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SUPPORTING ECONOMIC GROWTH AND JOB CREATION THROUGH CUSTOMS TRADE MODERNIZATION, FACILITATION, AND ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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SUPPORTING ECONOMIC GROWTH AND JOB CREATION THROUGH CUSTOMS TRADE MODERNIZATION, FACILITATION, AND ENFORCEMENT

THURSDAY, MAY 17, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room 1100, Longworth House Office Building, the Honorable Kevin Brady [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

Hearing Advisory

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Brady Announces Hearing on Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement

Thursday, May 17, 2012

Ways and Means Trade Subcommittee Chairman Kevin Brady (R-TX) today announced a Subcommittee hearing to review customs operations administered by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE). The hearing will focus on efforts to enhance economic growth and job creation by facilitating legitimate trade, modernizing customs procedures, and enforcing U.S. Customs and trade laws. The hearing will help the Committee develop customs reauthorization legislation. **The hearing will take place on Thursday, May 17, 2012, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be heard from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the subcommittee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Committee last conducted a comprehensive review of the structure and resources of CBP and ICE from a commercial operations and customs enforcement perspective in May 2010. Since that time, there has been growing concern that, in particular, existing efforts to modernize trade functions, facilitate legitimate trade, and enforce customs laws may not be keeping pace with the growing volumes of trade.

CBP has been implementing several programs to automate trade, improve compliance, and identify shipments that violate U.S. laws. In addition, in working with CBP, the trade community has made large investments in international supply chains through advance submissions of cargo data and "partnership" programs between government and business. This hearing will explore how these enhanced targeting and screening tools can be improved to reduce costs, smooth movements of legitimate trade by trusted partners, and increase compliance with the customs and trade laws of the United States.

With respect to enforcement of traditional customs laws and revenue collection, more enforcement-related training and other measures may be needed to ensure CBP can effectively address fraudulent practices that circumvent U.S. laws, including in the areas of antidumping and countervailing duty collection, intellectual property rights enforcement, and textile enforcement. This hearing will explore how CBP manages its resources and whether any structural or other changes are needed to ensure that U.S. customs and trade laws are enforced.

In announcing this hearing, Chairman Brady said, **"Trade is vital to our economic engine, creating jobs and lifting wages here at home. Today, more than 50 million U.S. workers are employed by companies that engage in international trade, and U.S. trade represents over 30 percent of U.S. GDP. Streamlining legitimate trade is an essential component to our competitiveness in the global marketplace. This hearing will explore how to allocate resources and develop models so that we can move the ever-increasing volume of legitimate trade more efficiently, while effectively filtering out trade that doesn't comply with our laws."**

FOCUS OF THE HEARING:

To meet the challenge of effectively and efficiently processing the volume and increasing complexity of trade in the future, CBP's structure, policies, operations, and modernization must support its trade facilitation and commercial enforcement functions. This hearing will examine the following topics:

- Modernizing: Modernizing CBP's Automated Commercial Environment (ACE) is critical to supporting the increase in import volume and the successful pre-screening of cargo. Complementing ACE is the International Trade Data System (ITDS), the window through which 48 government agencies with border responsibilities must function electronically and seamlessly. Together, these systems will allow CBP and other agencies to process goods more quickly and cost effectively, as well as collect and use trade data. The hearing will focus on what is needed to process all agency requirements at the border in the face of the ever-increasing volume of imports.

- Streamlining: CBP must find new models to manage the importing process by streamlining the flow of legitimate trade and providing benefits through a risk-based approach. CBP's advance cargo data initiatives and industry partnership programs must work together to process legitimate trade. The Subcommittee will explore, among other things, how CBP can use an account management summary processing approach as opposed to a shipment-by-shipment approach to facilitate trade by known and established industry partners, increasing compliance by allowing more focus on shipments posing greater risk.

- Enforcing: Revenue collection and trade enforcement activities are critically important missions for CBP and ICE. While the overwhelming majority of trade is compliant with U.S. law, the agencies face increasing challenges in revenue collection and customs enforcement as the sophistication of those who seek to evade our laws increases. The hearing will examine whether these agencies are meeting this challenge.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*Hearings*." Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record.*" Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business, Thursday, May 31, 2012.** Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721 or (202) 225–3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material

not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman BRADY. Good morning, everyone. Our hearing today will focus on three critical aspects of the Customs mission: Modernization, streamlining or facilitation, and enforcement as well as the accurate, timely measurement of improvement in all three. I want to welcome everyone and extend a special welcome to our guests.

Just 100 years ago, the main function of Customs was revenue collection revenue. For over 125 years, Customs duties were our main source of funds. At that time, America's imports were a mere $153 billion a year, and duties collected totaled about $310 million. Today the value of imported goods is approximately $2.3 trillion a year, and duties, taxes, and fees collected on these goods bring in almost $37 billion. The value of imports in 2011 has grown to over four times what it was just 20 years ago.

Trade is vital to our economic engine, creating jobs and lifting wages here at home. Today more than 50 million U.S. workers are employed by companies that engage in international trade, and U.S. trade represents over 30 percent of America's economy.

In the 21st century, lowering tariff barriers and increasing quotas is not enough. Time is a trade barrier, and streamlining legal trade is an essential component to our competitiveness in the global marketplace. This hearing will explore how to allocate resources, develop the models, and measure progress so that we can move the ever-increasing volume of legitimate trade more efficiently and halt trade that doesn't comply with our laws.

Customs is the air filter to our economic engine, allowing good, clean imports to flow through, while the harmful elements are screened out before they cause damage. To develop better tools and measurements, I intend to move forward on a bipartisan basis to pass Customs reauthorization legislation this year. The last time this committee last passed a Customs bill was in 2004, and it is long overdue.

CBP and ICE play pivotal roles to ensure that our trade agreements, our preference programs, and U.S. trade laws are enforced. The Treasury Department also plays an important role in furthering CBP's trade mission, and we depend on it to oversee CBP's important Customs revenue functions.

I strongly believe that for the United States to remain competitive, we must have the most modern and automated Customs structure we can realistically develop, the first component of a

sound Customs policy. I support the modernization of CBP's Automated Commercial Environment, which is vital supporting increased imports and pre-screening of cargo. I hope the CBP has turned over a new leaf in making ACE a reality and will quickly operationalize the cargo release module that we have been awaiting for some time. I understand that ACE will soon be expanded to accommodate export processing, which today is partially an archaic paper process.

Complementing ACE is the International Trade Data System. In working with Treasury, CBP has been leading 48 agencies in developing ITDS so that our companies deal with an electronic and seamless one-stop government, one window at the border instead of a morass of multiple clearance processes. These programs will allow CBP and other agencies to more quickly and cost-effectively process imported goods and to more efficiently collect and use trade data.

Second, in addition to automation, the sophisticated nature of trade demands better streamlining of Customs processes, particularly for low-risk importers. CBP's advanced cargo data initiatives and industry partnership programs must work together to better facilitate legitimate trade. Companies that partner with CBP to improve trade compliance should realize the benefits of a more efficient system that create incentives for cooperation above the norm.

CBP has the potential to develop new models to facilitate legitimate trade in a risk-based manner, such as through pooling expertise in Centers of Excellence and Expertise as well as the Importer's Self-Assessment program instead of shipment-by-shipment approaches. These models would enable CBP to focus on high-risk imports and expedite low-risk shipments while leveraging limited government resources. I would like to maximize the role of the Office of Trade in carrying out these functions.

The third component of sound Customs policy is collecting revenue, enforcing our laws without jeopardizing legitimate trade. While the great majority of incoming trade is materially compliant, CBP and ICE face increasing challenges as the sophistication of those who wish to evade our law increases. CBP and ICE have designated eight critical sectors as Priority Trade Issues to focus their enforcement resources, such as intellectual property rights enforcement, textiles, and antidumping countervailing duties.

I also want to congratulate fellow Ways and Means Committee member Dr. Charles Boustany on his bipartisan legislation to address evasion and underpayment of antidumping and countervailing duties, and I look forward to considering it.

We also can't forget that our trade agreements beneficially create new obligations on our trading partners that increase compliance. The TPP negotiations are taking this several steps further.

In conclusion, I want to emphasize that CBP and ICE consultations with this committee, with other agencies, and the private sector on its rulemakings and other major actions must be systematic and meaningful. This hasn't always been the case. There have been some bumps in the road in the past, and I think that consultation helps achieve a better product.

Today we will have a comprehensive discussion on efforts to enhance economic growth and job creation by facilitating legitimate

trade modernizing Customs procedures, enforcing U.S. Customs and trade laws in preparation for moving Customs reauthorization legislation.

Chairman BRADY. I will now gladly yield to our Ranking Member of the Trade Subcommittee, Mr. McDermott.

Mr. McDERMOTT. Thank you, Mr. Brady. I want to thank the chairman for holding this meeting and thank our witnesses for coming today. I want to start by recognizing the tremendous challenge that the CBP faces and the acting commissioner, Mr. Aguilar. Previous commissioner appointee was not confirmed, and therefore, Mr. Aguilar is sitting in for him in one of those situations where you have the job but you don't have the power, and we appreciate what you are going through at this point.

Your agency is tasked with protecting our borders from a range of security threats, a task that rightly became a central priority after 9/11. The agency also has to facilitate legitimate trade in goods across our borders, a task that is all the more complex given the exponential rise in trade.

Since Customs was subsumed in the Department of Homeland Security in 2002, our committee has expressed significant concern that CBP has not met this dual mandate and pushed CBP to sharpen its trade focus, both through statutory mandates and through oversight. Former Commissioner Bersin and now Commissioner Aguilar and key members of the CBP team have worked to respond to our concerns, and clearly you have made real progress, and we commend you for that.

But even with this progress, CBP is facing challenges with the trade side of the mandate. We are working our way towards Customs reauthorization bills, so we are here today to understand the nature and the origin of the problems and to look for solutions.

There are three areas that I hope we can focus on. One is bringing the U.S. Government's system for processing imports into the 21st century. It is, after all, the 21st century. Ensuring the CBP, number two, is getting off the sidelines and fulfilling its obligations to stop foreign companies from evading our trade revenue laws; and, three, ensuring that CBP can partner with innovative companies to stop imports which undermine U.S. intellectual property.

On the development of CBP's computer systems, the need is clear. We ought to get off paper and onto a computer. Our current system of processing imports is, simply put, inefficient. Importers submit duplicative data and paper documents to CBP and other regulatory agencies just to have their goods cleared at the port.

Now, I come from a high tech district, and just on the face of it, this redundant paper-based system not only costs importers more time and money as they wait for goods to clear, but it also costs CBP and other agencies wasted time and money.

CBP's mismanagement of ACE development hurt business. Our economy and Congress lost some faith in CBP to get the job done. Now I understand that in the past 2 years, CBP has taken good steps to get ACE back on track. Today I hope to get a better sense of how real that progress is and whether it is sufficient—significant enough that the committee should support continued development of the ACE ITDS system. It is—I think an electronic one-stop system for importers would be a great trade facilitation benefit for

businesses and over time could be a platform where CBP can finally automate a range of other programs such as drawback and inbound cargo.

On evasion of trade remedies laws, CBP's failure to act, even when affected U.S. industries provide CBP with very specific information about evasion is simply unacceptable. The purpose of AD/CVD duties is to level an un-level playing field which is harming our companies. If CBP does not take adequate steps to collect these duties, CBP is allowing that harm to continue.

Finally, on protection of U.S. intellectual property, the administration, ICE, and CBP deserve credit for the work being done at the National IPR Center to target and stop infringing imports. There are two areas where CBP should partner with innovative companies to bolster this work. The first is effective implementation of a provision enacted as part of the National Defense Authorization Act to allow CBP to share details on products suspected of being fakes with the right holders. The second is giving CBP the authority to share illegal devices used to infringe on copyright works such as video games with right holders. I hope to work with the administration and the committee to address both of these issues, and we welcome your testimony. Thank you.

Chairman BRADY. Thank you, Mr. McDermott. Now for our first panel of government witnesses, the Acting Commissioner of Customs and Border Protection, David Aguilar. Kumar Kibble, Deputy Director of Immigration and Customs Enforcement. Welcome. Timothy Skud, Deputy Assistant Secretary for Tax, Trade and Tariff Policy with the U.S. Department of Treasury. Gentlemen, thanks for coming today. We have reserved for each of you 5 minutes. Commissioner Aguilar.

STATEMENT OF DAVID AGUILAR, ACTING COMMISSIONER, UNITED STATES CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. AGUILAR. Good morning, Chairman Brady, Ranking Member McDermott, and distinguished Members of the Subcommittee. I want to begin this morning by thanking the Members of the Subcommittee and the Congress for your unwavering support to U.S. Customs and Border Protection and its men and women. Your support continues to enable us to work with our private sector partners to transform, do exactly as the chairman and the ranking member stated, to transform our entry and clearance processes, the way that we do business, and to meet our mutual and continuously evolving needs. It is indeed an honor this morning to appear before you today representing the thousands of men and women of the United States Customs and Border Protection.

I would like to begin to discuss the actions we are taking at CBP to develop a fully modern agency focused not only on protecting, which is critically important, but just as critically important also on promoting our national security and economic well-being well into the 21st century. This is an exciting time of innovation and implementation, and I want to underline implementation, at CBP, and I, along with the men and women of CBP, are committed to continuing our partnerships with the trade industry and furthering

our co-creation efforts to enhance the many important initiatives that we have undertaken.

Last week CBP held its 2012 trade symposium, its first ever on the west coast, where we focused on many of the initiatives transforming the way that CBP approaches the trade operations with the trade community and especially with other government agencies. We are charged with some of the most critical parts of America's economic and physical security.

In fiscal year 2011, CBP processed nearly $2.3 trillion in trade. We operate at 329 ports of entry and process over 100 million cars, buses, trucks, trains, vessels, and aircraft arriving at our ports of entry every year. We move more than 28 million commercial shipments arriving via air, sea, and land, 250 million more arriving in small parcels via express carriers and mail.

With such a large and growing volume of goods and people crossing our borders, CBP must perform its responsibilities efficiently to avoid delaying shipments or increasing costs and causing inefficiencies for U.S. businesses. It is essential that we stay agile in modernizing our processes and methodologies, especially as we face a world of increased trade volumes and the rapidly escalating complexity of modern trade.

Going forward, my focus on trade policy centers on several strategies and six key themes aimed at transforming as to how CBP carries out its trade and security missions. Specifically, those themes are consistency and harmonization; modernization of our processes and IT technology capabilities; building up the trust-based programs that have been so successful; co-creation with the trade industry on how we move forward; bidirectional education where we learn from the trade and the trade learns from us as to how we operate so that we can align, synergize, and dovetail at every opportunity; and lastly, trade enforcement and revenue collection, bringing substantive meaning to the enforcement and the revenue collection of our responsibilities.

Building a consistent approach across commercial ports and between Federal agencies will allow us to increase data sharing, reduce duplicative data filing, and reduce regulatory barriers to efficient cargo release. We have focused our efforts on the creation and implementation of things such as the Centers for Excellence and Expertise.

In October of 2011 CBP established two of these centers: One for pharmaceuticals, one for electronics. I recently announced just last week the expansion of two additional Centers for Excellence and Expertise, one in the petroleum, natural gas, and minerals arena, and the other in the automotive and aerospace arena. All four of these centers bring to bear all of our trade expertise on a single industry, on a single sector of industry in one strategic location. The centers are virtual, a mix of virtual and physical collocation that are staffed with trade disciplines and positions using our account management principles to authoritatively facilitate trade issues. Ultimately, they provide one-stop processing to lower the trades cost of business and enhance CBP's enforcement efforts.

Our most visible modernization effort is transition from ACS to ACE to automate and streamline the clearance and collection process. In March, we announced the completed development and suc-

cessful deployment of ACE rail and sea manifest, capabilities to all direct arrival rail and seaports through ACE.

We are also seeing significant progress on our simplified entry cargo release program, which is another successful result of our co-creation efforts. Approach to modernizing our trade operations is critical in co-creation. Simplified entry provides importers with a chance to file earlier in the process with a streamlined filing which can be amended. This is a first-time ever capability that has been provided to the trade industry.

Additionally, we continue to work towards establishing a comprehensive trusted trader program, specifically to strengthen co-creative program such as the Air Cargo Advance Screening, C–TPAT, and the Importer Self-Assessment program. We are working closely with the other agencies that are so critical to our successes.

