



CBP Abandoning Standard of Reasonable Care in Customs Enforcement: Lawyers

NEWPORT, R.I.—The Trump administration appears to be ditching the standard of reasonable care by importers in favor of strict compliance when enforcing customs violations, trade lawyer David Murphy said at the Coalition of New England Companies for Trade's (CONECT) Northeast Trade and Transportation [Conference](#) on Oct. 29.

Murphy, a partner at Grunfeld Desiderio, said that based on the language of recent proclamations and executive orders, the Trump administration is moving “beyond reasonable care” and “in some situations, they have now stated strict liability” for importers.

Previously, importers have had to exercise reasonable care when making transactions and providing “complete information, doing due diligence” to make sure that information supplied to CBP was “sufficient and correct,” Murphy said. The statute was vague, prompting trade lawyer Susan Ross, a partner at Mitchell Silberberg, to say that it can’t be defined “because Customs hasn’t really defined it.”

Still, the standard allowed importers to operate with a presumption of innocence, a presumption the Trump administration wishes to move beyond as it prioritizes what Murphy called a “heavy emphasis on monetary penalties and enforcement.”

Murphy said that it is an open question of whether the reasonable care standard will “continue to be recognized” by the Trump administration. He said that while “it’s a little early to give you a definitive answer on that,” language from the administration suggests it will not. The proclamation announcing copper tariffs (see [ITT 07/30/2025](#)) said that importers may be subject to severe consequences for customs violations, in which he said the “idea of strict compliance is being introduced.” He wondered “what happens to reasonable care” when “strict compliance is required? It would seem to be thrown out.”

Murphy questioned the role of customs brokers in the enforcement paradigm shift, saying that CBP “would like the broker to work for Customs rather than being an agent for the employer.” He said there have been changes in the regulations for brokers “that basically require the broker to turn in an importer if they’re not following certain instructions,” which he called “a little bit severe, but that’s the way we’re moving.”

The idea that brokers are supposed to “ferret out fraud,” is “antithetical” to the current relationship between importers and brokers, Murphy said, because they are “supposed to be working together” in a fiduciary relationship.

Ross said that CBP is often incorrectly issuing CF 28’s and 29’s as it tries to ramp up enforcement and, in some cases, “going right to letters of investigation,” without giving the importer a chance to respond. This is significant, she said, because the importer’s “right to fix the problem through a prior disclosure is cut off.” She stressed that CBP is not making mistakes due to incompetence but because it is “very short of experienced people in higher positions, so be warned.”

While noting that Murphy was “absolutely right” in saying the heightened enforcement environment is “all about revenue,” Ross went one step further, saying, “it’s all about stopping imports.” She said she was not suggesting “that there’s been any kind of memo issue that says, try to stop as much as you can, but it’s very obvious that the CBP folks that are inspecting the goods, that are dealing with the paperwork are all being very strict.”

Experts: CBP More Stringent in All Areas

NEW YORK—Geodis Vice President Ed Fitzgerald and Maytee Pereira, Customs and International Trade co-leader at PwC, told trade compliance professionals that CBP scrutiny is getting stricter.

CBP is “definitely looking at entries a lot closer,” Fitzgerald said. Importers are receiving more CBP Form 28

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requests for information and are receiving more notices of action, or CBP Form 29. He said there are more first-sale compliance checks and CBP is looking at valuation claims. He also said that CBP has been less forgiving of companies that file Import Security Filings late. He said in the past, the penalty was often reduced as a matter of course to \$1,000. Now, he said, CBP looks back for a few years to see if the company is an ISF repeat offender. If it's happened before, the penalty might only be reduced to \$2,500. He said sometimes, CBP will offer no mitigation, and the full \$5,000 fine is owed.

Pereira said the cost to companies isn't just the tariffs themselves, but also the cost of higher bonds, payments to service providers, increased requirements for documentation, increased Form 28s and risk analysis survey assessments from CBP. "It goes far beyond just the tariffs," she said.

Fitzgerald elaborated on the way that higher tariffs are affecting customs bond underwriting in his presentation at the U.S. Fashion Industry Association annual [conference](#) Nov. 5. Pereira presented at the same session.

He said CBP told Geodis that before this year, on average, there would be 4,300 customs bonds saturated in a year. "Now, it's 4,500 per month. So it's a huge wave."

He said, given the size of the bonds needed at these tariff rates, "there's more risk for the surety." He said insurers are asking for the most recent audited financials, and are looking for free cash on balance sheets. Underwriters are requiring collateral, and a letter of credit equal to the size of the bond.

"That's huge for small companies. That million [dollars] is frozen. You can't use it for payroll. You can't use it for investing."

Fitzgerald said as long as the entries have not liquidated, the bonds do not terminate, so companies are having to stack multiple bonds over the course of a year.

