office can be recorded with CBP to maximize their protection at the border. The advantages of e-Recordation include: making intellectual property rights data available at the ports to assist CBP personnel with infringement determinations; eliminating paper applications and therefore the need for supporting documents; allowing rights owners to upload images of their protected rights. e-Allegations is that the online reporting system of CBP for businesses and rights owners to submit allegations of infringing shipments. CBP uses this data to target these activities and may refer cases for criminal investigations. Finally, CBP reaches out to rights owners for assistance in making infringement determinations by Product Identification Guides which provide in depth data concerning recorded intellectual property rights and Product Training Sessions during which firms provide product identification training to CBP personnel at ports of entry concerning their IPR protected products (CBP, n.d.).

4.5.1.2. Prevention of Evasion of Antidumping and Countervailing

Duties and Trade Remedy Enforcement

According to TFTEA the term ‘evade and evasion’ refer to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise (TFTEA, 2015). On the other hand, the same Act specifies that the term ‘trade remedy laws’ means title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) which basically are the imposition of countervailing and antidumping duties.

The Act establishes the Trade Remedy Law Enforcement Division within CBP’s Office of Trade devoted to the advancement, administration and execution of policies to prevent and counter evasion. Trade Remedy Law Enforcement Division would encourage, advance, arrange and coordinate the trade of data between CBP, ICE, and other federal agencies with respect to evasion. It would moreover serve as the essential touchpoint with respect to activities concerning evasion, allegations made against them and investigation comes about. The division would contain a National Targeting and Analysis Group and would issue trade alerts to directors of ports of entry directing advance inspection, physical examination, or testing of merchandise to guarantee compliance with the trade remedy laws.

Title IV, section 421 of TFTEA of 2015 is also known as the Enforce and Protect Act (EAPA) authorizes the Department of Commerce to investigate evasion of antidumping and countervailing duty orders and establishes the procedures for such investigations. It also requires close collaboration between CBP and Department of Commerce in terms of information exchange regarding evasion investigations including administrative records of such investigations.

CBP's e-Allegations web portal provides a platform to file an allegation against merchandises that has been entered into the customs territory of the United States through evasion; or such entry was made by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable antidumping and/or countervailing duties cash deposits or other security. Once CBP initiates an allegation it has to reach a determination as to evasion unless the investigation is extraordinary complicated¹⁵.

4.5.1.3. Forced Labor

One of the other important trade enforcement implementations that CBP emphasizes is prohibition of imports of all products made by forced labor. Section 307 of the Tariff Act of 1930 determines 'Forced Labor' as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily including forced or indentured child labor (CBP, n.d.-a).

According to the Tariff Act of 1930 the importation of all goods, wares, articles, and

¹⁵ See CBP's e-Allegations submit platform; <https://eallegations.cbp.gov/Home/Index2>

merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions and subject to the exclusion and/or seizure, and may lead to criminal investigation of the importers. If information available reasonably but not conclusively indicates that merchandise is related to the forced labor, then CBP may issue withhold release orders. On the other hand, if the CBP provided with information sufficient to make a determination that the goods in question are subject to forced labor then CBP will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register¹⁶.

Any person who has reason to believe that merchandise manufactured by forced labor is being, or is likely to be, imported into the U.S. might communicate directly with CBP or file a case through CBP's e-Allegation portal. CBP partners with U.S. Immigration and Customs enforcement and other collaborating U.S. government agencies to analyze forced labor allegations. CBP encourages stakeholders within the trade community to closely examine their supply chains to make sure merchandise imported into the U.S. are not mined, produced or manufactured, completely or partially, with prohibited types of labor, i.e., slave, convict, indentured, forced or indentured child labor¹⁷.

¹⁶ See Code of Federal Regulation-19 C.F.R. § 12.42; https://www.ecfr.gov/cgi-bin/text-idx?SID=ec910d61e534d17331d166a0179aabac&mc=true&node=se19.1.12_142&rgn=div8

¹⁷ See CBP's Forced Labor Implementations; <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>

4.5.2. Major Trade Facilitation Implementations of CBP

Trade facilitation involves tension with trade enforcement and import security because trade facilitation involves encouraging faster and more efficient trade flows, while trade enforcement and import security involve identifying and preventing illegal flows – often slower cargo flows and reduce efficiency (Library of Congress. Foreign Affairs Division, 2015). Trade facilitation implementations, in the US Customs Border Protection context can be classified into security-driven facilitations and trade-driven facilitations.

4.5.2.1. Security-Driven Facilitation Implementations

Import security highlights the protection of the US homeland from the entry of weapons of mass destruction, illicit drugs and other contraband goods. Although customs agencies have always played a role in the protection of public safety, including through drug enforcement, the 9/11 terrorist attacks have caused many Americans to pay more attention to transportation and port security (Library of Congress. Foreign Affairs Division, 2013) . As a result of this emphasize CBP focuses it efforts in cargo security and traveler security.

4.5.2.1.1. Cargo Security

In FY 2017 more than 28.5 million cargo containers arrived at US ports by maritime, rail and truck (CBP, 2017). CBP develops programs through establishing partnership with the trade community to increase the security of the international trade. As part of these programs The Container Security Initiative (CSI) and the Customs-Trade Against Terrorism (C-TPAT) are the main response of CBP to the events of 9/11. Even though both

programs were initially implemented as security-driven initiatives, they evolved into one of backbone components of the CBP's overall trade facilitation implementations.

4.5.2.1.1.1. Container Security Initiative

Containers can pose numerous threats, and U.S. ports would be vulnerable to terrorist attacks without ensuring the security of containers and their contents considering the number of containers arrive at ports. Among others the worst scenario would be that one of containers that shipped to the US ports and moved to a major city might contain a nuclear bomb (Haveman, Jennings, Shatz, & Wright, 2007). In a recent estimate, a 10 to 20 kiloton nuclear weapon detonated in a major seaport would kill between 50,000 to one million people and result in direct property damage of \$50 to \$500 billion, losses due to trade disruption of \$100 billion to \$200 billion, and indirect costs of \$300 billion to \$1.2 trillion (United States. Congress. Senate. Committee on Homeland Security Governmental Affairs. Permanent Subcommittee on Investigations, 2005).