As we move forward, I think it is important to reiterate those themes. Our economy grows stronger when the way we do our job is more compatible with today's business practices. Our partnership with the Congress, the trade community, and other government agencies is critical to strengthening our Nation's economic prosperity and national security.

I thank the committee again for the opportunity to appear before you today, and I will look forward to continuing our work together, our partnership, and to answering any questions that you might have of us.

Chairman BRADY. Great. Thank you, Commissioner.

[The prepared statement of Mr. Aguilar follows:]

U.S. Customs and Border Protection

Embargoed until May 17, 2012 at 10am

STATEMENT

OF

DAVID V. AGUILAR
ACTING COMMISSIONER

U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"Customs Trade Modernization, Facilitation, and Enforcement"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Thursday, May 17, 2012 - 10:00 a.m.
1100 Longworth House Office Building

Introduction

Chairman Brady, Ranking Member McDermott, and distinguished Members of the Trade Subcommittee, I am pleased to appear before you today with Deputy Assistant Secretary Skud, and Deputy Director Kumar Kibble. My name is David Aguilar, and I am the Acting Commissioner for U.S. Customs and Border Protection (CBP). I am delighted to discuss my commitment to CBP's trade mission and the actions we are taking at CBP to develop a fully modern trade agency focused not only on protecting but also on promoting our national and economic security well into the 21st Century.

I want to begin by thanking the Committee for its unwavering support to CBP. Your support is enabling us to work with our private sector partners to transform our trade processes to meet our evolving needs.

From its inception by the fifth act of the first congress, Customs has been charged with collecting revenue and duties on products entering the U.S. More than 220 years later, and as we approach our 10th anniversary as CBP, our trade role is more complex than ever before, and so are our responsibilities. Of course, CBP has a vital role in preventing a terrorist event from occurring within our borders. And we have been very vigilant in pursuing this mission. But CBP also has a critical role in the global marketplace, facilitating trillions of dollars in legitimate trade while enforcing U.S. trade laws that protect the economy, the health and the safety of the American people.

Embargoed until May 17, 2012 at 10am

CBP is charged with some of the most critical parts of America's economic and physical security. With that comes the requirement that we stay agile by modernizing our processes and methodologies, especially as we face a world of increased trade volumes and the rapidly escalating complexity of modern trade. CBP has taken a number of very important steps to transform itself to meet the demands of trade in the 21st Century, and I look forward to sharing these efforts with you.

First, I would like to provide the Committee with a sense of the key elements of CBP's approach to its critical trade mission and then explain the core principles that inform our mission priorities. We are striving to create trade processes that are consistent and harmonized across operations at all ports of entry so that U.S. importers and exporters can operate in an environment defined by predictability and uniformity. We are developing systems and processes that recognize and reflect the operational realities of modern business. We are working to establish a comprehensive trusted trader program that encompasses all aspects of compliance. We are committed to close and continued cooperation with the trade community to jointly create trade initiatives that are relevant and responsive to dynamic trade business practices. We are dedicated to enhancing the knowledge and skills of our workforce by working with the trade community to deepen our understanding of the way business and industry operate in the ever changing global marketplace. Finally, we are working closely with our federal partners and the import community at the border to ensure that we are aggressively enforcing our trade laws and collecting the correct revenue with all due diligence.

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To establish the foundation for a more modern CBP, well equipped for future challenges, we are now focusing on the creation of Centers for Excellence and Expertise (CEE). The CEEs will fundamentally transform the way CBP approaches trade operations and works with the international trade community by expanding efforts to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices. To ensure that our automated systems are capable of handling the increasing volumes of data that flow through the global trade environment, CBP is focusing on successfully managing the transition from the legacy Automated Commercial System (ACS) to the Automated Commercial Environment (ACE), a modern, flexible system that provides efficiency and transparency to the trade community and the government agencies that regulate border activities. We will utilize the CEEs and ACE to create simplified entry and financial processes to minimize the cost of doing business. Working with our partners in the trade community, we are addressing key areas, like redefining the role of the Customs Broker as a critical partner in managing the ever-increasing volume and complexity of trade and revising our trusted trader programs to reflect current business realities. To ensure predictable and efficient clearance of cargo, we are also working very closely with our federal agency partners to develop shared approaches to risk management and compliance activities. We are revitalizing our trade enforcement and revenue collection activities by aligning efforts with our partners in ICE Homeland Security Investigations (HSI) to expand the scope of the National Intellectual Property Rights Coordination Center (IPR Center) to cover commercial fraud enforcement, a critical responsibility for the protection of U.S. domestic industry.

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Consistent and Harmonized Modern Trade Processes

Efficient and effective processing of goods and people to and through the United States is a crucial part of CBP's trade mission – to support our Nation's economy, promote job growth and help our partners in the trade community remain competitive in a constantly evolving world economy. In 2011, CBP processed nearly $2.3 trillion in trade – a 10.5 percent increase over Fiscal Year (FY) 2010. We operate 329 ports of entry, and process over 100 million cars, buses, trucks, trains, vessels and aircraft arriving at and within our borders each year. We move more than 28 million commercial shipments arriving in air and maritime cargo, and 250 million more arriving in small parcels via express carriers and mail.

With such a large and growing volume of goods and people to process, CBP must perform its responsibilities efficiently to avoid delaying shipments, increasing costs and creating inefficiencies for U.S. business. Indeed, modern business practices often rely on "just-in-time" delivery; delays in necessary shipments of products can derail or shut down business. As a result, we are actively implementing programs to integrate our processes into modern business operations.

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Collaborative Integration of Trade Processes

Increasing our knowledge of global trade practices is vital to our modernization efforts. We conduct extensive outreach with the trade community to develop strategies to integrate and harmonize private sector trade practices with CBP's processes to expedite trade. This outreach has led to the development of our "bi-directional education" and

"co-creation" initiatives, which institutionalize our commitment to increase our understanding of business operations and encourage partnerships with the private sector.

"Bi-Directional Education"

Indeed, "bi-directional education" efforts with the trade community have enabled CBP to improve its understanding of how modern trade works. But we need to continue learning more about each other and the challenges we both face as economic and global realities continue to change. We believe CBP has an ongoing responsibility to build efficiencies into our trade processes to drive down transaction costs for industry.

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In October 2011, CBP established two CEEs within our Office of Field Operations, to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and most importantly, strengthen the agency's knowledge of key industry practices. The CEEs initiative is a transformational concept. It was initially recommended by the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), and we have acted aggressively on their proposal.

Of our two current operating CEEs, one focuses on information technology and consumer electronics, and the other addresses pharmaceuticals, health and chemicals. I recently announced the opening of two additional CEEs. One, focusing on the automotive and aerospace industries will be based in Detroit. The other, based in Houston, will focus on the petroleum, natural gas and minerals industries. I would be remiss if I did not mention

the significance of the $3 million included in the President's Budget for the Centers of Excellence and Expertise. This funding will be used to provide for software, tools, and equipment to allow for virtual interaction and collaboration with the private sector, other agencies, and within CBP; investment in bi-directional training to develop industry expertise; and resources for outreach and collaboration with the private sector on CEE operations and activities. The CEEs are a priority for us and further demonstrates CBP's commitment to the synergies of our risk-based trade facilitation and enforcement missions.

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The CEEs represent CBP's focus on transforming our customs procedures to align with modern business practices. By having the centers focus on industry-specific issues, CBP is able to concentrate its trade expertise on single industries and provide tailored support to unique trade environments. Today, required import documents for trusted partners within the electronics and pharmaceutical industries are routed to their respective CEE. While revenue collection continues to be carried out at the ports of entry, the centers will perform all validation activities, protests, post entry amendment/post summary correction reviews, and prior disclosure validations for the trusted partners within their industry.

Because of their dynamic role in trade facilitation, the CEEs are able to play a more strategic role in trade enforcement. By focusing industry expertise in the CEEs, they are better able to work collaboratively on specific enforcement issues. To this end, the CEEs represent a strategic vision for trade enforcement, as they are able to partner with the industry to better identify threats. In turn, the approach to trade processing at the new

centers will reduce costs for the trade community, facilitate legitimate trade through risk segmentation, increase agency expertise and deliver greater transparency and uniformity.

Because of the protocols developed in our CEEs, we have been able to react as soon as we receive information about potentially counterfeit and/or harmful medicines that might enter the country. The Centers are working with a number of partners. For example, they collaborated with ICE/HSI on an enforcement action against an individual charged with smuggling 40,000 tablets of counterfeit drugs into the country.

The CEE's most robust interdiction effort to date was focused on counterfeit prescription drug Avastin. Upon receiving notification that counterfeit drugs had been discovered in the United States, the CEE immediately took steps to intercept future shipments. The Center manually targeted and held shipments sent from selected overseas firms and created systemic alerts that would automatically hold any shipment sent from or to a party of interest. The CEE's efforts to interdict counterfeit Avastin continue at this time.

To advance cooperation with industry, we are working closely with stakeholders from the trade community to identify issues of mutual interest or that need resolution via CBP's intelligence, targeting, and enforcement capabilities. We anticipate these industry representatives will provide us with up-to-the-minute information on industry trends and issues that impact CBP processing and enforcement.

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"Co-Creation" and End-to-End Supply Chain Management

An example of a signature achievement in "co-creation" is the Air Cargo Advance Screening (ACAS) program which is a more secure way of moving cargo by air. The ACAS pilot grew out of the October 2010 incident where authorities discovered two packages from Yemen containing explosive devices bound for the U.S. Forensic experts said these bombs were set to detonate in mid-air over Chicago. This plot was attributed to Al Qaeda in the Arabian Peninsula. In response, CBP and the Transportation Security Administration (TSA) immediately reached out to express carriers and began receiving pre-loading data on shipments from 28 countries to protect air cargo shipments into the U.S. Today, the ACAS pilot has expanded to 145 countries in the express environment and provides another layer in our risk-based strategy – as a direct result of our partnerships, we have received over 18 million transmissions of data and to date, there has not been a single "Do Not Load" order issued.

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CBP, TSA, and the COAC Air Cargo subcommittee worked diligently to develop the ACAS Strategic Plan that was recently released. We are now also beginning the second phase of ACAS to include passenger carriers as well as freight forwarders. Additionally, ACAS is yielding other opportunities for expedited release of merchandise arriving at the U.S. ports of entry. We are exploring opportunities to leverage ACAS and offer a simplified entry process to ACAS participants by integrating with the Simplified Entry Initiative. ACAS is an excellent model of public-private partnerships and is essential to furthering our national security efforts and facilitating trade more efficiently.

CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) program is at the forefront of our partnership with the trade community to better secure goods moving through the international supply chain. With the globalization of business, many of our ports are already saturated and simply cannot accommodate escalating cargo examination regimes. Because of these constraints, CBP has recognized the need to build on trust-based partnerships in our enforcement efforts. C-TPAT has enabled CBP to influence supply chain security at international locations where we have no reach. CBP is continuing to expand this partnership from its current enrollment of over 10,000 certified partners. We are also strengthening C-TPAT to ensure that certified member companies are fulfilling their commitment to the program by securing the movement of their goods.

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Another trusted trader partnership program we are expanding is the Importer Self-Assessment program (ISA), which is a voluntary approach to trade compliance that currently has 231 companies participating. The program provides the opportunity for importers who have made a commitment of resources to assume responsibility for monitoring their own compliance in exchange for benefits. We are also working to deepen our partnerships in the import safety arena. CBP, the Consumer Product Safety Commission (CPSC) and importers have implemented the Importer Self-Assessment-Product Safety Pilot (ISA–PS), which supports our goal of maintaining a high level of product safety compliance.

Finally, CBP's innovative concept for intellectual property rights (IPR) distribution chain management will transform IPR risk assessment, increase efficiency, and support U.S.

economic competitiveness. This CBP-private sector partnership program aims to improve IPR targeting by enabling CBP to identify and release shipments of authentic goods without inspection because it will move the shipment into the trusted segment of imports. These efforts are being undertaken in close consultation with the COAC and funding for implementation of this program is included in the President's FY 2013 Budget.

By knowing importers' supply chains, CBP will be able to focus its resources on shipments that have a high or unknown risk of containing counterfeit and pirated goods. U.S. importers will benefit from increased predictability in their supply chains and reduced costs because they will not have to bear the delays and costs caused by physical inspections. Additionally, right holders will benefit from the economic impact of CBP's enhanced ability to identify and seize more counterfeit and pirated goods.

We also realize that we cannot rely exclusively on our own internal processes to successfully execute our mission; interagency collaboration is fundamental to achieve our modernization goals. Through the Border Interagency Executive Council (BIEC), CBP continues to work towards a "one-government" approach to partnership programs. The BIEC was formed to improve interagency coordination on matters relating to import safety and is the foundation for enhanced efforts in the area of import safety and trade enforcement. Key issues currently being addressed by the BIEC include information sharing to improve targeting and enforcement in addition to increased partnerships between the government and the trade community.

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Further reinforcing the collaborative efforts of the BIEC is the Import Safety Commercial Targeting and Analysis Center (CTAC), located within CBP. This is a multi-agency fusion center for targeting commercial shipments posing a threat to the health and safety of the American public. Agencies with import safety authorities are co-located at the CTAC to share targeting tools, resources, data, and expertise to protect U.S. consumers from harmful goods.

A final example of our interagency coordination efforts is the IPR Center. The IPR Center is a multi-agency center created to provide a unified U.S. government response to the growing, global economic and health and safety issues posed by IPR theft, commercial fraud, unfair trade practices and the illegal importation of sub-standard and unregulated commodities. Led by ICE/HSI, it collaborates with other federal law enforcement agencies and foreign counterparts. CBP was the source of more leads and referrals in FY 2011 to the IPR Center for multi-jurisdictional/multi-national criminal investigation than any other federal agency.

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The IPR Center employs a task force model to enhance government-private sector partnerships and optimize the expertise of its member agencies to share information, develop initiatives and coordinate enforcement actions related to IPR theft. Through these strategic government-industry and interagency partnerships, the IPR Center protects the U.S. public's health and safety, economy, and our nation's military.

For example, the IPR Center led criminal investigations into three individuals whose identity and criminal activities were first uncovered by CBP's targeting and enforcement efforts. In 2011, Neil Felahy and Stephanie McClosky both pled guilty to trafficking in counterfeit goods. Their schemes to import counterfeit computer hardware for sale to the U.S. military were first identified during CBP's Operation Infrastructure. Chun-Yu Zhao was also convicted in 2011 of conspiracy to sell counterfeit networking equipment to the U.S. military, and her case began when CBP seized her shipments and referred the case to the IPR Center for investigation. Following these successful collaborations, CBP continues working with ICE/HSI and the IPR Center through ongoing special operations and supporting criminal investigations.

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Modernization of CBP

One of our most visible modernization efforts is our transition from ACS to ACE, which will automate and streamline the clearance and collection process. ACE is speeding the flow of legitimate shipments, forming the backbone for a "single window" through which the international trade community will electronically provide all information needed by federal agencies for the import and export of cargo. The ACE program is essential to improving the government's ability to assess cargo for security, health, and safety risks, while facilitating legitimate trade and ensuring compliance with U.S. trade laws.

Not very long ago, we found ourselves at a turning point with ACE. The program was suffering from management challenges and governance issues. In 2010, the program was placed on the Office of Management and Budget's (OMB) list of 26 troubled federal

Information Technology (IT) projects. Since that time, CBP has worked aggressively, with the support of DHS and OMB, to turn the program around.

We established the ACE Business Office within the Office of International Trade to refocus the development and identification of program priorities from a true business process perspective and in line with the needs of ACE stakeholders. Our stakeholders are now represented and involved as never before. We have also made significant improvements in the program's governance structure, technology management and acquisition practices.

In March, CBP marked a key milestone on one of our ACE program priorities when we announced that we had completed development and successfully deployed ACE rail and sea manifest capabilities to all direct arrival rail and sea ports. 85 percent of the rail and sea carrier community are already using or preparing to use ACE, and we are on track to decommission legacy system rail and sea capabilities by the end of the fiscal year.

We have made substantial progress towards fulfilling the International Trade Data System (ITDS) vision by developing the functionality of three major initiatives, on which we have begun testing: the Partner Government Agencies (PGA) Message Set, the Document Image System and the PGA Interoperability solution. In April, we published a Federal Register Notice authorizing the pilot of Document Imaging System capabilities, which allow trade members to electronically supply documentation needed during the cargo release and entry summary processes to CBP and other federal agencies.