He also talked about the burden on brokers, from both the proliferation of new data required to calculate tariffs and the last-minute nature of new tariffs, with implementation dates following too fast for brokerage IT departments to update internal systems. "We joke every Friday night ...

what's going to come out at 9:32 that's going to affect us on Monday morning?"

"You may have six tariff numbers associated to your first tariff number," he said. "That all has to be done manually." A task that would have taken 30 to 45 minutes can now take four to seven hours, he said.

One example—importing a chair that has steel bracing and aluminum feet. Now, it's not just the HTS for the chair, but you have to know the cost of the steel and aluminum content, and where those metals were melted and poured or smelt and cast. If you don't know the country of smelt and cast for those aluminum feet, you'll have to pay 200% tariffs on the portion of the chair they account for.

"The derivatives have really come to a point where you really need a bill of materials," he said.

However, Fitzgerald said his brokerage already had a steel and aluminum vertical, so it's been able to train employees that specialize in other products what to look for on a mill certification to document the country of melt and pour or cast and smelt.

Fitzgerald was asked if any importers are able to reduce tariffs by documenting U.S. content of more than 20%. He said he's seen it when goods are exported to Canada for further processing and return to the U.S.; in order to make the claim, he said, importers need the bill of material for the export to Canada.

USFIA President Julie Hughes said importers are having trouble getting clear answers from CBP on how to use the exemption for U.S. content.

Fitzgerald said that CBP has issued a few rulings on how it works in the plastics sector.

At a later session, Cotton Incorporated senior economist Jon Devine showed the audience how to potentially get a discount on T-shirt tariffs through this mechanism.

He said: Take a men's cotton T-shirt with an average import cost of \$2.07. He said that T-shirt weighs 0.51 pounds, and with a cotton price of 90 cents a pound across a three-year average, the U.S. cotton accounts for 46 cents of the cost of

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the shirt, or 22% of the value. (He said CBP has blessed the three-year average.) In that case, you could owe the average 36.5% most-favored nation + reciprocal tariff of \$1.61 per shirt, rather than \$2.07.

If the manufacturer used U.S. yarn rather than just cotton, it would be a lot easier for knitwear to get over the 20% level needed for the discount, he said.

However, the value of the cotton is a smaller proportion of the cost of a more complex garment, and the tariff break is only available if the U.S. content is 20% or more of the finished good. He gave the example of a pair of women's jeans, which cost \$9.62 a pair. The cotton cost \$1.34, only 14% of the value. — *Mara Lee*

Former CBP Officials Expect CTPAT to Remain

CBP's initiative aimed at facilitating partnerships between the agency and the trade community will likely remain intact under the Trump administration, but it's unclear how the initiative will evolve alongside CBP's renewed focus on trade enforcement, former CBP officials said at a "Customs and Trade Town Hall" [held](#) by the Automotive Industry Action Group last week in Detroit.

Sean Beddows, who worked for CBP for 22 years, including as acting CTPAT director, described on Nov. 6 how he and his colleague and fellow CBP veteran Brad Skinner held a webinar several weeks ago on CBP's Customs Trade Partnership Against Terrorism initiative for its members, and the two were flooded with 150 submitted questions about the initiative.

One of the questions Beddows has received often this year is how changes in trade regulations under the administration of President Donald Trump will impact CTPAT. While Beddows said he doesn't have an answer for that particular question, U.S. presidents have historically retained CTPAT.

"The answer is, I have absolutely no idea, right? And we're in uncharted territory. But what I can do is reflect historically, and over the 20-plus years of CTPAT, there's been several administration changes [but] there has never been a direct impact on the CTPAT program from those changes in administration," Beddows said. Beddows is now vice president of global services for CT Strategies, while his

colleague Skinner is a senior adviser for CT Strategies. Skinner was with CBP for 34 years, where he worked in Laredo and Houston as assistant director and also served as CTPAT's assistant director.

Although CTPAT is likely to survive, the change in White House administration can still result in some impacts. Namely, momentum for the program may depend on who the sitting president selects as CBP commissioner, as that commissioner may not have much experience in trade matters and may set unrealistic goals for CTPAT, according to Beddows.

The government shutdown also has the potential to cause hiccups in getting companies validated for the program, Beddows said.

"As the government has been shut down, all of the validations that were planned to take place during that time are about to be rescheduled, postponed, so now you're shrinking the window of opportunity to get those things done," Beddows said.

While coordinating meetings with foreign and domestic sites and business partners is typically flexible, these "shutdowns impact [the government's] ability to travel and get the job done. Then we see that flexibility to start shrinking," Beddows said.

Skinner reminded conference attendees that CTPAT plans to initiate a pilot for non-asset-based third-party logistics partners, in addition to asset-based third-party logistics partners (see [ITT 10/02/2024](#)). The *Federal Register* notice enabling companies to learn more about the pilot and sign up for it has yet to be published, but the pilot will run for five years, Skinner said.