Therefore, it is very important to scan the marine cargo to detect the threat before cargo is loaded on ships for the United States. The Container Security Initiative (CSI), which aims to inspect containers in foreign ports, was set up as part of the U.S. Customs and Border Protection (CBP) layered cargo security strategy in response to terrorist attacks on September 11, 2001 ¹⁸.

¹⁸ See CBP's Container Security Initiative; <https://www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief>

Title II, Section 205 of Security and Accountability for Every (SAFE) Port Act Of 2006 establishes the CSI to identify and examine or search maritime containers that pose a security risk before loading such containers in a foreign port for shipment to the United States, either directly or through a foreign port. According to the SAFE Port Act of 2006, CBP may treat cargo loaded in a foreign seaport designated under the Container Security Initiative as presenting a lesser risk than similar cargo loaded in a foreign seaport that is not designated under the Container Security Initiative, for the purpose of clearing such cargo into the United State (CBP, 2006). Being treated as a cargo that present less risk under CSI is what makes the initiative a part of the trade facilitation implementations of CBP.

In an attempt to strengthen national security, the United States has been pushing out its borders through CSI that is designed to prevent containerized shipping-the primary means of transporting goods in global trade-from being exploited by terrorists (Romero, 2003). CSI is based on the premise that the security of the world's maritime trading system needs to be enhanced and that it will be more secure if high-risk cargo containers are targeted and screened before they are loaded (UNCTAD, 2004).

The initiative operates in 60 foreign ports in 35 countries - covering about 80 percent of shipping containers to the United States, it addresses the threat to border security and global trade from maritime containers. CBP officers in foreign ports work with their host government counterparts to target and examine high-risk cargo before they are placed aboard ships bound to the United States. In FY 2016, CBP officers at CSI ports reviewed

11.9 million bill of lading and conducted more than 101,800 exams with their host country counterparts (CBP, 2017).

The CSI program has four core elements (UNCTAD, 2004);

- Establishing security criteria to identify high-risk containers based on advance information;
- Pre-screening those containers identified as high-risk before they arrive at U.S. ports;
- Using technology to quickly pre-screen high-risk containers, including radiation detectors and large-scale x-ray and gamma ray machines;
- Developing secure and "smart" containers.

CSI provides benefit to international government and trade community. Among others some main substantial benefits of CSI are as follows (CBP, 2006a);

- CSI offers added protection, on a day-to-day basis, for the primary system of international trade – a system on which all national economies of the world depend.
- The collaboration between Customs administrations improves their capabilities and increases the overall effectiveness of the targeting process.
- By engaging international organizations, hosting global conferences and interfacing with foreign countries to address significant threats of terrorism, CSI is participating in developing a world standard.

- While providing security for the maritime cargo transportation system, CSI ensures that security mechanisms do not impede the flow of legitimate trade.
- Adoption of a standardized, harmonized security approach ensures that companies can compete and allows nations to have confidence in the security of goods flowing through their ports.
- With the effective supply chain security provided by CSI ports, resumption of trade in the event of a terrorist attack can be achieved rapidly.

4.5.2.1.1.2. Customs-Trade Partnership Against Terrorism

C-TPAT

Custom-Trade Partnership Against Terrorism (C-TPAT) is, beyond question, the largest and most successful government-private sector partnership to emerge from the ashes of 9/11 (CBP, 2004). C-TPAT was launched in November 2001 with just seven big importers; at the end of FY 2016, C-TPAT had 12,083 program participants and 11,506 certified partners (CBP, 2016). C-TPAT is but one layer in U.S. Customs and Border Protection's (CBP) multi-layered cargo enforcement strategy. Through this program, CBP works with the trade community to strengthen international supply chains and improve United States border security¹⁹. Under a standard like C-TPAT, global supply chains are expected to be fully vetted for security, personnel, and process control (Kleindorfer & Saad, 2005). Even though Bagchi and Paul (2017) indicates that an important proportion of cost

¹⁹ See Custom-Trade Partnership Against Terrorism; <https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat>

of security is shifted to private companies in exchange for faster movement of goods at borders, further research by Voss, & Williams (2013) demonstrates that C-TPAT-certified firms outperform their noncertified counterparts in several important areas.

C-TPAT is a voluntary public-private sector partnership program which recognizes that CBP can provide the highest level of cargo security only through close cooperation with the main stakeholders of the international supply chain. The Security and Accountability for Every Port Act of 2006 provided a statutory framework for the CTPAT program and imposed strict program oversight requirements ¹⁹.

The purposes of the C-TPAT program are to;

- 1) Strengthen and improve the overall security of the international supply chain and United States border security,
- 2) Facilitate the movement of secure cargo through the international supply chain,
- 3) Ensure compliance with applicable law, and
- 4) Serve as the Authorized Economic Operator (AEO) program for the United States.

C-TPAT provides benefits to participants meeting or exceeding the program requirements. Participants in C-TPAT include Tier 1 participants, Tier 2 participants, and Tier 3 participants. Importers, customs brokers, forwarders, air, sea, land carriers, contract logistics providers, and other entities in the international supply chain and intermodal transportation system are eligible to apply to voluntarily enter into partnerships with the Department under C-TPAT (CBP, 2006).

Currently program partners include U.S. importers/exporters, U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers, all of whom account for over 52 percent (by value) of cargo imported into the U.S. ¹⁹

An applicant seeking to participate in C-TPAT will have to;

- 1) Demonstrate a history of moving cargo in the international supply chain
- 2) Conduct an assessment of its supply chain based upon security criteria established by the CBP including;
 - a) Business partner requirements
 - b) Container security
 - c) Physical security and access controls,
 - d) Personnel security
 - e) Procedural security
 - f) Security training and threat awareness
 - g) Information technology security
- 3) Implement and maintain security measures and supply chain security practices meeting security criteria established CBP
- 4) Meet all other requirements established by CBP.

Companies should apply to participate in C-TPAT. Participants submit an online electronic

application that includes the submission of corporate information on the CBP's web page, the supply chain security profile, and the acceptance of an agreement for voluntary participation. In completing the supply chain security profile, companies must perform a thorough self-assessment of supply chain security procedures using C-TPAT safety criteria or guidelines developed jointly for their specific enrollment category by the CBP and the trade community²⁰.