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We also recognize that repetitive and cumbersome entry requirements are inefficient, ineffective and expensive. We are seeing significant progress on our Simplified Entry/Cargo Release program, which is another successful result of our "co-creation" approach to modernizing our trade operations. Simplified entry provides importers with the chance to file earlier in the process with a streamlined filing, which can be amended – a first-time feature for the trade that allows for an expanded window of opportunity to identify potential risks to CBP. The capability for filers to update information will result in more accurate data for CBP, thereby enhancing cargo security. Partnering with the trade community, we will begin a pilot in the air mode of transportation later this month. Finally, an Export Manifest pilot began in March at eight ports. The participating 14 carriers represent fifty-six percent of the total containerized U.S. export volume.

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These achievements are evidence that changes to the program's governance have put ACE back on the correct course. We have assembled the right team to meet the needs of the private sector, CBP and our participating government partners. These improvements demonstrate that we have the capabilities necessary to consistently deliver on needed core functionality as we move forward.

However, there is still a tremendous amount of work to be accomplished in order to realize our "single window" vision and support the government's need to ensure safety, security, and compliance of our international trade, and also to realize benefits to industry such as faster processing, speedier clearance, and increased certainty in our processes. I

look forward to continuing to work with you to fully implement ACE, the cornerstone of CBP's trade modernization strategy.

Recognizing that customs brokers are crucial partners, we are also seeking to modernize the way we interact with customs brokers to automate the broker exam application, transform the broker licensing process to incorporate a more efficient background investigation process, and pre-certify qualified brokers to assess clients' readiness and eligibility to participate in our ISA program. The Role of the Broker Initiative is at the forefront of our efforts to meet this goal.

Additionally, CBP is working through the development of an Advance Notice of Proposed Rulemaking for the overhaul of Part 111, Broker Regulations. This overhaul looks at developing continuing education for licensed brokers; due process proceedings for brokers, including penalties and suspension and revocation of licenses; increased outreach and education to unlicensed parties; and "business model alignment" between the trade and CBP, which includes conducting customs business within the geographic bounds of the United States. CBP's goal is to seek comment on all facets of the broker regulations from the widest possible audience. Especially important is feedback from small and medium enterprises, as this provides insight on a broader scope of businesses. CBP will continue to meet with local and regional broker associations and intends to hold webinars to assure we receive meaningful insights that are unique to certain ports and border regions.

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Enforcement

Just as CBP is evolving, the face of trade continues to change as well. One of the many new challenges presented by evolving trade operations involves the use of unfair trade practices by competitors seeking to gain an edge in the global marketplace.

As President Obama noted in his State of the Union address this year, robust monitoring and enforcement of international trade agreements, and enforcement of domestic trade laws, are crucial to expanding exports and ensuring U.S. workers and businesses are able to compete on a level playing field. To strengthen our capacity to monitor and enforce U.S. trade rights and domestic trade laws, agencies must coordinate and augment their efforts to identify and reduce unfair foreign trade practices to ensure that U.S. businesses receive the maximum benefit from our international trade agreements and domestic laws.

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Growing concern about unfair trade practices and implementation of newly signed trade agreements have caused us to reexamine the antiquated laws and processes we currently operate under to address many emerging developments.

CBP addresses national trade risks and priority issues through multi-disciplinary trade strategies that provide solutions to both enforcement and facilitation challenges. Specifically, we have implemented the CBP Trade Strategy to direct actions and resources around trade issues posing significant risks. The strategy is organized around priority trade issues, which were developed using a consistent risk-based

analytical approach with a clear emphasis on integrating and balancing the goals of trade facilitation and enforcement.

With a strategic approach to addressing trade risks, CBP can successfully facilitate legitimate trade while effectively protecting the American public and economy. This includes protecting American business from theft of intellectual property and unfair trade practices, enforcing trade laws related to admissibility, collecting the appropriate revenue, and shielding the American public from health and public safety threats.

CBP manages its highest trade risks through Priority Trade Issues (PTIs) which integrate the key trade risks from political, economic, infrastructure and resource concerns while balancing the goals of trade facilitation and trade enforcement. We have regular and frequent conversations with staff from both the Senate Finance Committee and the House Ways & Means Committee on key PTI issues, including streamlining the drawback process. The PTIs cover antidumping and countervailing duty, import safety, intellectual property rights, trade agreements, and textiles and apparel.

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Antidumping and Countervailing Duty

We are enforcing antidumping and countervailing duty determinations and ensuring timely and accurate collection of duties. In Fiscal Year 2011, CBP issued over $4 million in penalties for AD/CVD violations. Our Re-Engineering Dumping (RED) Team developed enhanced AD/CVD enforcement tools and training, increased coordination with the U.S. Department of Commerce, and made progress in automation to reduce the

administrative burden of AD/CVD. The RED Team created specific scenarios to promote the use of Single Transaction Bonds for AD/CVD evasion at CBP ports, and is implementing a new standard operating procedure to proactively enforce AD/CVD cases. The RED Team conducted the first joint CBP-Commerce training webinar for CBP field staff on AD/CVD cases. The RED Team is also testing national automated tools to provide more efficient means to process AD/CVD entries and instructions.

Import Safety

CBP recognizes the challenges we face in maintaining safe and secure imports. CBP established a Division for Import Safety within our Office of International Trade. Our Import Safety Division has been closely collaborating and coordinating across federal agencies to streamline the import process by reducing the redundancy of inspection activities, targeting high-risk trade, ensuring compliance with U.S. trade laws among agencies with overlapping authorities and deploying risk-based management strategies. Key achievements include the formulation of the Border Interagency Executive Council, an increase in import-safety related seizures, integration of other government agencies into the Interoperability Web Service, driving the "single window" concept, implementation of the PGA Message Set, launch of other government agency risk targeting, and expansion of trade participation and benefits for Import Safety's trusted trader program.

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Intellectual Property Rights (IPR)

Theft of America's intellectual property is a serious crime that threatens the competitiveness of companies, the jobs of workers, the health and safety of consumers, and our national security. As America's frontline, CBP protects our Nation by meeting these threats head-on with an aggressive 5-year strategy to facilitate the entry of legitimate goods, enforce the laws that prohibit the entry of counterfeit goods, and deter future theft of intellectual property. The critical steps CBP completed in FY 2011 to implement this strategy, with support from an appropriations initiative in FY 2011, included acquiring modern tools and processes; partnering with stakeholders; and investing in resources and outreach. These steps, including education of 840 CBP officers at high-risk ports with Integrated IPR Field Training, enabled us, in concert with ICE/HSI, to increase the number of IPR seizures from slightly less than 20,000 in FY 2010 to nearly 25,000 in FY 2011. Our "co-created" product identification manuals also enable CBP officers to make speedier and more accurate determinations on the legitimacy of imported products. We also acquired portable scanners that will enable officers to make on-the-spot determinations whether or not a pharmaceutical is authentic. CBP is presently working with industry to deploy these tools to the field.

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On April 24, 2012, CBP published an Interim Final Rule amending its regulations, in part, to reflect new authority contained in the National Defense Authorization Act of 2012 (NDAA). This new authority permits CBP to share, prior to seizure, unredacted samples and photographs of suspected counterfeits with trademark holders so that they may better provide information to assist CBP in determining whether goods are

counterfeit. However, the regulations also provide protections for importers by giving them notice and an opportunity to respond before an unredacted sample is shared. The provision in the NDAA granting this new information sharing authority parallels the authority that the Administration sought when it submitted a legislative proposal, 19 U.S.C. 1628a, to Congress in 2011. However, the NDAA is narrower than the Administration's legislative proposal because it does not apply to merchandise suspected of infringing a copyright, it only applies to merchandise that is imported, and it does not contain provisions for sharing information when CBP enforces the Digital Millennium Copyright Act against copyright circumvention devices and exclusion orders issued by the International Trade Commission. The Adminstration looks forward to working with Congress to find a comprehensive solution.

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Trade Agreements

We are also continuing to work with internal and external stakeholders to facilitate legitimate trade and address areas of non-compliance while effectively communicating the terms of our free trade agreements and preferential trade legislation. CBP recently issued a Trade Agreements enforcement plan to ensure that claims for duty preferences are valid. The pilot enforcement plan identifies a minimum number of verifications spread among all 20 Field Offices that are to be completed for FY 2012 for free trade agreements (FTAs) and preferential trade programs. In addition, CBP recently implemented the Korea FTA. CBP issued draft interim regulations and implementing instructions for CBP field resources and the trade community, established a Korea FTA page on our website, and programmed CBP automated systems to allow for Korea FTA

claims. The same efforts are currently underway for implementing the Colombia Trade Promotion Agreement and will be done for the Panama Trade Promotion Agreement when it enters into force.

Textiles and Apparel

CBP is ensuring the effective enforcement of the anti-circumvention laws, trade agreements, and trade legislation regarding the importation of textile and apparel. In FY 2011, the Textile Production Verification Teams, in conjunction with ICE/HSI, visited 165 manufacturing facilities in nine countries to assess compliance with U.S. trade preference programs. We also delivered the results of the Mexico Textile Task Force's Exporter Operation to the Mexican government, which will assist Mexico with its enforcement of the North American Free Trade Agreement (NAFTA) claims on imports into Mexico. And, our textiles office established the Right to Make Entry Workgroup, a multi-discipline team whose goal is to develop guidance for CBP field personnel and update/reissue directives and regulations.

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In addition to these enforcement activities, we also conducted a number of outreach events, such as providing capacity building training to Central American governments and private sector members on textiles and rules of origin under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). This activity enabled the port of Los Angeles/Long Beach to make 51 wearing apparel/textile seizures for Right to Make Entry issues, duty circumvention and smuggling between September 2011 and February 2012. The textiles office also regularly provides updated guidance to

the trade and CBP to increase both enforcement and facilitation. The most recent guidance clarified Free Trade Agreement claims and acceptable wording on affidavits provided to CBP by the importer.

Conclusion

Chairman Brady, Ranking Member McDermott, and distinguished Members of the Trade Subcommittee, thank you again for the opportunity to appear before you today to present an overview of CBP's efforts to fulfill its goals of becoming a truly modern trade agency.

As the many examples I have cited show, Customs and Border Protection is committed to modernizing our tools and technologies as well as our procedures and our requirements. Our economy grows stronger when the way we do our job is more compatible with today's business practices. Our partnership with the trade community is critical to strengthening our nation's economic prosperity and our national security. We are aligning our security and trade targeting efforts. And by doing so, we are becoming ever more effective in stopping dangerous and illegal shipments while facilitating legitimate international trade that is vital to the U.S. marketplace and to our national economy.

I look forward to answering your questions.

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Chairman BRADY. Mr. Kibble?

STATEMENT OF KUMAR KIBBLE, DEPUTY DIRECTOR, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Mr. KIBBLE. Chairman Brady, Ranking Member McDermott, and distinguished Members of the Subcommittee, it is my privilege to testify before you today regarding ICE's investigative efforts and strategies to combat illegal trade practices and commercial fraud activities. As you know, the growth of international trade is an integral part of our Nation's economic prosperity. It is imperative, therefore, that we protect American innovation and are attuned to any new threats to public safety and national security it may pose.

Today I will focus on three of our major priorities as an investigative agency: Protecting American innovation from theft, cracking down on complex international property theft, and strengthening our borders to combat the threat posed by transnational organized crime.

ICE's Homeland Security investigations HSI Directorate is the largest investigative program within the Department of Homeland Security, with an extensive portfolio of enforcement authorities. Specifically, HSI investigates a wide range of trade fraud, including intellectual property theft and commercial fraud. Both IP theft and commercial fraud pose significant threats to the U.S. economy and health and safety of the American public. To focus government efforts and to enhance government efficiency, HSI led the creation of the National IPR Coordination Center. Now with 20 partners, including other Federal agencies, Europol, Interpol, and the governments of Mexico and Canada, the IPR Center brings together the full range of legal authorities and law enforcement tools to combat IP theft in the United States. And we are now seeing tremendous results.

In March of 2012 HSI and our partners at the FBI executed a joint enforcement operation which resulted in the arrests of 28 subjects, including two in Germany. These arrests were ultimately the result of a merger of an HSI investigation into a large-scale counterfeit smuggling scheme and an FBI narcotics smuggling investigation. This investigation revealed this organization to be involved in a web of criminal activity, not only the smuggling of counterfeit merchandise and narcotics trafficking, but also the use of fictitious personal and stolen corporate identities to further those activities. The total estimated MSRP of seized goods that this organization attempted to smuggle was in excess of $300 million.

Overall, our IPR enforcement statistics have increased dramatically over the last 3 years. From fiscal years 2009 to 2011, arrests jumped 115 percent, indictments rose by 206 percent, and convictions are up a total of 77 percent. Thus far in this current fiscal year, our IP enforcement statistics indicate that we will again surpass this past year's record results.

In October of 2007 ICE created Operation Guardian, which is the IPR Center's public health and safety initiative. Examples of imports targeted as part of Operation Guardian are counterfeit toothpaste containing antifreeze, counterfeit prescription drugs, tainted pet food, counterfeit circuit breakers, and contaminated food products. Since its inception, more than 700 investigations have been initiated resulting in nearly 200 criminal arrests, over 260 indict-

ments, 171 convictions, and more than 3200 seizures valued at over $87 million.

We recognize, however, that law enforcement cannot do it alone, and so we look to partner with private industry in our efforts. To enhance and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture in fiscal year 2008. It gives industry a point of contact they can use to provide us with leads and tips regarding efforts to combat intellectual property right infringement. Since July 2008 the IPR Center has coordinated and conducted 671 outreach events with approximately 35,000 public and private sector partners.

HSI also has a long history of engagement in commercial fraud enforcement, dating back to our past as investigators for the former U.S. Customs Service. HSI investigates U.S. importers, companies or other entities that attempt to circumvent lawful trade mechanisms, including the payment of required duties. The HSI antidumping and countervailing duty program is another illustration of how HSI, in close partnership with CBP, protect U.S. businesses from unfair trade practices and protect the revenue of the United States. The goal of an HSI antidumping or countervailing duty evasion investigation is to ensure that U.S. industry is protected against unfair trade practices and to ensure that the United States receives legally required tariff revenue. Currently HSI is involved in approximately 100 investigations relating to open commerce, AD/CVD orders covering commodities such as honey, saccharine, citric acid, tow-behind lawn groomers, shrimp, steel, and wooden bedroom furniture. Textile imports represent approximately 43 percent of all duties collected by CBP, and Operation Unravel was conducted in fiscal year 2011 by HSI, CBP, and the government of Mexico's Tax Administration Service, or SAT, to primarily target illicit textiles transshipment from China through the U.S. and ultimately into Mexico under suspected false NAFTA claims. The results of Operation Unravel are still being analyzed to identify additional vulnerabilities in the bonded movement system.

So we continue to work using other initiatives as well including targeting the vulnerability of in-bond diversion with fraud investigative strike teams and have continued to build on our commercial fraud program, expanding our statistics are trending up. I want to thank you, again, for the opportunity to appear before you today, and I would be pleased to answer any questions you may have for me.

Chairman BRADY. Thank you, Mr. Kibble.

[The prepared statement of Mr. Kibble follows:]

U.S. Immigration and Customs Enforcement

STATEMENT

OF

KUMAR C. KIBBLE
DEPUTY DIRECTOR

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"CUSTOMS TRADE FACILITATION AND ENFORCEMENT"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Embargoed until May 17 2012 at 10am

THURSDAY, MAY 17, 2012
1100 LONGWORTH HOUSE OFFICE BUILDING

INTRODUCTION

Chairman Brady, Ranking Member McDermott, and distinguished Members of the Subcommittee:

It is my privilege to testify before you today and discuss U.S. Immigration and Customs Enforcement's (ICE) investigative efforts and strategies to combat illegal trade practices and commercial fraud activities. The growth of international trade is an integral part of our nation's economic prosperity, and we must ensure we are attuned to the new threats to public safety and national security it may pose.

ICE's Homeland Security Investigations (HSI) directorate is the largest investigative program within the Department of Homeland Security (DHS), with an extensive portfolio of enforcement authorities. Notably, HSI Special Agents possess statutory authority to enforce more than 400 federal laws. Specifically, HSI investigates a wide range of trade fraud, including intellectual property (IP) theft and commercial fraud. Both IP theft and commercial fraud pose significant threats to the U.S. economy and the health and safety of the American public.