"What's important [in that pilot] is if they were to open up the sector for importer partners," Skinner said. Meanwhile, the asset side of the pilot could be directed to warehouse operations involved in the flow of international cargo coming into the country, he continued.

During the session, Beddows speculated that there wouldn't be significant changes to the minimum security criteria. "We have no indication for the program that there's going to be any significant changes coming to the minimum

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security criteria” except for some minor updates to the rail carrier minimum security criteria, Beddows said.

Beddows also observed that the validation process can be uneven, as companies seeking entrance into CTPAT can range anywhere from large, multinational companies to small outlets that cross the border regularly.

“The inconsistency of this process is outrageous. Different formats, different requests for information. Some of it’s reasonable, some of it’s absolutely over the top, and we recognize that we also see that same issue very much with security profiles, annual review,” Beddows said.

While his intent isn’t to bash CTPAT, especially since CBP couldn’t attend the conference and defend itself, Beddows said he sees inconsistency with how the validation process plays out.

“There’s companies in the program that have 10,000-plus employees, massive international networks, and then there’s a guy named John, who lives in his house and has a truck, and he crosses the border once a day. Both those companies and everybody in between is allowed to be in the program, and they all have to meet the same minimum security criteria for the business entity, so there has to be a significant level of flexibility” in the interpretation and application of federal security criteria, Beddows said.

However, “you see these vastly different approaches by supply chain security specialists, and even the field office that they represent,” he continued. Field offices may also have their “own kind of personality and procedures,” he said.

To address this issue, Beddows recommended that AIAG members put together a list of issues that have cropped up so that they can approach CTPAT and “get these conversations started,” he said.

This includes potentially confusing language in the guidelines, such as for minimum security criteria, Beddows and Skinner said.

The language for minimum security criteria had been “developed in collaboration with the trade community over a long period of time, with a lot of inputs, but it’s not perfect. It can be perfected,” Skinner said. Bringing these issues

over language before headquarters enables the agency to take these issues into consideration whenever it decides to revise the security criteria, Skinner continued.

“Remember, it’s supposed to be a partnership program. They’re supposed to listen to you. This was supposed to make changes that make sense for you guys and for them,” Beddows said.

Refunding Tariffs ‘Not That Hard’ for CBP If IEEPA Is Overruled

It won’t be difficult for CBP to refund tariffs collected under the International Emergency Economic Powers Act, according to Nicole Bivens Collinson of Sandler Travis.

Collinson, speaking on a Nov. 12 podcast, said that “it’s not that hard refunding the tariffs paid under” the IEEPA, “despite what some might be saying.” She said that CBP has been through the refund process “a million times, and on a large scale too.”

Collinson pointed to the 2018 reauthorization of the Generalized System of Preferences benefits program, which required refunds, and said that CBP managed to send them even without “the electronic transfer of refunds in place.” In 2025, it is even easier, she said, as CBP can “unilaterally flag the entries” made under the Harmonized Tariff Schedule heading for the IEEPA tariffs and then “effectuate an electronic funds transfer under the ACH directly into the accounts of those who paid the tariffs. And Bob’s your uncle.”

“Let’s be intellectually honest here,” Collinson said. “It is not that difficult.” — **Oren Dennett**

CBP to Commence Pilot Enabling 3PLs to Participate in CTPAT

DHS, through CBP, soon will kick off a pilot enabling asset-based and non-asset-based third-party logistics partners, or 3PLs, to join the Customs Trade Partnership Against Terrorism program, according to a *Federal Register* [notice](#).

The pilot, set to begin on Dec. 1, could last up to five years, and any possible extensions will be announced via notices in the *Federal Register*.

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The notice describes the purpose of the pilot, eligible participants, duration of the pilot and pilot procedures, CBP said. Those wishing to participate in the pilot must contact CBP using the email address in the notice.

In 2008, CBP had allowed some 3PLs that met eligibility requirements to be CTPAT members, as well as select non-asset-based 3PLs, but “their participation was limited,” according to the agency. The CTPAT Pilot Program Act, passed by Congress on Oct. 1, 2024 (see [ITT 10/02/2024](#)), calls for DHS to establish a pilot that could assess whether allowing non-asset-based 3PLs and asset-based 3PLs to participate in CTPAT would enhance port security, assist in combating terrorism, prevent supply chain security breaches, or otherwise meet the goals of CTPAT, CBP said.

USTR Extends Section 301 Exclusions to November 2026 as Part of China Deal

The Office of the U.S. Trade Representative [announced](#) Nov. 26 that it will [extend](#) the 178 currently existing exclusions from Section 301 tariffs on China until Nov. 10, 2026, as expected (see [ITT 11/03/2025](#)). The exclusions had been set to expire Nov. 29, but the Trump administration agreed to extend them as part of a deal that also cut tariffs on China by 10% and halted ship-docking fees in return for China pausing export controls on rare earths, lowering retaliatory tariffs and stopping its own retaliatory ship fees.

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