Companies that successfully meet the minimum security criteria of CBP are certified as Tier 1 partners and have limited benefits within the scope of the C-TPAT program. As part of Tier 1 certified business partners, the risk score is reduced by up to 20 percent of the high-risk threshold created within the CBP. Such a reduction would result in less cargo inspection for security concerns, and a lower level of random Compliance Measurement examinations compared to non-C-TPAT importers. Tier 1 importers are also eligible for accelerated cargo handling (FAST lanes) at land borders, having 'front of lines' privileges at the entry ports required for entrance examinations, and having some penalty reductions in the Trade Act of 2002 and become eligible for Importer Self-Assessment Program and participate in C-TPAT training seminars (CBP, 2006b).

Participants that are certified as Tier 1 are subject to the on-site assessment for validation of the security measures and their supply chain security practices within 1 year of their certification as Tier 1 participant. With additional commitment demonstrated as a result of

²⁰ See Applying for C-TPAT FAQ; https://www.cbp.gov/sites/default/files/documents/applying_faqs_3.pdf

successful validation, the importer then becomes eligible for Tier 2 status whom benefits includes all the same benefits associated with Tier 1 with addition of twice the level of risk score reductions received by Tier 1 importers through CBP's Automated Targeting System as well as priority searches and fewer examinations of cargo for security reasons compare to Tier 1.

Finally, participants who demonstrate a sustained commitment to maintaining security measures and supply chain security practices that exceed the security criteria of Tier 2 status are classified as Tier 3 participants. Adaption of Security Best Practices that have overlapping and interlocking layers of defense, submission of additional information regarding cargo prior to loading, utilization of container security devices, and compliance with any other cargo requirements established by CBP are also required for Tier 3 participants. Under Tier 3 status benefits include all benefits associated with Tier 1 and Tier 2 statuses. The extended benefits for Tier 3 status include the expedited release of cargo in destination ports within the United States during all risk levels designated by CBP, further reduction in examinations of cargo, priority for examinations of cargo, further reduction in the risk score assigned pursuant to the Automated Targeting System, and inclusion in joint incident management exercises. Tier 3 status is also precursor for CBP's 'Green Lane' which will afford members with zero inspection upon arrival except for occasional random examination (CBP, 2006b). For instance, an analyze by CBP indicates that entries from non-C-TPAT members are 3.5 times more likely to undergo a security-based exam than those from C-TPAT Tier II Partners; and nine times more likely than

those entries filed by C-TPAT Tier III companies²¹.

There are three steps to become a C-TPAT participant. The first step is for company to review the C-TPAT minimum security criteria to determine the company's compliance with the program. The second step is that the company makes a basic application with the C-TPAT portal system and accepts voluntary participation. The third step is to complete the company's supply chain security profile. The Security Profile describes how the company meets the minimum security criteria of C-TPAT¹⁹.

Upon the satisfactory completion of the application and supply chain security profile, a C-TPAT Supply Chain Security Specialist is assigned to review the materials submitted by the applicant and provide guidance to the ongoing program. The C-TPAT program will have up to 90 days to approve or reject the application. If certified, the company will be validated within a year of certification as Tier 1 status. In addition, Level 2 and Level 3 participants are subject to the revalidation process, not less than once each 4-year period following the initial validation¹⁹.

C-TPAT also serves as the Authorized Economic Operator (AEO) program for the United States. One of the main benefits of the AEO is that it will be mutually recognized by the customs authorities of other countries. Mutual recognition refers to activities related to the signing of an arrangement document between the CBP and a foreign customs administration that provides a platform for exchanging membership information and

²¹ See C-TPAT Program Benefits Reference Guide;
<https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-ctpat-feb2013.pdf>

recognize the compatibility of the relevant supply chain security program. The document, referred to as “arrangement”, indicates that the security requirements or standards of the foreign industry partnership program and also the verification procedures are the same or similar as the C-TPAT program. Mutual Recognition Arrangements (MRA), therefore, are bilateral understandings between the two customs administrations. As of July 2016, CBP has signed eleven MRA¹⁹.

Participants of C-TPAT may gain more facilitation from CBP by taking a part at The Importer Self-Assessment (ISA) program which is a joint government-business initiative designed to build cooperative relationships that strengthen trade compliance. It is based on the premise that importers with strong internal controls achieve the highest level of compliance with Customs laws and regulations. The ISA program provides a means to recognize and support importers that have implemented such systems²².

The ISA program is a voluntary approach to trade compliance built on the knowledge, trust, and willingness to maintain an ongoing CBP/importer relationship that is mutually beneficial to both parties. The CBP aims to partner with importers who can demonstrate that they are ready to assume responsibility for managing and monitoring their compliance through self-assessment. Importers who are accepted to the ISA program receive tangible benefits while allowing the CBP to redirect valuable resources to focus on high-risk and unknown importers. The ISA benefits include; exemption from the Regulatory Audit’s

²² See **Customs Modernization and Informed Compliance Act**; <https://www.gpo.gov/fdsys/pkg/BILLS-103s106is/content-detail.html>

audit pool, expedited cargo release, designated National Account Manager, expanded benefits for Prior Disclosure, mitigated Penalties and Liquidated Damages, priority consideration for ISA members to participate in the Centers of Excellence and Expertise, expedited internal advice or consultation with Regulations & Rulings, Importer Trade Activity Data received free of charge, opportunity to apply for coverage of multiple business units (CBP, 2011).

4.5.2.1.2. Traveler Security

CBP officers processed more than 397.2 million travelers at air, land, and sea ports of entry in 2017, including more than 124.2 million travelers at air ports of entry. Over the last five years, international travel has grown approximately 9.7 percent overall and 21.6 percent at airports (CBP, 2017). CBP ensures the security of travelers mainly by preclearance program and Trusted Traveler Programs (Global Entry, FAST, NEXUS and SENTRI) These programs speed the processing of pre-approved, low-risk travelers, allowing CBP to focus on higher-risk travelers. Applicants of Trusted Traveler Programs (TTP) apply online through CBP's Global Online Enrollment System and undergo a background check, biometrics collection, and an interview with a CBP officer. Participation in these fee-based programs is voluntary, and membership is good for five years. Once an applicant is enrolled in a program, CBP runs law enforcement checks every 24 hours to ensure the members maintain a low-risk status. In FY 2016, CBP produced more than 1.5 million TTP cards which (CBP, 2016).