To focus government efforts and enhance government efficiency, HSI led the creation of the National Intellectual Property Rights Coordination Center (the IPR Center), which combats violations of intellectual property rights, specifically trademark counterfeiting and copyright piracy. Now with 20 partners, including other federal agencies, Europol, INTERPOL, and the governments of Mexico and Canada, the IPR Center brings together the full range of legal authorities and law enforcement tools to combat IP theft in the United States.

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Through the IPR Center's Commercial Fraud Unit, HSI aggressively pursues commercial fraud violations, including dumping and countervailing duty evasion schemes, pharmaceutical smuggling, tobacco smuggling, and border enforcement. HSI enforces U.S. trade laws and international agreements, as well as investigates and aggressively seeks prosecution of noncompliant importers, exporters, manufacturers, brokers, and others who commit trade-related crimes. HSI works closely with U.S. Customs and Border Protection (CBP) in these efforts, and engages the trade community through an active outreach program.

Today, I would like to discuss some of the innovative HSI initiatives and operations instituted as part of this ongoing strategic effort. In particular, I will focus my remarks on our efforts to keep dangerous and substandard products out of the U.S. marketplace, the methods by which we protect intellectual property rights, and the approaches we use to target schemes designed to circumvent lawful trade mechanisms.

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PROTECTING INTELLECTUAL PROPERTY RIGHTS

U.S. law enforcement agencies have overlapping areas of responsibility for enforcing intellectual property laws. Recognizing that the collective leverage of resources is essential to success, the IPR Center was designed to share information and promote a coordinated U.S. government response to criminal IPR enforcement.

The IPR Center includes embedded, co-located representation from the following agencies: CBP; Federal Bureau of Investigation; Food and Drug Administration Office of Criminal Investigations (FDA-OCI); U.S. Department of Commerce's Office of Intellectual Property Rights; U.S. Patent and Trademark Office; Consumer Product

Safety Commission (CPSC); U.S. Department of State's Office of International Intellectual Property Enforcement; U.S. Postal Inspection Service (USPIS); Defense Criminal Investigative Service; Air Force Office of Special Investigations; U.S. Naval Criminal Investigative Service; General Services Administration's Office of the Inspector General; U.S. Army Criminal Investigation Command; Defense Logistics Agency; National Aeronautics and Space Administration; Mexican Revenue Service; Royal Canadian Mounted Police; INTERPOL; and Europol.

The IPR Center utilizes a multi-layered approach consisting of investigation, interdiction, prosecution, and outreach/training to fight IPR crime. To accomplish this, the IPR Center is organized into four units: the Field Support Unit, the Programs Unit, the Outreach and Training Unit, and the Policy and Administration Unit.

The Field Support Unit executes the IPR Center's command and control function for multi-jurisdictional, large-scale investigations. This unit is responsible for de-conflicting leads that are received at the IPR Center among all partner agencies and then forwarding actionable information to the field. The Field Support Unit also runs a certified undercover operation to target proactively the sale and distribution of counterfeit, substandard and tainted products online, and works closely with the Department of Justice to prosecute IPR violators domestically and internationally.

The Programs Unit develops HSI's enforcement initiatives, as well as interagency initiatives. In addition, it develops procedures for HSI's many different IPR actions and activities, including ongoing operations, and coordinates HSI's participation in international enforcement operations.

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The Outreach and Training Unit is the point of contact for all potential partners and sources of information, including the private sector, federal, state, local, and foreign law enforcement, as well as the public. The IPR Center also coordinates with the World Customs Organization, INTERPOL and the U.S. Departments of Commerce, Justice and State to conduct training and provide support for anti-counterfeiting efforts with international customs administrations and law enforcement agencies domestically and internationally.

Finally, the Policy and Administration Unit coordinates the IPR Center's standard operating procedures and policies, and performs collaborative work with other U.S. Government agencies and the Office of the U.S. Intellectual Property Enforcement Coordinator.

The central goal of the IPR Center is to provide a "one stop shop" for IPR law enforcement and industry around the U.S. and the world. We recognize that law enforcement cannot do it alone, and so we look to partner with private industry in our efforts. To enhance and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture in FY 2008. This effort is designed to increase support, communication, coordination, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts. Operation Joint Venture is an HSI initiative designed to provide all private industry with valuable information about our efforts to combat the importation of hazardous and counterfeit products. It gives industry a point of contact they can use to provide us with leads and tips regarding efforts to combat intellectual property right infringement.

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Since July 2008, the IPR Center has coordinated and conducted 671 outreach events with approximately 35,000 public and private sector partners. This outreach is paying dividends. For instance, in June 2009, the IPR Center received information from the Motion Picture Association of America that a website, ninjavideo.net (NinjaVideo), was illegally distributing pirated copies of motion pictures and other audiovisual works. NinjaVideo provided its millions of visitors the ability to illegally download high quality infringing copies of copyrighted movies including movies that were currently in theaters or not yet released, as well as television programs. Despite receiving Digital Millennium Copyright Act takedown notices, the NinjaVideo organization continued to distribute the infringing material.

To date, the NinjaVideo investigation has resulted in the arrests and convictions of five of the six co-conspirators with sentences ranging from 22 months in Federal prison to three years' probation with a combined restitution exceeding $470,000 to the victims. A sixth co-conspirator remains a fugitive. The defendants in this investigation collected more than $500,000 from online advertisers and donations by users during the website's 28 months of operation and facilitated the infringement of millions of dollars of copyrighted movies, television programs and software products. During a one week period the NinjaVideo website distributed nearly 600,000 copyrighted motion pictures and more than 1.1 million copyrighted television programs.

Overall, IPR enforcement statistics for HSI increased dramatically over the last three years. From Fiscal Year (FY) 2009 to FY 2011, arrests jumped 115 percent from 266 to 574, indictments rose 206 percent from 116 to 355, and convictions climbed 77 percent, a notable increase from 164 to 291. FY 2012 arrests have already reached 373 in the first

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six months of this fiscal year—a strong indicator that our IP enforcement will again surpass the previous year's results.

PROTECTING HEALTH AND SAFETY

Operation Guardian

Operation Guardian (Guardian) is the IPR Center's public health and safety initiative. Guardian was initiated in October 2007 in response to several incidents in which hazardous imports into the United States caused serious public safety concerns.

The IPR Center leads a working group comprising HSI, CBP, the FDA-OCI, USPIS, the Department of Justice Computer Crime and Intellectual Property Section, the U.S. Department of Agriculture, and the CPSC to target, interdict and investigate substandard, tainted and counterfeit products being imported into the United States that pose health and safety risks to consumers.

Since the inception of Guardian, HSI and its partners have initiated more than700 investigations resulting in nearly 200 criminal arrests, obtained over 260 indictments, executed 282 search warrants, secured 171 convictions, and made more than 3,200 seizures valued at over $87 million.

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Operation Safeguard

Operation Safeguard, formerly Operation Apothecary, began in FY 2004 and is an ongoing operation that identifies, measures, and attacks potential vulnerabilities in the entry process that might permit the smuggling of commercial quantities of counterfeit, unapproved, and/or adulterated pharmaceuticals, using international mail facilities,

express courier hubs, and land borders. The name was changed in FY 2012 in order to consolidate the HSI and CBP operations under one name. Operation Safeguard is also being utilized to evaluate the type, volume, and quality of declared pharmaceutical products being shipped in international mail packages. Safeguard combines the expertise of HSI, CBP, FDA-OCI, and USPIS to conduct regular surge operations to secure new intelligence, investigative leads, and assess the deterrent effect of the prior surge.

In support of the Safeguard mission in FY 2011 and thus far in FY 2012, HSI personnel have coordinated and conducted 18 Safeguard enforcement surges in conjunction with CBP, FDA and USPIS at international mail facilities and express courier hubs throughout the United States. These surges have resulted in the examination of more than 8,800 parcels, more than 1,100 of which were either detained or seized. In FY 2011 and thus far in FY 2012, through Operation Safeguard, HSI special agents have conducted 66 investigations, 25 criminal arrests, 6 indictments, the execution of 30 search warrants, obtained 18 convictions and made 341 seizures valued at over $33.2 million.

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INTERNATIONAL EFFORTS

Recognizing that enforcing intellectual property laws is an international effort, the IPR Center works with the World Customs Organization (WCO), INTERPOL, and the U.S. Departments of State, Commerce, and Justice on a variety of initiatives, including providing training in IPR enforcement to our foreign law enforcement partners.

HSI is recognized worldwide as an expert on criminal customs matters, and holds positions as Chair for the WCO's Enforcement Committee and Chair of the Commercial

Fraud Working Group. In addition, HSI has assigned a Deputy Director to Brussels to coordinate our international IP efforts. In March 2011, the IPR Center proposed, and the WCO accepted, Operation Short Circuit, a three month surge operation in July 2011 through September 2011 to combat the importation and distribution of substandard and counterfeit electrical items. Over 43 countries participated in this operation which resulted in the seizure of more than one million items, including; almost 4,800 boxes of holiday lights, over 350 boxes of surge protectors, over 3,700 boxes of extension cords, almost 800,000 individual batteries, 18,000 boxes of batteries, 42,000 power supplies, 33,600 power adaptors, and 115,000 chargers.

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COMMERCIAL FRAUD

HSI has a long history of engagement in commercial fraud enforcement dating back to our past as investigators for the former U.S. Customs Service. HSI, as the Department of Homeland Security's investigative arm, investigates U.S. importers, companies or other entities that attempt to circumvent lawful trade mechanisms, including payment of required duties.

Illicit cargo and goods are often smuggled into the U.S. through methods similar to those utilized by drug traffickers and human smugglers. Individuals illegally import items by sea, air and land, penetrating U.S. borders with falsely described and/or mislabeled merchandise. Schemes include the exploitation of the in-bond system, transshipping to third countries and falsifying the country of origin, or stealing the identity of a legitimate importer. HSI works closely with CBP and numerous other law enforcement partners to identify and combat these schemes.

In-Bond Diversion and Trade Schemes

HSI and CBP have identified illegal diversion of in-bond merchandise as a vulnerability that can endanger public health and safety, damage the U.S. economy, and facilitate or finance the illegal activities of organized crime. The in-bond system allows foreign merchandise to physically enter the United States at a port of entry to transit the United States for export to a third country. When conducted properly, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. In-bond movements are incredibly valuable to trade, but also have an inherent vulnerability because they can be diverted to smuggle restricted or high-duty items into the United States.

To mitigate potential vulnerabilities in the entry process that might allow smuggling of commercial merchandise via bonded warehouses, HSI established Fraud Investigative Strike Teams (FIST). FIST operations, which began in 2004, focus on protecting the integrity of the in-bond process. FIST personnel consist of HSI special agents, CBP officers and representatives from other federal agencies. These teams focus on identifying unauthorized manipulations of commercial merchandise within bonded areas and preventing unauthorized access by employees who lack proper immigration documentation and/or the background investigations required to have access to the bonded warehouses.

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Trade Scheme Utilizing the Identities of Legitimate Importers

HSI uncovered an elaborate trade scheme to smuggle counterfeit goods manufactured in China into the United States utilizing containers falsely associated with legitimate importers. Through the use of an unwitting customs broker, the conspirators fraudulently stole the identities of legitimate corporations to import counterfeit goods to evade detection at the Port Newark-Elizabeth Marine Terminal. In total they imported, or attempted to import, more than 135 containers of counterfeit goods into the United States. Many of the containers of goods held millions of dollars in merchandise; together they had an estimated retail value of more than $300 million.

Some of these same conspirators also engaged in a conspiracy to launder what they believed to be the proceeds of narcotics and illegal gambling activity through banks in China, the United States and elsewhere. As of April 2012, 26 individuals associated with this investigation have been arrested and more than $3 million in proceeds have been recovered.

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Anti-Dumping and Countervailing Duties

The HSI Antidumping and Countervailing Duty (AD/CVD) Program is another illustration of how HSI and CBP protect U.S. businesses from unfair trade practices and protect the revenue of the United States. When the U.S. Department of Commerce (Commerce) determines that an imported product is being dumped or benefits from an actionable subsidy and the International Trade Commission finds injury or threat of injury to a U.S. industry, an anti-dumping duty order or countervailing duty order is imposed to offset the dumping or actionable subsidization.

HSI, with assistance from CBP and Commerce, investigates importers or other entities attempting to circumvent payment of required duties. The goal of an HSI AD/CVD evasion investigation is to ensure that U.S. industry is protected against unfair trade practices and to ensure that the United States receives the legally required tariff revenue.

Currently, HSI is involved in approximately 100 investigations relating to open Commerce AD/CVD orders covering commodities such as honey, saccharin, citric acid, tow-behind lawn groomers, shrimp, steel, and wooden bedroom furniture.

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Operation Unravel

Textile imports represent approximately 43 percent of all duties collected by CBP. In 2009, HSI and CBP officials were alerted to several schemes used in the under-valuation of textile products imported from China, including, but not limited to, incorrect classifications, underreported quantities, and questionable entry documentation. Due to the severity of the problem, HSI and CBP, with the cooperation of the Mexican Government, initiated Operation Unravel.

Operation Unravel was a three-phased initiative, commencing in March 2011, which was designed to identify shipments of Chinese textiles that were ultimately being smuggled into Mexico, frequently in contravention of the North American Free Trade Agreement (NAFTA). The first phase focused on shipments at the port of Los Angeles/Long Beach and then moved under bond to and through a port of export to Mexico. This phase involved physical cargo examinations at the unlading stage and corresponding examinations at the point of export.

The second phase involved intensive data analysis by the CBP New York National Targeting and Analysis Group on imports of apparel into the United States from Mexico with a preferential NAFTA duty/origin claim. Based on this analysis, a group of Mexican producers was identified for additional scrutiny by CBP field personnel in the form of extensive entry/declaration reviews. Thirty-two percent of the companies targeted produced discrepancies that resulted in recovery of over $200,000.

The third phase involved HSI and CBP personnel visiting the premises of 38 U.S.-based exporters of NAFTA originating goods used in the production of wearing apparel that was ultimately imported from Mexico with a preferential NAFTA claim. Nearly all of the companies were found to be issuing invalid NAFTA certificates of origin for export to Mexico. Furthermore, most of the company officials did not, or claimed they did not, understand the requirements of the agreement.

The results of Operation Unravel are still being analyzed to identify additional vulnerabilities in the bonded movement system and have led to the referral of four companies to HSI for potential criminal investigation.

Overall, commercial fraud enforcement statistics increased over the last three years. Arrests climbed 24 percent from 90 in FY 2009 to 112 in FY 2011; indictments increased by 53 percent from 43 to 66; and convictions rose slightly from 59 to 62 – an increase of 5 percent.

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Trade-Based Money Laundering

Another scheme designed to circumvent lawful trade mechanisms is trade-based money laundering. HSI's Trade Transparency Unit (TTU), which aggressively targets

trade-based money laundering and commercial fraud, has partnerships with Argentina, Brazil, Colombia, Paraguay, Mexico, Panama and, most recently, Ecuador. The core component of the TTU initiative is the exchange of trade data with foreign counterparts, which is facilitated by existing Customs Mutual Assistance Agreements or other similar information-sharing agreements. The partner countries recognize the value of sharing trade data with the United States and gaining the tools to analyze their own data. Recognized as the best mechanism to combat trade-based money laundering, TTUs have been highlighted in numerous U.S. government publications including *The National Money Laundering Threat Assessment*, the Department of Treasury's *National Money Laundering Strategies,* and the Department of State's *International Narcotics Control Strategies*.

By combining international efforts, TTUs can identify international trade anomalies indicative of trade-based money laundering. This information is then used to initiate and support international criminal investigations related to customs fraud, tax evasion, money laundering and other financial crimes. It bears mention that HSI is the only federal law enforcement agency capable of exchanging trade data with foreign governments to investigate these types of crimes.

Additionally, TTUs are contributing to the successes of HSI investigations. With the assistance of the HSI Headquarters TTU, the HSI office of the Special Agent in Charge (SAC) Los Angeles, California in July 2010 closed a two-year investigation of a Los Angeles based toy company suspected of money laundering, cash transaction structuring, and bulk cash smuggling. HSI Headquarters TTU personnel provided analytical support and assisted the SAC office with the execution of a search warrant

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issued on the company. The case culminated in the arrest of the company's Chief Executive Officer, company owner, and accountant. Additionally, a Colombian businessman involved in the aforementioned criminal activities with the company was also arrested.