4.5.2.1.2.1. Preclearance

Before granting entry to the United States, the immigration, customs and agricultural inspection of each passenger and baggage must be carried out by CBP officers and agricultural experts. Preclearance allows these inspection operations to occur in foreign soil before flying directly to the United States without further CBP processing or security screening on arrival ²³.

CBP has more than 600 law enforcement officers and agriculture specialists stationed at 15 air Preclearance locations in 6 countries; Canada, Bahamas, Bermuda, Aruba, Ireland, and United Arab Emirates. In Fiscal Year 2017, CBP personnel stationed abroad precleared 19 million travelers, representing over 15 percent of all commercial air travelers to the United States. Some benefits of precleared passengers include; more direct-flight to domestic destinations, shorter wait times for inspection process at the airports, seamless baggage transfer, streamlined security screening, efficient pre-boarding experience (CBP, 2016a).

4.5.2.1.2.2. Global Entry

Global Entry is a CBP program that allows accelerated clarity for low-risk travelers on arrival in the United States. Members enter the United States with automatic kiosks at certain airports. At airports, program members pass through global entry kiosks, present their machine-readable passport or US permanent cards, place fingerprints on the scanner

²³ See CBP's Preclearance Operations; <https://www.cbp.gov/border-security/ports-entry/operations/preclearance>

for fingerprint verification, and complete a customs declaration. Kiosk gives a receipt to the traveler and directs the passenger to the baggage claim and the exit²⁴.

Travelers must be pre-approved for the Global Entry program. All candidates undergo a strict background check before enrolment and an interview in person. Although Global Entry's goal is to speed up passengers throughout the process, members can be selected for further review as they enter the United States. Any violation of the program's terms and conditions will result in proper enforcement action and termination of the visitor's membership privileges. U.S. citizens, U.S. nationals and U.S. Lawful Permanent Residents may apply for Global Entry as well as citizens of certain countries with which CBP has trusted traveler arrangements, including Argentina, Colombia, Germany, Mexico, the Netherlands, Panama, the Republic of Korea, Singapore, Switzerland, the United Kingdom and now India. As of July, 2007 available at 53 U.S. airports and 15 Preclearance locations, Global Entry streamlines the international arrivals process at airports for trusted travelers. The more than 4 million Global Entry members bypass traditional CBP inspection lines and use an automated kiosk to complete their admission to the United States without facing paperwork. Members have also access to expedited entry benefits in other countries as well as eligibility for TSA Pre✓ (a program expedites traveler screening through Transportation Security Administration (TSA) security checkpoints)²⁴.

²⁴ See CBP's Trusted Traveler Programs; <https://ttp.cbp.dhs.gov/>

4.5.2.1.2.3. Free and Secure Trade Program FAST

The Free and Secure Trade (FAST) program is a commercial clearing program for low-risk shipments from Canada and Mexico to the United States. Launched after 9/11, this innovative trusted traveler/trusted shipper program provides an accelerated process for commercial carriers who have completed background checks and meet certain eligibility requirements²⁴.

More than 78,000 commercial drivers are enrolled in the FAST program nationwide. FAST enrollment is open to truck drivers from the U.S., Canada, and Mexico. FAST vehicle lanes process cargo at land border ports of entry that serve commercial cargo: 17 ports on the northern border and 17 on the southern border. The majority of dedicated FAST lanes are located in northern border ports in Michigan, New York and Washington and at southern border ports from California to Texas. Participation in FAST requires that every link in the supply chain, from manufacturer to carrier to driver to importer, is certified under the Customs-Trade Partnership Against Terrorism (C-TPAT) program²⁴.

Among the key benefits of FAST enrollment are²⁵:

- Access to dedicated lanes for greater speed and efficiency in processing trans-border shipments; Reduced number of inspections resulting in reduced delays at the border;

²⁵ See CBP's FAST Fact Sheet;
<https://www.cbp.gov/sites/default/files/documents/FAST%20Fact%20Sheet%20-%20FINAL%20%28web%20ready%29.pdf>

- Priority, front-of-the-line processing for CBP inspections; and,
- Enhanced supply chain security while promoting the economic prosperity of the U.S., Canada and Mexico.

4.5.2.1.2.4. Northern Border Crossing System NEXUS

NEXUS is a cooperative effort between CBP and Canada Border Services Agency . The NEXUS program allows for accelerated operations of pre-screened passengers when entering the United States and Canada. Members of the program use special transaction lanes at the designated North border ports of entry, NEXUS kiosks when entering Canada by air and Global Entry kiosks when entering the United States via Canadian Preclearance airports. NEXUS members also receive accelerated transactions at sea marine sites. Among the benefits of Nexus; using dedicated processing lanes at land border crossings, using NEXUS kiosks when entering Canada, using Global Entry kiosk when entering the United States, and calling a marine telephone reporting center to report arrival into the United States and Canada²⁴.

4.5.2.1.2.5. Secure Electronic Network for Travelers Rapid Inspection SENTRI

The Secure Electronic Network for Travelers Rapid Inspection (SENTRI) provides expedited CBP processing from Mexico through dedicated commuter lanes for vehicles and pedestrians. SENTRI is a U.S. Customs and Border Protection (CBP) program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United

States. Participants may enter the United States by using dedicated primary lanes into the United States at Southern land border ports. Travelers must be pre-approved for the SENTRI program. All applicants undergo a rigorous background check and in-person interview before enrollment. Benefits of program include; using dedicated processing lanes at southern land border crossings, using NEXUS land when entering the United States from Canada by land, and using Global Entry kiosk when entering the United States²⁴.

4.5.2.2. Trade-Driven Facilitation Implementations

Along with the complexity of customs procedures, international trade requires submission of large amount of information by trade community to the customs administration. This information is used by many other government agencies in terms of ensuring the import security as well as deciding admissibility of merchandise. Enabling trade community for electronic submission, converting manual procedures into electronic ones, interchanging of data among government agencies, and developing industry sector-tailored solutions for traders are at the core of trade-driven facilitations.

4.5.2.2.1. Automated Commercial Environment, International Trade Data System and Single Window

The Automated Commercial Environment (ACE) is the primary system through which the trade community reports imports and exports and the government determines admissibility. Through ACE as the Single Window, manual processes are streamlined and automated, paper is being eliminated, and the trade community is able to more easily and efficiently

comply with U.S. laws and regulations. ACE has modernized and streamlined trade processing across all business capabilities, including Manifest, Cargo Release, Post Release, Export and Partner Government Agencies (PGAs). The ACE is the system through which the United States government has implemented the “single window,” the primary system for processing trade-related import and export data required by government agencies. This transition away from paper-based procedures results in faster, more streamlined processes for both government and industry²⁶.

The concept of ‘Single Window’ is defined at WTO’s Trade Facilitation Agreement as an automated platform that enables traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. In CBP’s context single window platform is formed as International Trade Data System (ITDS) which is established by the section 405 of Security and Accountability for Every (SAFE) Port Act of 2006 as an electronic trade data interchange system.

According to the SAFE Port Act, 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 CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. All Federal agencies that

²⁶ See ACE and Automated Systems; <https://www.cbp.gov/trade/automated>

require documentation for clearing or licensing the importation and exportation of cargo shall participate in the ITDS (CBP, 2006).

The International Trade Data System (ITDS) is an interagency program to establish a single window through which the data required by government agencies for international trade transactions may be submitted by the trade. SAFE Port Act of 2006 mandated that all agencies which require documentation for clearing or licensing the importation and exportation of cargo to participate in ITDS. Currently, 47 agencies are working together to implement the goals of ITDS as Partner Government Agencies (PGAs). The technology backbone for ITDS is the Automated Commercial Environment (ACE). By providing a centralized online access point to connect CBP, the trade community, and PGAs, ACE will ultimately become the “single window” for all trade and government agencies involved in importing and exporting. ACE will allow agencies to obtain data more quickly, process cargo more expeditiously and identify unsafe, dangerous, or prohibited shipments.

The benefits of ITDS are substantial include²⁷;

- Reduction or elimination of paper forms will reduce handling costs to the filers, CBP and the PGAs. Legitimate trade will be approved for release into the commerce more quickly resulting in greater cost savings for both Government and private sector.
- Access to electronic data will improve targeting, based on a risk-management

²⁷ See ITDS Fact Sheet; https://www.cbp.gov/sites/default/files/documents/itds_capab_2.pdf

approach, to more precisely target the highest risk people, cargo, and conveyances crossing the border. Those considered low-risk will move more quickly and smoothly through ports of entry and exit.

- Policy formulation and review will be improved by providing more accurate and complete international trade data, more sophisticated access to this data, and improved timeliness for decision makers.
- Federal agencies with border responsibilities will be better able to work with the trade to improve trade compliance.

The Executive Order 13659 dated February 19, 2014, on Streamlining the Export/Import Process for America's Businesses sets forth deadline as December 31, 2016, for completion and government-wide use of the ITDS. The Executive Order also establishes Border Interagency Executive Council (BIEC), an interagency working group that serves as an Executive Advisory Board, with the mission of assisting federal agencies in their efforts to 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 shipments²⁸. BIEC plays a crucial role in terms of effective collaboration of PGAs to ensure the successful implementation of ITDS by which US realize its 'Single Window' initiative.

²⁸ See The Executive Order 13659 ; <https://obamawhitehouse.archives.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>

4.5.2.2.2. Centers of Excellence and Expertise

Centers of Excellence and Expertise (Centers) are defined as national CBP offices that are responsible for performing certain trade functions and making certain determinations, regarding importations of merchandise by their assigned importers, regardless of the ports of entry at which the importations occur. The Centers are organized by industry sectors, which are categorized by the Harmonized Tariff Schedule of the United States (HTSUS) number²⁹.

The concept of Centers was developed as a result of discussions with the Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC), which promoted the management by account framework. The COAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. COAC provides advice and makes recommendations to the Commissioner of CBP, the Secretary of the Department of Homeland Security, and the Secretary of the Treasury on all matters involving the commercial operations of CBP and related U.S. Department of Homeland Security (DHS) and Treasury functions. CBP has continually consulted COAC throughout the development of the Centers²⁹.

In October 2011, CBP established the first two Centers and today there are ten Centers; Electronics Center, Pharmaceuticals, Health & Chemicals Center, Petroleum, Natural Gas

²⁹ See The Interim Final Rule; <https://www.federalregister.gov/documents/2016/12/20/2016-29719/regulatory-implementation-of-the-centers-of-excellence-and-expertise#p-18>)

& Minerals Center, Machinery Center, Industrial & Manufacturing Materials Center, Consumer Products & Mass Merchandising Center, Base Metals Center, Automotive & Aerospace Center, Apparel, Footwear & Textiles Center, Agriculture & Prepared Products Center.

Section 110 of TFTEA of 2015 requires CBP to develop and implement Centers of Excellence and Expertise that; enhance the economic competitiveness of the United States by consistently enforcing the laws and regulations of the United States at all ports of entry of the United States and by facilitating the flow of legitimate trade through increasing industry-based knowledge; improve enforcement efforts, including enforcement of priority trade issues in specific industry sectors through the application of targeting information from the National Targeting Center and from other means of verification; build upon the expertise of U.S. Customs and Border Protection in particular industry operations, supply chains, and compliance requirements; promote the uniform implementation at each port of entry of the United States of policies and regulations relating to imports; centralize the trade enforcement and trade facilitation efforts of CBP; formalize an account-based approach to apply to the importation of merchandise into the United States; foster partnerships through the expansion of trade programs and other trusted partner programs; develop applicable performance measurements to meet internal efficiency and effectiveness goals; and whenever feasible, facilitate a more efficient flow of information between Federal agencies (TFTEA, 2015).

The Centers are managed from strategic locations around the country to focus CBP's trade

expertise on industry-specific issues and provide tailored support for importers. The concept of the Centers arose in response to claims that CBP's port-by-port trade processing authority sometimes resulted in similar goods entered at different ports of entry receiving disparate processing treatment causing trade disruptions, increased transaction costs, and information lapses for both CBP and the importer. CBP established the Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for the identified industries. CBP believes that providing broad decision-making authority to the Centers will better enable the Centers to achieve these goals for CBP and the trade²⁹.