Additionally, in February 2010, three individuals were arrested and three Miami businesses were searched on charges involving the export of goods to a U.S.-designated terrorist entity in Paraguay. The enforcement actions were a direct result of cooperative efforts among HSI, the Joint Terrorism Task Force, CBP, and the Paraguay TTU. By analyzing both sides of the trade transactions, special agents were able to detect fraudulent shipments of electronic goods destined for Paraguay from Miami. HSI special agents worked closely with Paraguayan TTU counterparts to identify false invoices containing fictitious addresses and consignee names, concealing the true destination of prohibited shipments.

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CONCLUSION

IPR theft and unlawful importation of illicit goods pose a significant threat to national security, public safety and the economic security of the United States. HSI investigations have shown that these illegal traders and criminal organizations are profit-driven, and exploit loopholes and vulnerabilities in the in-bond system and financial sectors to advance their criminal enterprises. HSI has unique expertise, as well as the necessary infrastructure and established key law enforcement partnerships, to effectively support investigative and operational activities focused on dismantling criminal

organizations – thus reducing public safety hazards and limiting negative economic impact to this country.

HSI will continue to leverage all its tools to coordinate and unite domestic and international law enforcement efforts to combat international trade crimes. We are also dedicated to building on agency outreach programs with the trade community to enhance cooperation with all private sector partners.

Thank you again for the opportunity to appear before you today, and for your continued support of ICE investigative efforts.

I would be pleased to answer any questions you may have.

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Chairman BRADY. Welcome, Mr. Skud.

Mr. SKUD. Thank you, Mr. Chairman, Ranking Member McDermott.

Chairman BRADY. Mr. Skud, can you hit that microphone again.

STATEMENT OF TIMOTHY SKUD, DEPUTY ASSISTANT SECRETARY FOR TAX, TRADE AND TARIFF POLICY, UNITED STATES DEPARTMENT OF THE TREASURY

Mr. SKUD. Sorry. Thank you, Mr. Chairman. Ranking Member McDermott, Members of the Committee, thank you for the opportunity to discuss Treasury responsibilities for Customs revenue functions and to discuss the International Trade Data System. Authority for Customs revenue functions is important to the Treasury mission because taxation and regulation of trade have an important effect on our economy and on global growth. While enforcement of Customs revenue laws have been delegated to the Department of Homeland Security, Treasury retains sole authority to approve regulations. One recent example of such a regulation, Treasury and DHS have published a proposed regulation that would reform the in-bond and transit processes. These reforms should enhance revenue collection, they should limit evasion of antidumping laws, and they should promote security by providing better control over in-bond shipments.

We work closely with CBP on many areas of mutual concern. One of those areas and the focus of my testimony today is the International Trade Data System. It is a key component of efforts to modernize and coordinate interagency border enforcement activities. Today, importers report separately to numerous government agencies, sometimes on paper, sometimes electronically. Wouldn't it make sense to have a single electronic filing with that data distributed by computer to all relevant agencies? That would reduce costs to government and to business. This is the ITDS vision that CBP and 46 other agencies are building as part of the ACE program.

Some ITDS functions are already operational. For several years ITDS agencies have been able to obtain import data that CBP already collects electronically and use that data to stop unsafe shipments and to eliminate paperwork requirements.

Two years ago, the ITDS board identified three priorities, on which I can report significant progress has been made. The first priority was to add data elements required by other agencies to the existing CBP reporting messages. CBP has built that capability. It is known as the PGA Message Set. CBP expects to test it this year.

The second priority. Accept electronically imaged forms in place of paper. CBP has built a document image system to accept imaged documents where paper is now required. CBP is testing this capability now.

Third, establish a technical standard for communication between agencies' electronic systems. CBP has adopted interoperable Web services as a protocol for transferring data among agencies. It was successfully tested last year.

When these three initiatives become operational, CBP will have implemented for imports the basic electronic trade data interchange system mandated by the SAFE Port Act. Testing and implementation are planned for this year.

With progress on imports, we have begun work on exports. In 2010, the ITDS board recommended building ITDS export capability on existing systems in order to save money and time. CBP

and the Census Bureau, which has authority for the current export commodity reporting systems, have agreed to expand those systems to include data required by other ITDS agencies. Despite the challenges involved in a project of wide scope and involving 47 agencies, the ITDS program can be successfully and expeditiously implemented. Our board of directors looks forward to working with this committee to make ITDS a success.

Mr. Chairman, that concludes my oral remarks. I am happy to answer questions, and I thank you for the opportunity to testify.

Chairman BRADY. Mr. Skud, thanks for being here today.

[The prepared statement of Mr. Skud follows:]

Statement of Timothy E. Skud
Deputy Assistant Secretary for Tax, Trade, and Tariff Policy
U.S. Department of the Treasury

Testimony before the Subcommittee on Trade, Committee on Ways and Means
May 17, 2012

Hearing on "Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement"

Mr. Chairman, Ranking Member McDermott, and Members of the Subcommittee, thank you for the opportunity to appear here today to discuss the Treasury Department's responsibilities for customs revenue functions and the International Trade Data System (ITDS).

Treasury Responsibility for Customs Revenue Functions

As the Committee is aware, the Secretary of the Treasury has authority for "customs revenue functions," as defined by the Homeland Security Act of 2002. This includes not only revenue collection, but also the regulation of international trade for certain economic purposes, which has an important effect on our economy and on promoting global growth.

The Treasury Department has delegated authority for enforcing the laws involving customs revenue functions to the Department of Homeland Security (DHS), but has retained sole authority to approve customs regulations involving import quotas, trade bans, user fees, origin, copyright and trademark enforcement, duty assessment, classification, valuation, preferential trade programs, and recordkeeping requirements. .

The Treasury Department also reviews Customs and Border Protection (CBP) rulings involving these issues when those rulings are to effect a change in practice. In addition, the Treasury Department shares the chair of the Commercial Operations Advisory Committee (COAC) with CBP.

As part of the Treasury Department's responsibility for customs revenue functions, we have worked closely with DHS and CBP over the past year on particular areas of concern to this Committee. For example, Treasury and DHS have recently published a proposed regulation that would reform the "in-bond" and transit processes. This reform would enhance revenue collections and help limit evasion of antidumping laws and should also promote security by providing both more information about and better control over in-bond and transit shipments. Other areas where we have recently worked closely with CBP and other agencies include implementation of free trade agreements and protection of intellectual property.

International Trade Data System (ITDS)

The focus of my remarks today, however, is another area where the Treasury Department has worked closely with CBP as well as many other agencies, the International Trade Data System (ITDS).

The ITDS project is an interagency effort to build an electronic "single-window" system for reporting imports and exports to the government. Currently, importers or exporters must make multiple reports to multiple agencies. The goal for the ITDS Program is to eliminate redundant reporting, replacing multiple filings with a single electronic filing. Relevant data will be distributed electronically to the appropriate agencies, providing agencies with the ability to process that data electronically.

ITDS will allow agencies to obtain data more quickly, process cargo more expeditiously, and identify unsafe, dangerous, or prohibited shipments. Moreover, ITDS will reduce costs for business and government by eliminating redundant reporting of data, thereby facilitating trade.

The SAFE Port Act (P.L. 109-347, October 13, 2006) formally established ITDS and gave the Secretary of the Treasury the responsibility to coordinate interagency participation in ITDS in consultation with an interagency committee consisting of the agencies participating in ITDS and the Office of Management and Budget (OMB). The SAFE Port Act also requires all "agencies that require documentation for clearing or licensing the importation and exportation of cargo" to participate in ITDS.

Forty-seven agencies, including CBP, are working together to implement ITDS. Pursuant to section 405 of the SAFE Port Act, Treasury chairs the interagency coordinating committee, the ITDS Board of Directors. CBP as the nation's face at the border, plays a leading role, and has the responsibility of building ITDS functions into the Automated Commercial Environment (ACE), CBP's new trade processing system.

Status of Implementation of ITDS

Some ITDS functions are partly operational. For several years, ITDS agencies have been able to obtain import data that CBP already collects electronically. Some of these agencies have successfully used that data to interdict shipments and also to eliminate paperwork requirements. A recent example of interagency cooperation is the Coast Guard (USCG) pilot of manifest functionality in Charleston, South Carolina. The USCG used information received through ACE to place and remove restrictions on the processing and clearing of bills of lading, containers, and vessels.

Recent Progress on ITDS for Imports

Two years ago, the ITDS Board of Directors recommended three concrete measures to advance the ITDS program.

First, the Board recommended that CBP immediately add data elements required by other agencies to the major import reporting messages (manifest, entry, entry summary), so traders would be able to provide data for other ITDS agencies through ABI (Automated Broker Interface – the data intake module for both ACE and the Automated Commercial System (ACS), the CBP trade processing system that is being phased out).

Second, the Board recommended that CBP develop the capability to accept transmission of "images" (such as .pdf files) of forms which currently must be submitted on paper. Such imaged forms could be transmitted as "attachments" to filings with CBP and then forwarded to the relevant agencies.

Third, the Board recommended that CBP make decisions related to technical interoperability with other agencies' systems, in order to allow other agencies to make plans for investing in automated systems to work with CBP systems.

The past 12 months have seen significant progress toward implementing these three goals:

- **Collect ITDS Data Electronically:** CBP has built the capability to collect data elements required by other agencies through a **"PGA (Participating Government Agency) Message Set"** so the information that can be transmitted through the ABI. CBP expects to test this new capability in 2012.
- **Accept "Images" of Documents:** CBP has built the capability to accept electronic transmission of "imaged" documents, documents that currently must be submitted on paper, through its **"Document Image System"**. CBP is testing this capability and is accepting electronically submitted EPA and NOAA forms that are required for importing certain products.
- **Establish System-to-System Communication among ITDS Agencies:** CBP has implemented a standard protocol for transferring data to other agencies' electronic systems, known as **"Interoperable Web Services."** This capability was successfully tested when CBP transmitted entry and entry summary data to the Consumer Product Safety Commission.

The bulk of the work on developing these three functionalities has been completed. Once the PGA Message Set is added to CBP's major import messages, CBP makes data from that set available to agencies, and the Document Image System is regularly used to transmit "imaged" copies of documents that now must be submitted on paper, the basic electronic trade data interchange system that is mandated by the SAFE Port Act will have been implemented for imports. Completion of testing and implementation are planned for 2012.

Electronic collection and delivery of these data will make agencies better able to interdict unsafe cargo. This progress should discourage proliferation of multiple expensive electronic import reporting systems, reduce collection of paper documents, and make importing less expensive. Finally these steps will provide the necessary foundation for

more advanced "value-added" ITDS functions, such as the automated processing of data and interagency electronic communications.

ITDS for Exports

The progress that has been made on ITDS for imports has allowed the Board to turn its attention to exports. In 2010, the ITDS Board recommended building on existing export systems in order to achieve ITDS export capability. CBP and the U.S. Census Bureau (which maintain the current export commodity reporting systems) have since agreed to expand these systems to include data elements required by other ITDS agencies to enhance their processing capabilities and to support their export-related missions.

Inbound and outbound manifests contain largely the same information, about the means of transport and shipments. In 2010 the ITDS Board also suggested that an automated export manifest system be based on the work already done for an inbound manifest system, which is nearly complete. CBP has decided to use that work as the basis for a new automated export manifest system, which would include single-window capability to deliver data to other agencies, and to link data from that system to export commodity data from AES to improve export enforcement.

Finally, an interface is planned between these export systems and USXPort, a Department of Defense automated export licensing application system, which is being expanded under the President's Export Control Reform Initiative to provide a single-window licensing platform for all agencies that license exports.

Challenges

Funding limitations have resulted in a reduction of contractor support for the ITDS program, and a consequent loss of knowledge and expertise. Competing priorities have also seen ITDS funds redirected for other uses. We see value in focusing on basics and building on existing capabilities. For example, the ACE Portal, an existing website that allows agencies to obtain data collected by CBP, can be enhanced to provide easier access to more data. The Interoperable Web Services tool can also be used to provide agencies data they currently do not receive. Basic import processing, such as license verification and notification of clearance, can be a focus in CBP's work to develop automated cargo release and simplified entry processing in ACE.

Benefits of ITDS

Once fully implemented, ITDS will have a number of significant benefits for the private sector and the government, including:

- Reducing the burden on business and increasing the efficiency of the government's collection of international trade transaction data by substituting standard electronic messages for the redundant reporting – often on paper forms – that occurs today.
- Enhancing the ability of CBP and other agencies to target risky cargo, persons, and conveyances.
- Extending the capabilities of ACE by bringing together critical security, public health, public safety, and environmental protection information through a common platform, which will foster an "account management" approach to importing.
- Reducing the technical barriers to authorized sharing of data with other governments by accepting electronic filings reported using international standards for trade reporting (World Customs Organization standards).
- Improving compliance with laws and regulations that apply to:
    - Carriers – for example, highway safety and vessel clearance requirements,
    - People – for example, immigration requirements for drivers and crews of commercial conveyances, and
    - Goods – for example, laws addressing public health and safety, animal and plant health, consumer protection, and enforcement of trade agreements.
- Providing convenient access to data on international trade that are more accurate, complete, and timely for Federal agencies with a statistical mission.
- Providing a single billing and collection point for the variety of taxes and fees incurred by traders.
- Providing Federal agencies with a convenient, single point of access to data on trade transactions, with each agency having its own, and appropriate, level of access.

Conclusion

Despite the challenges we currently face, I am confident that the ITDS program can be successfully and expeditiously implemented. On behalf of the entire ITDS Board of Directors I can say we look forward to working with the Committee to make ITDS a success.

Mr. Chairman, thank you again for the opportunity to testify this morning. I would be happy to answer any questions you may have.

Chairman BRADY. I thank all the panelists.

Mr. Aguilar, first, you know, in the past, CBP has not necessarily devoted much time to consultations with Congress, the trade com-

munity, trying to find as you would call it, co-creation progress going forward. You and your predecessor have changed that culture, have spent a great deal of time with that outreach. I want to thank you for doing that, encourage you to do more of it. I think it is very helpful.

I have got two questions, one dealing with ACE, one with measurements. As you heard from Mr. McDermott, there is bipartisan support for getting ACE in place, and there is bipartisan concern about the delays and what the future is on that program. The reason it is critical—you know, the Trade Subcommittee on Ways and Means have three major goals. One is to find new customers, level the playing field around the world for our American products and services; secondly, to fight protectionism, here and abroad, the delay becomes a barrier for our products to be sold around the world; and finally what we are doing today, which is streamlining the movement of these goods and services. Time is the trade barrier in the 21st century. ACE could be critical to creating more efficiently efficiency in that system.

My question to you is, looking forward over the next 12 months, which ACE functionalities can we expect CBP to deliver?

Mr. AGUILAR. Mr. Chairman, as you said, ACE is absolutely critical. ACE, simply put, is going to modernize into the 21st century, is going to streamline, facilitate, and give us a greater capability at targeting illicit commodities and goods coming into this country.

Having said that, we have prioritized the ACE functionalities that we are looking at putting forward. Some of those include the going forth on the ITDS, as Mr. Skud pointed out, following through with our simplified entry that is already the force module, if you will, working towards full cargo release. Critically important that we move forward on those. Continuing our efforts to include the co-creation of what all of the PGAs are looking for us to do. So one of the things that, of course, we are faced with are the budget constraints. But prioritizing what it is that we have in place that will dovetail with what the needs are going forward. Complete e-manifest for rail and sea, simplified entry of the phase one, the document imaging system that we just talked about, the PGA Message Set, and the interoperability. Critically important. Moving forward, at or about the 12-month period and continuing is going to be something that the trade has asked for specifically, which is the entry summary edits capability, and then of course working towards integration of the exports capability in support of the President's export initiative.

Chairman BRADY. So, Commissioner, in the first 12 months, which elements are you looking at?

Mr. AGUILAR. It is going to be the ACE, continuing the rail and sea that is going through the pilot now, it is going to continue with the simplified entry that is basically moving forward as we speak, and commencing, already commenced a pilot on the exports initiative.

Now, as quickly as we can, because we have already allocated from carryover monies, is what we refer to as critical fixes on already deployed capabilities, and what that means, Mr. Chairman, this is something that is critically important to me, is going back

to all of those deployments that we have deployed in the past that have not worked as well as they should have, as we planned them, and as we envisioned them. So we are going back to fix those to get them to work as they need to be operating.