CHAPTER FIVE

5. Trade Facilitation Performance of United States

The main objective of trade facilitation is to reduce the time and cost burden of cross border transactions by providing a transparent and predictable trade environment through harmonizing, standardizing and simplifying customs procedures. In terms of measuring the trade facilitation performance of any customs authority it is necessary to measure the overall performance of such customs authority.

Although the focal points differ, there are several international accepted tools that measure some aspects of customs authorities' performances. Doing Business Report and Logistics Performance Index by World Bank Group, Global Enabling Trade Report and Global Competitiveness Index by World Economic Forum, and Trade Facilitation Indicators by OECD are some of these tools that measure the performance of nation's customs authorities.

Doing Business (DB) measures aspects of business regulation affecting domestic small and medium-size firms defined based on standardized case scenarios and located in the largest business city of each economy and covers 11 areas of business regulation across 190 economies (World Bank, 2018). Trading Across Borders is among 11 different areas that Doing Business measures **Trading Across Borders** measures the time and cost (excluding tariffs) associated with documentary compliance and border compliance within the overall process of exporting or importing a shipment of goods. Time and cost to export

the product of comparative advantage and import auto parts is used when measuring it (World Bank, 2018).

Trading Across Borders consist of documentary compliance, border compliance and domestic transport. However, data relating to the domestic transport is not used to calculate the scores for Trading Across Borders. Documentary compliance covers; obtaining, preparing and submitting documents during transport, clearance, inspections and port or border handling in origin economy; obtaining, preparing and submitting documents required by destination economy and any transit economies; and all documents required by law and in practice, including electronic submissions of information as well as non-shipment-specific documents necessary to complete the trade. Border compliance covers; customs clearance and inspections by customs; inspections by other agencies (if applied to more than 20% of shipments); and port or border handling at most widely used port or border of economy (World Bank, 2018). According to the Doing Business 2018 report, as it is shown in the Table 5.1 below, United States ranks 6 in terms of ease of Doing Business and 36 in terms of Trading Across Borders out of 190 countries.

Table 5. 1: DB-Trading Across Borders 2018

Ease of Doing Business rank (1–190): 6		Trading Across Borders rank: 36		
Trade	Export		Imports	
Transaction	Time to Export (Hours)	Cost to Export (US\$)	Time to Import (Hours)	Cost to Import (US\$)
Documentary compliance	1.5	60	7.5	100
Border compliance	1.5	175	1.5	175

Source: World Bank; Doing Business 2018

On the other hand, **Logistics Performance Index (LPI)** ranks 160 countries on six dimensions of trade -- including customs performance, infrastructure quality, and timeliness of shipments -- that have increasingly been recognized as important to development (World Bank, 2016). **The Customs Performance** covers the efficiency of customs and border management clearance. According to LPI 2016, the United States ranks 10 out of 160 countries and ranks 16 in terms of customs performance which is detailed in the Table 5.2 below.

Table 5. 2: LPI-Customs Performance 2016

Logistics Performance Index rank : 10		Customs Performance rank: 16	
Export time and cost / Port or airport supply chain		Shipments meeting quality criteria (%)	96.34%
Distance (kilometers)	427km	Number of agencies - exports	3
Lead time (days)	3 days	Number of agencies - imports	2
Cost (US\$)	N/A	Number of documents - exports	3
Export time and cost / Land supply chain		Number of documents - imports	3
Distance (kilometers)	1081km	Clearance time without physical inspection (days)	1 days
Lead time (days)	4 days	Clearance time with physical inspection (days)	2 days
Cost (US\$)	N/A	Physical inspection (%)	4.29%
Import time and cost / Port or airport supply chain		Multiple inspection (%)	2.58%
Distance (kilometers)	237km	Declarations submitted and processed electronically and on-line (%)	100%
Lead time (days)	3 days	Importers use a licensed Customs Broker (%)	100%
Cost (US\$)	N/A	Able to choose the location of the final clearance (%)	100%
Import time and cost / Land supply chain		Goods released pending customs clearance (%)	57.14%
Distance (kilometers)	483km		
Lead time (days)	4 days		
Cost (US\$)	N/A		

Source: World Bank Logistics Performance Index 2016

Furthermore, **The Enabling Trade Index (ETI)** assesses the extent to which economies have in place institutions, policies, infrastructures and services facilitating the free flow of goods over borders and to their destination. There are 7 seven pillars that ETI measures. **Efficiency and Transparency of Border Administration** is among those pillars that ETI measures. This pillar assesses the efficiency and transparency of border administration. More specifically, it captures efficiency, transparency and costs associated with importing and exporting goods. It includes an assessment of the range, quality and comprehensiveness of key services offered by customs and related agencies, and the average time, costs and number of documents required to, respectively, import and export goods. The pillar also assesses the time predictability of border procedures, as well as the transparency of the process—as measured by the availability and quality of information provided by border agencies—and the prevalence of corruption (World Economic Forum, 2016). Table 5.3 illustrates details of CBP’s Efficiency and Transparency measured by ETI.

Table 5. 3; ETI-Border Administration Efficiency

Enabling Trade Index ranking (2016): 22			Efficiency and Transparency of Border Administration ranking : 17		
Efficiency and transparency of border administration	Rank/136	Value	Efficiency and transparency of border administration	Rank/136	Value
Customs services index 0–1 (best)	15	0,82	Time to export: Border compliance (hours)	18	1,5
Efficiency of the clearance process 1–5 (best)	16	3,8	Cost to export: Documentary compliance (US\$)	49	60
Time to import: Documentary compliance (hours)	50	7,5	Cost to export: Border compliance (US\$)	46	175
Time to import: Border compliance (hours)	25	1,5	Irregular payments and bribes: imports/exports	29	5,3
Cost to import: Documentary compliance (US\$)	68	100	Time predictability of import procedures	28	4,9
Cost to import: Border compliance (US\$)	43	175	Customs transparency index 0–1 (best)	1	1
Time to export: Documentary compliance (hours)	25	1,5			

Source: World Economic Forum ETI 2016

Moreover, covering 137 economies, **the Global Competitiveness Index (GCI)** measures national competitiveness—defined as the set of institutions, policies and factors that determine the level of productivity. There are twelve pillars and 114 indicators that GCI

measures. **Burden of Customs Procedures** (1 = extremely inefficient; 7 = extremely efficient) and irregular payments and bribes connected with imports and exports, public utilities, annual tax payments, awarding of public contracts and licenses, and obtaining favorable judicial decisions (1 = very common; 7 = never occurs) are two indicators that reflect the performance of customs authorities (World Economic Forum, 2017). Table 5.4 demonstrates the main indicators of GCI in terms of CBP's Performance.

Table 5. 4; GCI- Burden Of Customs 2017

Global Competitiveness Index ranking: 2		
Indicator	Rank/137	Value (1-7)
Burden of customs procedures	8	5,6
Irregular payments and bribes	34	5,2

Source: World Economic Forum GCI 2017

According to the tools that are mentioned above, CBP's 10 years' historical trade facilitation performance is shown in the Table 5.5 Customs Performance indicator of LPI and Efficiency, Transparency of Border Administration indicator of ETI, and Burden of Customs Procedures indicator of GCI is incrementally improving. The improvement on the GCI's Burden of Customs Procedures indicator is precise in 2018. However, the rankings on the DB's Trading Across Borders indicator are declined over the years.

Table 5. 5; Comparison of Performance Tools

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<u>The LPI</u> Customs Performance Ranking	19	-	-	15	-	13	-	16	-	16	--	-
<u>The ETI</u> Efficiency and Transparency of Border Administration Ranking	-	21	-	21	-	20	-	20	-	17	-	-
<u>The DB</u> Trading Across Borders Ranking	11	15	15	18	20	20	22	22	16	34	35	36
<u>The GCI</u> Burden of Customs Procedures Ranking	27	39	39	48	58	48	35	35	33	30	20	8

Source: World Bank's DB& LPI and World Economic Forum's ETI&GCI

Finally, to help governments improve their border procedures, reduce trade costs, boost trade flows and reap greater benefits from international trade, OECD has developed a set of **Trade Facilitation Indicators (TFIs)** that identify areas for action and enable the potential impact of reforms to be assessed. The OECD indicators cover the full spectrum of border procedures for more than 160 countries across income levels, geographical regions and development stages (OECD, 2015). There are 11 categories and 155 indicators that OECD measures which all are based on the WTO's Trade Facilitation Agreement. In

the Table 5.6 below these main categories are detailed. According to the OECD online tool the United States ranks 2 over all out of 160 countries in terms of TFIs³⁰.