Chairman BRADY. Okay. I think there will probably be follow-up questions on ACE. Let me ask a final question on measurement. We have two young boys. I have discovered that putting a bunch of 5-year-olds on a soccer field doesn't necessarily mean you will see a soccer game, and creating a whole number of new programs and efficiencies doesn't guarantee efficiency unless you measure it. So my question to you is, what measurements—and I notice the World Bank study recently ranked America 9th in measuring the efficiency of our supply chain, in Customs efficiency we were ranked 13th in the world and international shipments 17th. We did better in some other areas such as tracking and tracing, consignments. The goal of this legislation is to move up those rankings. So, A, what are you measuring today in efficiency and accuracy and security? And as we move forward with ACE and others, what other measurements will you be looking at?

Mr. AGUILAR. Yes, sir. Critically important that we take a look at the metrics, and for each one of these efforts that we are undertaking, we have identified a set of metrics. I would like to give you a couple on some of the things that are most prominent as an example on ACE. Some of the metrics that we are measuring is entry summary filers, and how that is progressing moving forward, entry summaries by the filers, how many are they actually conducting. Filer entry summary submissions to ACE, summaries that are submitted, the percent of eligible entry summaries that are filed in ACE, what percentage are we seeing in an increase, and I have got some numbers that I can provide to you later on if you would like, post-summary correction submissions, something that the trade asked for, we provided, and now we are finding that they are using it tremendously. Validation activities under ACE.

I spoke earlier about our Centers of Excellence and Expertise. We piloted these just back in October of 2011, but moving forward on that, one of the things that we set in place was our ability to capture the metrics. I will just go through a couple of those to show the level of detail that we are going through. But under risk segmentation and facilitating the legitimate trade, some of the things that we are looking at, do the centers maintain or improve the revenue gap within the industry standards from the compliance standpoint? Do the centers maintain or improve compliance of the revenue within the industry standards? Are the centers increasing the paperless rate that we are also interested in? Do the centers improve the detection rate and increased seizures of high risk products? And there is a litany of about 15 metrics that we use. So for every one of these, undertaking these that we are moving forward on, we have a metrics unit that we are looking at for each one of them.

Chairman BRADY. Right. If you could supply those to the committee, that would be helpful. Mr. Kibble and Mr. Skud as well, when you are looking at your respective duties, what you measure today and are contemplating, that would be very helpful to me as we move forward. I cede my time to Ranking Member McDermott.

Mr. McDERMOTT. Thank you, Mr. Chairman. I am a physician. We are accustomed to talking over people's heads and using all kinds of acronyms and all kinds of words that nobody uses in ordinary speech. So as I listen to you guys, I think I am talking to a bunch of doctors who are talking to a bunch of people that don't know what you are talking about. ACE stands for automated commercial environment, whatever the heck that is.

Mr. AGUILAR. Yes.

Mr. McDERMOTT. We spent billions of dollars on it. And then they said, no, it isn't working. And now we are doing something new, and that is going to work. Would you explain to me in terms that I can understand what it was that was attempted and what didn't work? I mean, anybody here can answer. I don't know who to direct that at, but if you could do that, I think it would help the committee understand what this reauthorization is about.

Mr. AGUILAR. I will begin, and then I will pass it on to my fellow doctors here, sir.

We are moving towards an automated commercial environment that takes into account all the technological capabilities that basically exist in today's world to ensure that we automate, that we connect all the dots of all the participating agencies, all the agencies that have an interest on all commodities coming into the United States. From a compliance, from a revenue perspective, from a security perspective, ACE is going to be that backbone that by way of technology, gives all of us the insight that we need to have to do the following things: And that is to facilitate, to streamline, to secure the global supply chain, and to specifically target. In the simplest terms, it will give us the means by which to assess risk, but critically important to, in a very modern way manage risk.

So now as——

Mr. McDERMOTT. Could I just stop you there?

Mr. AGUILAR. Yes, sir.

Mr. McDERMOTT. It seems to me that if you are trying to work on risk that one of the best ways not to make a mistake is to not do anything, don't let anything come in. So if you make the system so complicated that nothing can get through it, then you will never have any problem, nothing will ever have happened because it got into the country. Am I——

Mr. AGUILAR. And that is exactly what the ACE system is not trying to do. It is going to give us the ability to segment risk, to assess the risk once it has been segmented, and then direct our efforts at that flow of goods and commodities that we either know less about or that we have reason to believe we need to target because of a high level of risk. Therefore, basically identifying the needle in the haystack, if you will, by blowing away all the hay of this $2.3 trillion worth of imports that we do on a yearly basis. So we have spent a lot of money on ACE, but I will brag on CBP over the last couple of years in that more has been done in the last 2 years in the ACE arena than had been done in the prior 5 years before that.

One of the things that we are looking at, Congressman, is building in what I refer to as chunks, functionalities, identifying the functionalities along with the trade community, and looking to

what is best going to serve the trade community and CBP and the rest of the participating government agencies. Taking them in chunks, building business cases, and being incremental towards, as an example, cargo release, so that at the end, we have a fully functional cargo release capability that is built over a time period that takes into account the incremental necessity and importance of segmentation and risk identification.

Mr. McDERMOTT. What are the other agencies? What is your feeling about this?

Mr. KIBBLE. Well, sir, I am a general practitioner, I am not a specialist. However, I would say—and, I mean, this relates to ACE but also other initiatives that CBP leverages to selectively target. One of the things that we pioneered recently through the Commercial Fraud Working Group, which is a very close working group that involves leaders from both CBP and ICE, are post-investigative analysis reports, and the idea here is from an investigative perspective, when we conclude the investigation, how do we take that tactical success and turn it into something that is of more strategic value?

Well, we identified methodologies, schemes, things that can be used to refine targeting algorithms at the National Targeting Center and other systems that CBP leverages to, again, focus in on the violators so that we can facilitate lawful trade.

So, I mean, that is just a general observation I have there is that we are partnering as we have never before, and not only with one another, but obviously with industry to refine the method in which we target illicit or suspect trade.

Mr. McDERMOTT. Do you have any comment that you want to fill in anything?

Mr. SKUD. Well, I will just add, Mr. McDermott, that there is sometimes a lot of confusion about what ITDS is, how is it different from ACE. Well, they are not two different systems. One system, ACE; ITDS is a part of ACE. The basic premise of ITDS is let's use the Customs system, ACE, to collect information for these other agencies as well so we don't build separate systems for each agency to collect it, and Customs stores it, gets it to the agencies, makes decisions about it, and then gets that information back to Customs.

Mr. McDERMOTT. Is it seamless to you for countervailing duty decisions and so forth?

Mr. SKUD. Well, I am afraid it is not seamless to me. The goal is to make it seamless to the trader so that he is filing one place, and he will get one answer back. I am afraid when you are trying to stitch together 68 agencies, there is a lot of seams in there, but we are focused on—the ITDS program has been around for a while. For a long time, there was a lot of talk about all the wonderful things we could do. In the last few years we decided, look, it is time to concentrate on the basics. Let's add the data, let's get it to the agencies, let's get those decisions back to Customs. So we are trying to concentrate on things we know we can build, things that can be built quickly and at relatively low cost.

Mr. McDERMOTT. Thank you, Mr. Chairman, for extending my time.

Chairman BRADY. No, thank you, sir. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I want to commend all of you and your agencies for moving them into the 21st century. There are ample models in the private sector with credit card architecture, online purchasing, similar relationships with an Amazon and a PayPal, for example, that make it transparent to that one user that literally links thousands of organizations together with very little error. I know this is tedious dealing with statutes and regulations, but having done many large company implementations myself, nothing to the scale that you all have, I feel your pain in that one sense, but it is very critical to progress.

It brings me to my first question. Commissioner Aguilar, as you know, CBP facilitates trade on behalf of 48 Federal agencies at our border, and according to the agencies announced initiatives for 21st century trade, you are also working to improve cargo security while increasing trade competitiveness. I have been told by a number of people, organizations in the trade community that highly compliant importers find the benefits of CBP's partnership programs to be severely constrained by other agencies' holds at the border, and it is my understanding these delays tend to be several days longer than CBP holds.

I have also been told that a multi-agency partnership program for highly compliant importers or a certified importer program would greatly reduce these delays. I am thinking on the TSA side with Global Traveler, for example, if, so we avoid an inverse of Pareto's law where 90 percent of the people, in effect, are punished for the suspicious behavior of maybe a very small percentage.

As trade continues to increase, especially with the recent entry into force of trade agreements with Korea and Colombia, how is CBP working with other Federal agencies to streamline legitimate trade processing, and how is your agency working with other agencies to provide benefits to trusted traders?

Finally, as kind of a third part to that, have you considered a multi-agency certified importer program?

Mr. AGUILAR. Yes, sir, all critically important questions. Let me begin with the last one first. On a multi-agency trust-based partnership, we are very aggressively working towards something that looks like that but, as Mr. Skud said, when you have 48 agencies coming together, all having different interests for the right reasons, whether it is statutory, regulatory, or otherwise, it is hard to do that. But we have made some great strides, I believe, in moving in that direction.

The one example that I will give in that venue is what we refer to as a Border Interagency Executive Committee that we created about a year ago that meets on a quarterly basis, and for the first time, brings together all of these interested agencies together at one table to start working towards that synergy, towards an alignment of interests in order to start identifying, as an example, what the PGA Message Set, what are the elements that we would need as one government to basically satisfy all 48 agencies at one time. We have created the Message Set. It had never been done before. So we are moving in that direction.

The issue of other government agency holds, approximately 60 percent of all holds placed on goods coming into the country are placed by other government agencies besides CBP. So when that

happens, because we don't have that one whole of government approach, that one single window, CBP acting as the executive agent then has to go to each individual agency to get the information required for them if they have a need for it, and to get the actual release. Very time consuming.

Moving towards ACE, that single portal at ITDS, to where all of the interested agencies come together in one window, one component, one location where all the interests, whether they are revenue, compliance, safety or otherwise, are targeted, if you will, under ACE, and then fed to the agencies electronically, very quickly get the feedback and released. That is what we are working towards as we move forward.

Mr. DAVIS. Well, that is a good point to transition over to Mr. Skud. How are you leading the 48 government agencies in the International Trade Data System to ensure that all involved in the import process are working together to harmonize their treatment of importers that participate in trusted shipper programs in the processing of their goods?

Mr. SKUD. Well, the ITDS role is really focused on building the electronic platform to provide the information to the agencies to allow them to make that decision, those decisions based on the best information available quickly. Really, these kind of policy decisions about interagency cooperation, these are things that are done by the policy leadership in the Border Interagency Executive Committee. That is really where the focus for that is and not in ITDS.

Mr. DAVIS. Thank you, Mr. Chairman. I yield back.

Chairman BRADY. Thank you. Mr. Reichert.

Mr. REICHERT. Thank you, Mr. Chairman, and welcome to all three of you. I especially want to thank Mr. Aguilar and Mr. Kibble for your service and the men and women that serve in your agencies. I do appreciate your service, too, Mr. Skud, but I have a special spot in my heart for law enforcement, being an old sheriff myself, so I appreciate the work that all three of you do.

I can identify, as Mr. Davis said, a little bit with your pain, the sheriff's office with 1100 employees in Seattle, we had responsibility for the metro system, so our challenge was to enforce the laws, investigate crime, and keep the buses and the trains moving, and sometimes cops really don't understand the part about keeping the buses and the trains moving, am I right?

Mr. AGUILAR. Exactly.

Mr. REICHERT. I know you are working hard on that, so I understand that aspect of it as well.

I want to address my first question to Mr. Skud. Now, you said in your opening comments taxation and regulation of trade have an impact on our economy. That is, I think, a pretty mild comment. So I am really interested in your views on how U.S. policy is actually deterring goods from moving through our ports, specifically the harbor maintenance tax, and in Washington State, as you know, we have the Port of Tacoma and the Port of Seattle, and that harbor maintenance tax has created a situation where some of our world partners are now heading their ships to Vancouver, Canada, and Prince Rupert, and so we are losing some business in Seattle as a result of this tax, and it strikes me as a very clear cost advantage that U.S. policy is conferring on foreign ports. The fewer goods

that are shipped through our ports obviously, the fewer jobs they sustain.

So do you agree that imposing this tax and how it is currently imposed on inbound marine cargo could discourage shipping through U.S. ports and harm our competitiveness? We like to think of ourselves in Seattle and in Tacoma as the Port of Chicago because we only keep about 30 percent of the goods that come into those ports, and 70 percent go across the country. Vancouver is quickly becoming the Port of Chicago, and we are concerned about that.

Mr. SKUD. Well, Mr. Reichert, as a native-born Seattleite and graduate of the University of Washington, I have some familiarity with the Port of Seattle and Port of Tacoma.

Mr. REICHERT. Good to hear.

Mr. SKUD. And under the current law, there is the harbor maintenance tax on shipments coming into U.S. ports, including those two ports, and to the extent that that raises costs on shipments to those ports vis-à-vis competing ports in Canada, I would have to agree that it provides an incentive for people on the margin to ship through another port.

Mr. REICHERT. We see this as a pretty serious problem, as you might guess, in our area of the country. Would you commit to working with me on finding a solution to this problem?

Mr. SKUD. I would be happy to work with your staff to address the issue.

Mr. REICHERT. Great. Do you have any ideas today on how we might be able to do that or do you want to wait until another time?

Mr. SKUD. I think I better wait.

Mr. REICHERT. Okay. I appreciate your commitment, Mr. Skud. Thank you so much.

Mr. Aguilar, I have worked with Customs for a long time over my career on the issue of circumvention devices here in Congress, and, you know, this helps thieves pirate U.S. intellectual property, including many video games made in and around our congressional district by companies like Nintendo and Microsoft. It is my understanding that Customs will seize these devices but that you don't share them with the affected U.S. companies. Do you have anything like Mr. Kibble described as a joint venture, private-public relationship where you can share these things with our public companies so that they know what is happening when this technology is stolen?

Mr. AGUILAR. Congressman, one of the things that has just come about, and we are very grateful, which will be a tremendous tool for us, is the IPR information sharing capability that we just issued the interim final rule on, and under that, what we now have the capability to do is that within 7 days of Customs, CBP seizing a commodity, we will go to the importer and ask them for evidence if we believe that it is counterfeit or is an IPR violation, a trademark violation, and they, of course, are more than welcome to provide us with some information to prove that it is not a violation.

After 7 days, we are now capable and very much willing to share with the rights holders the information, pictures, things of a commodity that we haven't had in order for them to help us validate

or verify that it is, in fact, a valid product, or that it is a violative product. So we have that capability in place.

Mr. REICHERT. Thank you. Thank you, Mr. Chairman.

Chairman BRADY. Thank you. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. I have a company in my district that manufactures high quality knives and other types of tools, and I have visited with them a number of times, and they sell the tools in the U.S. and as well as internationally. They have been in business for over 100 years, and they employ 100 people in Southbridge, Massachusetts, it is Hyde Tools. They suggested that the procedures for filing an antidumping action should be made more accessible to small and medium-sized enterprises. They tell me they were forced out of the U.S. market for a particular tool that was dumped by a foreign company, but they didn't file an antidumping case because, as a small business, they couldn't afford the expense.

For the witnesses here, would you care to suggest a path forward, making it easier for these small business types to file antidumping actions?

Mr. SKUD. We are all here on sort of the other end of the collecting the money side, but I would be happy to work with your staff to connect them with the right people at the Department of Commerce who work on the input side, the filing side.

Mr. NEAL. Okay.

Mr. AGUILAR. Congressman, I would add to that that one of the things that was actually put in place because of some of these concerns is what we refer to as e-allegations where when there is a belief or there is an incident where a company or individuals or an industry believe that something is happening in the IPR environment, by way of virtual connectivity to CBP through e-allegations, they can commence that effort also.

Mr. NEAL. Okay. Let me follow up with you, Commissioner, as well. Coming from a State where there is a great deal of chip manufacturing and also the acknowledgment that there are millions of counterfeit chips that are imported into the United States, I am told that these chips have been found in many critical applications, military weapons, voltage regulators for the automobile antilock braking and air bag systems.

You mentioned in your testimony that last month, your agency published an interim final rule that reflects new authority that permits Customs to share prior seizure, and also photographs of suspected counterfeits with trademark holders to assist your organization in determining whether or not the goods are counterfeit. Can you provide the committee with any additional information on that?

Mr. AGUILAR. Other than that we are now taking those actions, we have that capability, we welcome that capability, and it will help us tremendously in making determinations as to whether the products that we have seized are, in fact, violative by being able to share that information, that product, that picture, things of that nature with the copyrights holder. A tremendous tool.

Mr. NEAL. Thank you. And lastly, one of the witnesses on the next panel who is the COO of Leggett & Platt, they have a presence in Oxford, Massachusetts, in my constituency. In their testi-

mony they estimate that Treasury loses well over a billion dollars in unpaid duties each year. That is a pretty significant number. As a cosponsor of the ENFORCE Act, this bill would help to create a formal process for stakeholders to petition Customs to investigate possible evasion, and I hope, Chairman Brady, that we can consider this legislation as well, and for all the witnesses, what might you suggest along that path?

Mr. AGUILAR. As to the pending bill, I think—I don't want to speak for my fellow doctors here, but I think we would all welcome the opportunity to assess and to work with the Congress on any bills going forward, absolutely.

Mr. NEAL. Given that Boston port is the equivalent of open heart surgery as you know.

I thank the panelists, Mr. Chairman.

Chairman BRADY. Thank you, Mr. Neal. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

Commissioner Aguilar, I understand that membership levels for CBP's two partnership programs, the importer's self-assessment C–TPAT have leveled off. In fact, ISA membership hasn't budged since 2007 when the program was started and about 200 companies joined. The ISA was meant to incentivize better compliance.

If a company opens its books and demonstrates trade compliance, CBPs will offer tangible benefits, but industry reports that it doesn't find the benefits to be material. What kinds of material benefits can we provide especially for smaller- and medium-sized companies?

Mr. AGUILAR. A couple of things on that question. The two top trust-based partnerships that we have are, in fact, ISA and C–TPAT. C–TPAT is over 10,250 members now. It has grown dramatically. The ISA has, in fact, stabilized, and last week that was one of the main focuses that we had at our trade symposium. Identifying the benefits. ISA is compliance program, C–TPAT is a security program. We are very seriously taking a look at melding the two as one so that the benefits that are derived from both will be a package, if you will. Everything from front-of-the-line benefits, the reduction in inspections or examinations. As an example, C–TPAT members right now are seven times less likely than a non member to get inspected or examined. The number of audits under the ISA that occur will be reduced.

So those are the incentives that we are looking to package up as one trust-based program. We are working with the trade industry to see what other benefits we might be able to jointly identify.

There are other efforts underway that I hesitate to share with you in this venue only because we are still working on them, but very quickly, I would anticipate within the next 60–90 days, we will be able to share some of the incentive areas that we are looking at within ISA because it is a critically important program.

Mr. HERGER. Thank you. It sounds like you agree that this is important to measure the outcomes of this program for C–TPAT members, such as clearance times, not only to ensure efficiency but also to encourage greater participation in the program.

Mr. AGUILAR. Absolutely. Congressman, I would add the following because I feel it is critically important. Under our C–TPAT program, there have been two studies by the University of Virginia

where both studies have shown, this is an assessment on the participants, that the members have found it very beneficial from both the benefits' perspective and improvement perspective on their business processes when they join C–TPAT.

Mr. HERGER. Again, one of the defining points I think would be that we have more members joining, and I think there is a concern that we haven't had more. So that is important we work on that.

Also I was hoping you could go into more detail on the Centers for Excellence and Expertise, CEEs. What were the outcome from the two pilot centers in California and New York? What benefits did they provide to the trade community and to CBP.

Mr. AGUILAR. I have to tell you, Congressman, this is something we love to talk about, and the reason for it is because of the immediate outcomes were very depictive of our vision for the CEEs and actually went beyond. The vision was standardization, consistency, bringing more transparency to that industry sector that we are dealing with, and driving a more compliant and facilitative process.

As an example I will give you the following. On the request for information, the so-called CF 28s that are filed at ports of entry when a commodity or product is coming in, there are members of the industry that will actually come in through several ports, 60, 70, 80 of the 329 ports. In the past, the way we used to work, each port would have the ability, and we would exercise that ability and enforcement right, to ask for a request for information. That would place a hold on the shipment. Under the Centers of Excellence and Expertise, there will be one request per information as opposed to 60, 70 or several other ports of origination. There will be one response.

So it makes a tremendous difference on facilitation, on the streamlining. It brings together, the CEEs bring together all the disciplines within CBP in one centralized location as opposed to the fragmented means that we operate under currently. When we finish off the CEE's effort, we have identified—at this point in the time, we have identified nine industries where we believe Centers of Excellence and Expertise will apply.

We have announced automotive and aerospace, we have announced pharmaceutical, electronics, and petroleum, natural gas and minerals. We are looking to go towards agriculture, base metals and machinery, consumer products, and mass merchandisers, industrial and manufacturing materials, textiles, wearing apparel, and footwear as we move forward.

So each one of those will have that ability to standardize and bring more consistency and harmony as to how we do business and be more facilitative.

Mr. HERGER. Thank you. Thank you, Commissioner.

Chairman BRADY. Can you forward us the list of those future CEEs?

Mr. AGUILAR. The ones that are being contemplated, yes, sir, absolutely.

Chairman BRADY. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman. I want to thank all of our witnesses for being here today. I just wanted to mention one thing, quickly. I did get a chance to get down to El Paso, met with

Customs and Border Protection. They were telling me out of the four ports of entry there, 21 million people northbound a year. Very impressive. I was very impressed in terms of the professionalism and just staggered by the amount of work that the people do there in your organization.

But I wanted—I mentioned this a little bit earlier, Commissioner, and I touched base with you. Let me run through this. Sarasota Bradenton International Airport, which is about an hour south of Tampa, maybe 50 minutes south of Tampa International Airport, is a user-fee airport, and has one dedicated CBP officer stationed there. Sarasota pays all the costs of the officer presently. No commercial International carriers are landing there today, so that there is no need to clear Sarasota airport. So the single officer clears primarily general aviation. Also, we have a port in my area, in terms of Port Manatee, they work closely with the port.

In 2005, when Sarasota last had a Canadian commercial air carrier, Canjet, they had some additional officers, CBP officers were assigned to the work with that in terms of the flights. They were brought down from Tampa. Sarasota reimbursed all of the overtime and travel costs for all of the extra officers.

Last year, Sarasota was close to securing an international carrier with a proposed schedule of twice-a-week flights. When they discussed this with the Tampa CBP director, they were informed that the general counsel of Washington was interpreting the U.S. law in a different manner than previously, and applying it to a user fee airport. CBP is requiring that user fee airports pay the annual full-time costs of each officer needed, even if you are only using them once or twice a week, and in this case, it would have been probably for 4 or 5 months a year.

As an example, Sarasota had secured Condor service from Europe twice a week for 7 months, Sarasota would need to pay 12 full-time officers at an expense of $1.7 million roughly per year, regardless of the fact that Sarasota would only need them 8 hours a week for 7 months. That renders the service unattainable.

I guess my question was to you, as it results to that, Commissioner Aguilar, why has CBP taken such a hard line? Is this standard? It seems to me to be unreasonable. I am concerned about tourism and economic development in terms of our region, and I would say it would be not just applicable to Sarasota but applicable to any airport around the country because we would like to think that one flight could lead to additional flights. We have almost a million people in our economic region there.

Do you have any thoughts on that?

Mr. AGUILAR. Congressman, I am unfortunately unfamiliar with the Sarasota situation as you just described it. I know that we talked earlier. I would like to take that for the record and get back to you. I agree with you that we need to revisit if, in fact, the description you just gave, and I will take it for the record and get back to you on it, sir.

Mr. BUCHANAN. I know that in the 4 or 5 years ago, they did provide service out of Tampa and we paid all of the expenses. So it is something that has been—you have had a precedent before where you have done it. But now they have taken a hard line and it is something we have been pushing pretty caressively on it. I say

"we," the authorities at the international airport there. Are there any other suggestions or any other ideas that you would have as it relates to that today?

Mr. AGUILAR. Again, I am unfamiliar with just what part of the process we are in.

Mr. BUCHANAN. Basically it is a low activity airport, and we need part time workers, but again, there would probably be a premium because you have got to move them around or whatever. We are willing to pay everything plus probably a little premium on top. The airport is well-financed. So it is not a question of picking up the expenses. It is just that they don't want to have 10 people sitting around for a year where you really don't need them.

Mr. AGUILAR. Exactly. I will review the situation and get back to you with any options that may be available to us.

Mr. BUCHANAN. I would appreciate that. Mr. Chairman, I yield back.

Chairman BRADY. Thank you. Mr. Schock.

Mr. SCHOCK. Thank you, Mr. Chairman. I, too, have a question for Commissioner Aguilar. Thank you for being here. Over the last several months, Customs and Border Protection has taken some positive steps to enhance their supply chain security. The air cargo advance screening program has been successful and is a good model to build on as it continues to expand. You also recently signed an agreement recognizing the U.S. and European Union Custom Security Programs, which is another positive step in securing the supply chain. I want to say that we appreciate your efforts in this area and congratulate you on this recent agreement.

At the same time, it is also important that we find ways to improve the flow of the supply chain in a cost-effective and efficient manner. One of the ways to do this is to reduce the burden of importing lower-value shipments into the U.S. If someone ships something into the U.S., the current exemption from entry as you know is $200. However, if an individual comes back from abroad and is bringing back goods into the U.S. with them, there is a personal exemption of $800. The cost to process of these low-value shipments and the disparity in these two levels of exemptions seem both impractical and also potentially a barrier to growth in jobs that could be created from the importation of low-value shipments, such as Internet sales of low-value retail goods.

My question for you is whether or not CBP would be supportive of increasing this de minimis level from the current $200 level to be something more similar to the personal exemption level of $800 or more in order to reduce some of the costly administrative burden of processing those level shipments.

And also in mind of our bipartisan goal here in Congress to increase exports and imports, obviously this is a barrier as it stands. What is your position on that?

Mr. AGUILAR. Congressman, I think the question that you asked, the way that I would answer it is in two parts: One is from the operations of the revenue collection; and then the second part, which I think goes more towards my partner, Mr. Skud over here, is revenue generated. So I will take the operations portion of that.

From an operational standpoint, the raising the de minimis to $1,000 or whatever it would be, does not really impact us oper-

ationally. This same amount of work basically will go into collecting either the $200 or the $1000. So from an operational standpoint, it would stay neutral. Now I can say——

Mr. SCHOCK. Doesn't it impact more goods?

Mr. AGUILAR. Again, I think that is the revenue-generating portion that——

Mr. SCHOCK. Revenue aside, if you are affecting all shipments of up to $800, I am sorry. If you are only affecting shipments over 800 as opposed to shipments over $200, revenue aside, you are having to touch and be involved with more shipments or more.

Mr. AGUILAR. Yes, sir. And the assessments that we have done, and we have done some of these minimally in the past, in fact, there has been an actual assessment on the $200 up to $1,000, and it has shown that operationally it would have minimal impact.

Mr. SCHOCK. So you need to have the same number of people and the same amount of work?

Mr. AGUILAR. Because it is done all virtually and electronically, yes, sir. Now, the one thing I would add, and then if Mr. Scud is interested, I will pass on addressing this also from a revenue-generating perspective, is one thing we are doing is on the informal entry, is that we are moving forward to moving that up from $2,000 to $2,500, and we are formulating the interim final rule as we speak in order to move that forward, and that will probably be within the next 60 to 90 days, but again, that is only on the informal entry.

Mr. SCHOCK. Let me ask you looking at it from a different perspective. Obviously as the agency from your perspective, it doesn't reduce your burden, would you admit though that by raising the de minimis level from $200 to $800, you are reducing the burden on constituents, on the business community, on the trading community, if you will?

Mr. AGUILAR. I think that is a fair statement, yes.

Mr. SCHOCK. Mr. Skud, do you have a perspective on this you would like to share?

Mr. SKUD. Under the current statutory scheme, there is regulatory authority to increase the de minimis amount if we can demonstrate that the savings and processing costs would be—would counteract the losses in revenue. And as Commissioner Aguilar pointed out, because the processing would be the same and the processing is largely electronic, and so all of the costs are—they are—we haven't seen any evidence of savings there, certainly, if there was a legislative change, that would be, in essence, a tax reduction. Businesses generally look at tax reductions as less of a burden, but the administration hasn't taken a position on the bill to my knowledge.

Mr. SCHOCK. Okay. My time has expired, but we are working on the legislative fix as well, so thank you.

Chairman BRADY. Thank you, Mr. Schock. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman, thank you to our witnesses as well. Mr. Aguilar, the United States and Canada are each others' obviously largest export market. Can you tell us what the status is on the U.S.-Canada Beyond the Border Action Plan unveiled December 7, and is CBP pleased with the progress of the plan to date, and what outstanding recommendations do you see

moving toward implementation, and how will they benefit the trade community?

Mr. AGUILAR. Beyond the Border Action Plan consists of over, I believe it is 34 or 35 actual items, of which CBP is the lead for all about 16 of them, for obvious reasons. We were basically at the border, and what we are looking to do on Beyond the Border Action Plan is to harmonize policy, harmonize operations, harmonize the consistent way in which we do business. I can report to you that the efforts ongoing between the U.S. and Canada and all of the agencies involved I think is moving forward in a very positive manner.

For those that we are responsible for, of course, there are some that are more challenging than others, especially when it comes to the interagency alignment, if you will, and that is not just from the U.S., it is also from the Canadian side, CBSA is as responsible as we are for the ports of entry.

So that is being worked at the highest levels, actually above CBP and CBSA, to make sure that that alignment happens.

But my report is that we are pleased. I think both Canada and the U.S. are both moving very assertively forward. There are going to be some challenges, which, I believe, my ex-sheriff up here would appreciate on what we are calling NextGen which is the, literally the patrolling capabilities between the RCMP, ICE, CBP and other agencies jointly. But it is that harmonization, that consistency that dovetailing, that synergy that we are all working towards, and again, my report is, I believe, it has moved forward very positively.

Mr. SMITH. Can you touch on some of those items you mentioned by number?

Mr. AGUILAR. Well, one of the ones that is probably—one of the challenging ones is probably CBSA, operating from Messina, Messina, New York, the port of entry on U.S. land; pre-clearance; another one is preclearance, working preclearance operations by U.S. officers and Canadian officers on each other's areas of operations; identifying ports of entry that we may look to either build infrastructure on or build a policy to align on. Some of these ports of entry we might look to reducing, mitigating or even closing some of these in the future. But again, those are the things we are harmonizing our efforts on as never before.

Chairman BRADY. Thank you, Mr. Smith. Ms. Jenkins.

Ms. JENKINS. Thank you, Mr. Chairman. Thank you for joining us.

Commissioner Aguilar, could you tell us about Customs' allocation of import specialists trained in textile and apparel verifications? We have been told that import specialists who have been trained specifically to do textile and apparel clarifications are often assigned to ports that receive very little such trade. I know that Customs does an annual review of import specialists and their locations.

With an increasing need for enforcement and facilitation at high-volume ports, what are your plans to ensure these ports have adequate staffing, and more importantly, adequate training?

Mr. AGUILAR. A couple of things on that question, I think, that is important to mention. One, is that the floors on all trade posi-

tions, we have sustained, in fact, as we speak, we are actually above those floors on the trade positions that have been set by Congress. So I want to begin there.

To the question of textile import specialists as to where they are assigned, I don't have the exact numbers, but I would answer that question with the following: That brings to light the importance of us undertaking the initiatives that we have such as the Centers of Excellence and Expertise, because what that will do, that will give us the capability, again, as I said earlier, either virtually or physically, to service in a specific portion of the industry.

I mentioned earlier that one of the CEEs we are looking to provide is textiles, wearing apparel, and footwear, to where the textile industry would have one centralized location with all of the textile specializing import specialists, all of the national account managers, all the account management, and all of the other disciplines that will be brought to bear in one centralized location to service the textile industry. So that is the vision. That is what we are moving forward on.

Ms. JENKINS. Thank you, Mr. Chairman. I yield back.

Chairman BRADY. We are pleased to be joined by Dr. Charles Boustany. Key Member of the Ways and Means Committee but also a leader in trade issues. Dr. Boustany, welcome.

Mr. BOUSTANY. Before I ask questions, I ask unanimous consent to include two letters, one from the Crawfish Processors Alliance, and the other from our Louisiana Agriculture Commissioner to be made part of the record as well as testimony from one of our colleagues in Congress from our Louisiana delegation, Mr. Richmond.

Chairman BRADY. Right. Without objection.

[The letters follow: The Honorable Charles Boustany Letter 1, The Honorable Charles Boustany Letter 2]

May 15, 2012

The Honorable Charles Boustany
1431 Longworth House Office Bldg
Washington, DC 20515-1807

Dear Congressman Boustany,

Louisiana's abundant fisheries and natural resources allow this state to provide the nation with high quality seafood that is safe for consumption, without fear of being tainted with antibiotics, chemicals and other contaminants that are harmful to human health. In fact, the Louisiana seafood industry contributed almost $1 billion to the economy.