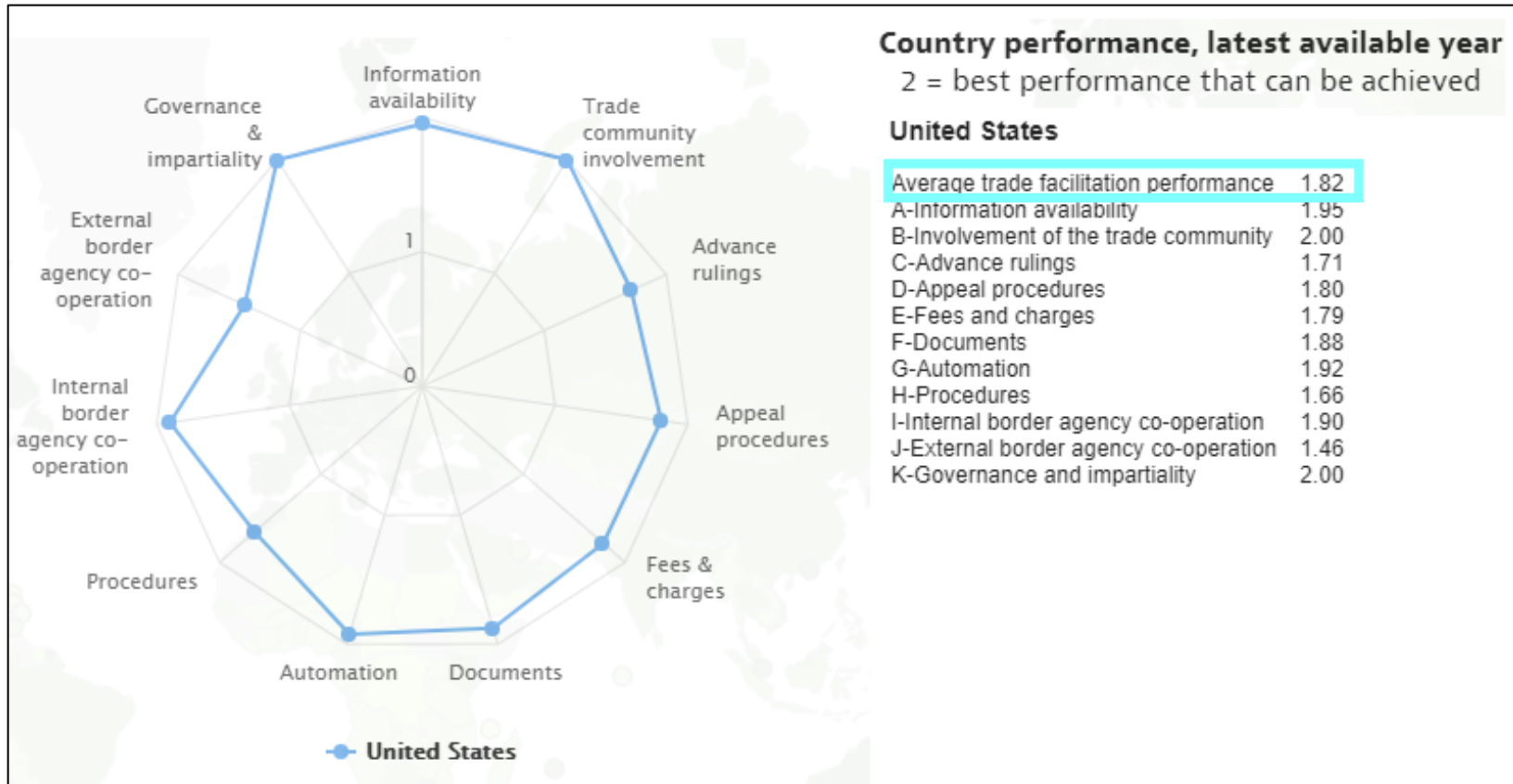
Table 5. 6; TFI- Performance Indicators

Advance Rulings	Prior statements by the administration to requesting traders concerning the classification, origin, valuation method, etc., applied to specific goods at the time of importation; the rules and process applied to such statements.
Appeal Procedures	The possibility and modalities to appeal administrative decisions by border agencies.
Co-operation – External	Co-operation with neighboring and third countries.
Co-operation – Internal	Co-operation between various border agencies of the country; control delegation to customs authorities.
Fees and Charges	Disciplines on the fees and charges imposed on imports and exports.
Formalities – Automation	Electronic exchange of data; automated border procedures; use of risk management.
Formalities – Documents	Simplification of trade documents; harmonization in accordance with international standards; acceptance of copies.
Formalities – Procedures	Streamlining of border controls; single submission points for all required documentation (single windows); post-clearance audits; authorized economic operators.
Governance and Impartiality	Customs structures and functions; accountability; ethics policy.
Information Availability	Publication of trade information, including on internet; enquiry points.
Involvement of the Trade Community	Consultations with trader

³⁰ See OECD's Online Tool of Trade Facilitation Indicators; <http://www.oecd.org/trade/facilitation/indicators.htm>

According to the OECD's Trade Facilitation Indicators the United States ranks 2 out of 160 countries in terms of meeting the criteria of Trade Facilitation Agreement. Although, as it is shown in the Figure 5.1 the cooperation with neighboring and third countries and streamlining of border controls are two main areas that United States needs to pay more attention, the CBP's overall trade facilitation performance is calculated as 1,82 over 2.

Figure 5. 1: Trade Facilitation Indicators of CBP Measured by OECD



CONCLUSION

The US is the largest economy with the second largest share in the global trade. In this context, the performance of the US trade operations directly affects the trade operations in the rest of the world. Managing the largest economy requires adequate legal arrangements and the “Trade Facilitation” is one of concepts that shapes those legislations.

Trade Facilitation efforts of US Customs dates back to 1990’s when even the WTO were not established yet. However, the 9/11 incidents have dramatically changed the US Customs approach towards to the concept of trade facilitation. Pre-9/11 trade facilitation legislations mainly focus on the streamlining and computerizing the customs operations whereas post-9/11 trade facilitation legislations shift the focal point to import security, trade enforcement and homeland security.

The most comprehensive trade facilitation legislation is the Trade Facilitation and Trade Enforcement Act of 2015 which supports CBP’s efforts to protect U.S. Economic Security through Trade Enforcement; collaborate with the Private Sector through direct engagement; and streamline and modernize processes through Business Transformation initiatives to meet the demands and complexities of a rapidly evolving global supply chain.

Trade facilitation implementations of US Customs comes along with trade enforcement that is designed to protect U.S. consumers and business against illegal imports and to collect customs revenue. Trade enforcement implemented by enforcing health and safety standards, by protecting U.S. businesses through enforcing patent, trademark, and

copyright laws, and by collecting anti-dumping and countervailing duties.

On the other hand, CBP has three main trade facilitation objectives; reducing the cost for trade and travel communities by streamlining processes in collaboration with public and private sector partners, promoting harmonization throughout ports of entry and other U.S. government agencies, and to expanding risk-segmentation through advanced technology to enable low-risk trade and travel.

CBP's trade facilitation implementations can be divided into two: security-driven facilitations and trade-driven facilitations. Security-driven facilitations mainly focus on cargo security and traveler security. The Container Security Initiative (CSI) and the Customs-Trade Against Terrorism (C-TPAT) are the main import security implementations of the CBP which emphasize on the protection of the US homeland from the entry of weapons of mass destruction, illicit drugs and other contraband goods.

CSI aims to identify and examine or search maritime containers that pose a security risk before loading such containers in a foreign port for shipment to the United States. The initiative operates in 60 foreign ports in 35 countries – covering about 80 percent of shipping containers to the United States, it addresses the threat to border security and global trade from maritime containers.

On the other hand, C-TPAT is a voluntary public-private sector partnership program in which CBP ensures highest level of cargo security through close cooperation with the main stakeholders of the international supply chain. Importers, customs brokers, forwarders, air,

sea, land carriers, contract logistics providers, and other entities in the international supply chain and intermodal transportation system are eligible to apply to voluntarily enter into partnerships under C-TPAT in which participants are classified in three different tiers. The C-TPAT is also serves as the Authorized Economic Operator (AEO) program for the United States.

In terms of travel security, CBP implements Preclearance Program as well as Trusted Traveler Program. These programs speed the processing of pre-approved, low-risk travelers, allowing CBP to focus on higher-risk travelers.

Trade-driven facilitations of CBP mainly emphasizes on management of the trade data including the interchange of this data within the trade related government agencies. The Automated Commercial Environment (ACE) is the primary system through which the trade community reports imports and exports, and the government determines admissibility. The International Trade Data System (ITDS) is an interagency program to realize a “Single Window” through which the data required by government agencies for international trade transactions can be submitted by the trade community. The technology backbone for ITDS is the Automated Commercial Environment (ACE).

Centers of Excellence and Expertise (Centers) are the other trade-driven facilitation implementation which are defined as national CBP offices that are responsible for performing certain trade functions and making certain determinations, regarding importations of merchandise by their assigned importers, regardless of the ports of entry at which the importations occur. The Centers are organized by industry sectors, which are

categorized by the Harmonized Tariff Schedule of the United States. There are ten different Centers today which are managed from strategic locations around the country to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers.

CBP's ranking among five different performance indexes that are used in this study is within the range of customs administrations rankings of developed countries. The Customs Performance rankings which is measured by Logistics Performance Index, and the Efficiency and Transparency of Border Administration rankings which is measured by Enabling Trade Index are improved over the past decade. However, Trading Across Borders ranking which is measured by Doing Business index, and the Burden of Customs Procedures rankings which is measured by Global Competitiveness Index are worsen over the same period. Even though United States ranks one of the overall best performing country according to the OECD's Trade Facilitation Indicators, CBP still needs to improve in some areas such as external border agency co-operation, customs procedures, and advance rulings.

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