As you may be aware, the Louisiana seafood industry is facing a serious economic crisis due to the increased volume of imported seafood. Additionally, the number of domestic processors of our seafood, and corresponding jobs related to this industry, has decreased significantly due to the flood of lower priced imports. Many of these products are being diverted to this country because Canada and the European Union have banned the import of these products due to the presence of banned antibiotics.

According to the 2009 report from President Obama's Food Safety Working Group, more than 75% of this nation's seafood comes from non-U.S. waters. We have been made aware that none of the these products are being tested for antibiotics banned by the United States Food and Drug Administration, chemicals and other contaminants. While we do support global trade and economic development, we would like to see responsible trade that assures a safe food supply. Our citizens deserve the same protection that citizens of Canada and the European Union are receiving in terms of a safe supply of seafood.

Over the last few months, several recommendations have been made to help preserve our Louisiana seafood industry. I firmly believe that the Preventing Recurring Trade Evasion and Circumvention (PROTECT) Act that you have authored will help to accomplish this. I strongly support this legislation and your efforts to increase communication between agencies within the federal government and give them new tools to combat the evasion of import duties.

Please feel free to contact me should you have any questions.

Sincerely,

Mike Strain, DVM
Commissioner

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
MIKE STRAIN DVM
COMMISSIONER

May 15, 2012

The Honorable Charles Boustany
1431 Longworth House Office Bldg
Washington, DC 20515-1807

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Please feel free to contact me should you have any questions.

Sincerely,

Mike Strain, DVM
Commissioner

Post Office Box 631, 5825 Florida Blvd., Baton Rouge, Louisiana 70821-0631 Telephone: (225) 922-1234 Fax: (225) 922-1253 www.ldaf.la.gov

Mr. BOUSTANY. Thank you, Mr. Chairman.

I think we all agree that evasion of our trade remedy laws is a serious problem, and additional authorities, perhaps legislation, is going to be needed to provide more tools. I am very sympathetic to the complaint raised by some American companies that CBP, in effect, becomes a black box after receiving allegations of evasion and provides little or no feedback on the adequacy of the allegation,

what steps are being taken by CBP or another agency as a result of the allegation, or even the ultimate outcome of any of the actions.

On the other hand, I have to say I am very concerned about imposing artificial deadlines on investigating invasion because some of these cases are more complex and just simply arbitrarily placing a deadline would be problematic.

So I would like to understand how can CBP and ICE work better with the private sector on evasion without undermining its ability to investigate or otherwise address evasion. If you could all answer that for me, I would appreciate it.

Mr. KIBBLE. Congressman, one of the joint ventures that we have at the Intellectual Property Rights Center, one of the things we do is in the outreach and training section. We have very robust engagement with the industry, and we do communicate whether we, for example, are opening a criminal investigation, and perhaps, what location that may be at. Now, obviously, as the investigation continues that we are limited in terms of the types of things we can share in a criminal context.

But we are committed—we put together, in particularly, talking about to seafood industry, for example, we have really enhanced our engagement with the seafood industry in particular, as well as others, to learn from the industry, to inform our operations, but also, again, to share what is appropriate to share in terms of the status investigations so that it is not a black hole. There is not another lack of information.

Mr. BOUSTANY. What happens when an E-allegation is filed? Can you walk us through some of the steps?

Mr. AGUILAR. On the E-allegation specific. We, CBP, will take the initial efforts to start identifying that which has been reported. We work hand-in-hand with the Department of Commerce which, as you know, Congressman, will actually take on the investigative portion of that. Now, that is where I think some of the concerns start to make into play. The antidumping, countervailing duty system that we have in place right now is very challenging and it is very complex. It is not any one agency that can service the interested parties on the outside. We, too, are very appreciative of the frustrations that exist out there.

Mr. BOUSTANY. Is there a better way to set up an interagency process or point of contact?

Mr. AGUILAR. I think the points of contact, and again, this is my take on it, the points of contact are there. E-allegation, the countervailing case development, moving it forward, but it is just a complexity of the system that we have in place and procedurally what we have to go to and what we are constrained by once an investigation begins. There is only so much that can be shared with the public.

Unfortunately, our system right now that we have in place sometimes that takes up to 2 and 3 years before a final decision is made. As you know, Congressman, at that point then when we, the CBP, are given the go-ahead to start collection proceedings, some of these companies have either gone out of business, have changed names or are unaccessible to us in other parts of the world.

So it is a very difficult, very challenging, very complex system that we have in place, but the one thing I can tell you with our partners in ICE and commerce, everybody is very focused on moving within the constraints that we have as aggressively as we can on the cases that we do have.

Mr. KIBBLE. Sir, if I could add one thing. These investigations are so complex, and there are certain challenges we face in terms of prosecution. But I will tell you the antidumping countervailing duty investigations have been a principal focus of the commercial problem working group, and one of the things that I think will be helpful in terms of expediting the resolution of these investigations and getting more of them prosecuted is training.

Because we have a number—and this includes, by the way, training for prosecutors, that perhaps also recognizes the sensitivities in terms of the delays that these investigations can take. But as the Commissioner indicated, there are hurdles to overcome in terms of when these cases go a certain track.

Mr. BOUSTANY. We will work with you to hopefully get the system even better.

One of the last issues, if, Mr. Chairman, if I might just ask one quick follow-up question.

Boots on the ground. Your ability to get boots on the ground to investigate a lot of these cases, that has been an issue as well, and particularly foreign jurisdictions. Could you address, briefly address that.

Mr. KIBBLE. There have definitely been challenges in terms of, in some cases, travel advisory—and here I am talking about commercial fraud in general, not just, or perhaps forced child labor investigations and other types of disciplines. There can be difficulties. I mean, in some cases there may be unwillingness on the parts of the government to assist us in furthering the investigations. Some of the inspections that—the verifications that we seek to do. There are some challenges there.

I would say that we have expanded our global presence, within ICE anyway. We have about 71 foreign offices around the world—we have been going through a footprint analysis to make sure that it doesn't reflect this historic Cold War footprint and looks at the challenges of the future and where the cases are. And part of that, though, is there is one thing about getting boots on the ground, but there is the willingness of the government to work with us, so that is the significant issue as well in terms of where we choose to invest the scarce resources we have.

Mr. BOUSTANY. Thank you, gentlemen. Look forward to working with what we have.

Chairman BRADY. Thank you, Doctor. I want to thank all of the witnesses. Reminders, Commissioner Aguilar, you were going to present, send us a list of the functionality for ACE for this year and a list of the CEE topics subjects are going to be, and I think all three of you have agreed to send us your measurements, both what you are looking at today and what you are thinking about looking at again. We are all in our jobs to make improvements and progress, and if we know what you are looking at, we can also obviously add our thoughts to that as well. I want to thank you all for being here today.

Our second panel of witnesses is from the private sector. First as he makes his way up here, a special welcome home to a former Ways and Means staffer, George Weise, who will give us his perspective both as a former Customs Commissioner and now as an Adviser in Trade.

Mr. Sekin and Mr. Mullen will testify on how related services add value to our supply chain.

Mr. Williams and Mr. Glassman will testify about the importance properly assessing and collecting the anti-dumping duties and the impact these duties have on their products and ability to provide jobs.

And as we get settled in, I would like to pass Dr. Boustany to personally introduce Mr. Williams.

Doctor?

Mr. BOUSTANY. Thank you, Mr. Chairman. Thank you again for letting me participate in this hearing.

It is my pleasure to introduce John Williams with over 40 years of experience in every aspect of the shrimp industry, John now serves as the executive director of the Southern Shrimp Alliance.

In addition to his leadership role with the alliance, John serves on numerous advisory panels, supporting the shrimp industry on a wide range of issues. And it should not be a surprise to anyone in this room that our Gulf shrimpers and other aquaculture industries are facing serious challenges from the invasion of anti-dumping and countervailing duty orders.

Given the hurdles our domestic industries face, and John's first-hand knowledge, I look forward to hearing his expert testimony today, and John, I just want to thank you for joining us for sharing your insights on the problems and possible solutions.

Again, Mr. Chairman, thank you for allowing me to participate and I yield back.

Chairman BRADY. Thank you all for coming here today. We will submit your written statements for the record, and I ask you to limit your statements to no more than 5 minutes. Mr. Weise, thank you for joining us.

STATEMENT OF THE HONORABLE GEORGE WEISE, EXECUTIVE VICE PRESIDENT, SANDLER & TRAVIS TRADE ADVISORY SERVICES, (FORMER COMMISSIONER OF CUSTOMS)

Mr. WEISE. Thank you so much for your kind introduction. It is a pleasure to be back in this room where I spent 9 very, very interesting positive constructive years. It is a homecoming for me, and it is great to be here to talk about an agency that has meant so much to me for so many years.

I am appearing today in a personal capacity, and not on behalf of any organizations to which I am affiliated. In the interest of time this morning, I will focus my oral comments on the critical need to see ACE and ITDS fully implemented as soon as possible, and I thank you for submitting my entire statement for the record.

My hope in appearing before you today is to provide some historical perspective on this important issue. My views have been shaped from 40 years of experience in the Customs and trade field, from my early days working as a GS–5 import specialist for U.S. Customs in the Port of Baltimore, my Customs oversight worked

while serving this committee, including the development and enactment of the Customs Modernization Act of 1993, and my tenure as Commissioner of The U.S. Customs Service from 1993 until 1997.

Since leaving government service in 1993, since then '93, I have spent 15 years working in the private sector trying to help commercial companies cope with government regulations and get goods moved as quickly as possible.

Much has changed since I left office as Commissioner in 1997. The old Customs service in the Treasury Department has become U.S. Customs and Border Protections. CBP is more than triple the size of the former Custom service, with a much broader mission and a focus on border security as a critical component of the Department of Homeland Security in the aftermath of 9/11.

Congressional oversight of the agency has also become more complex. In the good old days, when the Committee on Ways and Means and the Senate Finance Committee had exclusive jurisdiction over the former U.S. Customs Service, numerous committees and subcommittees now share oversight responsibility for CBP.

Today, CBP is responsible for a myriad of challenging and complex missions to safeguard our Nation and, for the most part, is doing an outstanding job. Although it is understandable that CBP has placed the highest priority on security and anti-terrorism, it is also clear that CBP needs to play a critical role in our national economic security by effectively executing its trade enforcement and facilitation missions.

As much as things have changed since my days as Commissioner, I am also struck and distressed by how much they remain the same in implementing the tools necessary to effectively address CBP's national economic security mission.

With the leadership of this committee, the Congress enacted the Customs Modernization Act in the fall of 1993, soon after I became Commissioner. This legislation significantly changed our Customs laws to enable modern techniques and procedures to be applied to the importing process. Charged with implementing that important legislation, it immediately became clear to me that a new automation system was critical to achieve the modernization objectives of the MOD Act, since the decades-old automated commercial system which was in place at that time was not capable of handling many of the new streamlined procedures of the MOD Act. Also I was told that it was crumbling because of overuse and lack of capabilities.

It was also clear that we had to find a way to consolidate the data requirements placed on importers by the numerous government agencies involved in regulating imports. To address both issues, we began, at that time, back in 1994, working with Congress to seek funding for ACE and ITDS. Needless to say, it is extremely disappointing that nearly 20 years later, after the expenditure of many millions of dollars, we are still far from completion of ACE or ITDS.

I commend former Commissioner Bersin and Commissioner Aguilar for their leadership in recent years. They have recognized the importance of CBP's economic security mission and made significant strides to address these shortcomings. Notwithstanding these positive efforts, however, we are nowhere near where we need to be.

In my judgment, the commercial operations of CBP are lagging vis-à-vis the security mission of CBP. Despite significant efforts and millions of invested dollars, we are a long way from bringing ACE and ITDS to successful conclusion.

It is clear to me that the top priority to address these issues is to find a way to bring ACE and ITDS to a successful conclusion, and with that, retiring the ACS system as soon as possible.

I understand that the current budget appropriation for CBP only provides funds for operation and maintenance of the ACS system and nothing for the development of ACE. This, in my judgment, is a shortsighted approach that will not only foster the continuation of costly and burdensome systems, but will further delay the goal of creating a single modern system to facilitate trade and enhance CBP's enforcement mission. It is understandable why additional funding for ACE development was not appropriated in light of the many millions of dollars already expended over this program over the many years and so little tangible to show for it. But again, I think an historical perspective might help here.

During my term as Commissioner, I worked very hard but unsuccessfully over my entire 4 years to convince the Congress to fund ACE development. At that time, we were convinced having built ACS the predecessor system, on our own, that we were capable of building the next generation of automation as well.

The clear message I received, however, was the only way Congress would ultimately approve ACE funding would be if Customs brought in outside experts to do the job. Several years after my departure, that is exactly what happened and the IBM team was awarded the contract to build ACE.

Unfortunately, the program was then viewed as a contracted IT effort rather than a CBP initiative, and the result of that was CBP's key operational leaders were not engaged to the extent that they should have been. Consequently, operational requirements were not well defined, and the process bogged down with a lot of wasted effort and well-deserved criticism from many sources.

Another factor leading to the scheduling delays and higher costs for the program was in the aftermath of 9/11, CBP completely redirected much of its programming efforts and understandably, so from facilitation to border security, changing the game sort of midstream. The problem has now been addressed by CBP in my judgment, and I think this committee has appropriately commended Commissioner Aguilar for the efforts that had been taking place. They have now created the ACE business office, which actively and effectively involves key stakeholders at every level.

Chairman BRADY. Commissioner, if I may, because we have exceeded the time limit, perhaps we can ask you some questions on the follow-up with your permission. Thank you again for being here today. Welcome back.

[The prepared statement of Mr. Weise follows:]

STATEMENT OF

George J. Weise

Committee on Ways and Means

Subcommittee on Trade

Hearing on Customs Trade Modernization, Facilitation

And Enforcement

May 17, 2012

Embargoed until May 17, 2012 at 10am

Chairman Brady, Ranking Member McDermott and other distinguished Members of the Subcommittee on Trade of the Committee on Ways and Means, it is an honor and a privilege to appear before the Subcommittee on which I so proudly served as a staff member from 1984 until 1993 to discuss the commercial challenges facing U.S. Customs and Border Protection (CBP), the agency that has been very special to me throughout my long career.

I am appearing today in a personal capacity and the views that I express are mine alone and should not be attributed to my firm, Sandler and Travis Trade Advisory Services, where I currently serve as Executive Vice President, or any of its clients. In the spirit of full disclosure, our firm is actively involved in working with numerous commercial clients in carrying out their compliance responsibilities vis-a-vis U.S. Customs and Border Protection (CBP) and we also are engaged as a subcontractor on several Government contracts, including working at CBP on the development of ACE.

My hope in appearing before you today is to provide some historical perspective on the important issues the Subcommittee is addressing today with respect to CBP. My views have been shaped from 40 years of experience in the Customs and trade field, from my early days working as an Import Specialist for U.S. Customs in the port of Baltimore, my customs oversight work while serving this committee, including the development and enactment of the Customs Modernization Act in 1993, and my tenure as Commissioner of the U.S. Customs Service from 1993 until 1997. Since leaving Government, I have spent fifteen years working closely with private companies to meet their compliance challenges. I also currently serve on the Commercial Operations Advisory Committee (COAC), the official industry advisory board to

CBP. I request that my full statement be entered into the record and I will summarize my comments.

Times have changed but so much remains the same.

The focus of today's hearing is on CBP's efforts to enhance economic growth and job creation by facilitating legitimate trade, modernizing customs procedures and enforcing Customs and trade laws. Before addressing these issues, I must first acknowledge that much has changed since I left office as Commissioner of the U.S. Customs Service in 1997. Due to the Government restructuring in the aftermath of 9/11, the old Customs Service in the Treasury Department has become U.S. Customs and Border Protection (CBP). CBP is more than triple the size of the former Customs Service with a much broader mission and a focus on border security as a critical component of the Department of Homeland Security. Congressional oversight of the agency has also become more complex. Whereas, the Committee on Ways and Means and the Senate Finance Committee had exclusive jurisdiction over the former U.S. Customs Service, numerous committees now share oversight responsibility for CBP.

Today CBP is responsible for a myriad of challenging and complex missions to safeguard our nation. CBP must secure our borders against terrorism and criminals, reduce illegal immigration, enforce countless trade laws, interdict contraband and counterfeit goods, and prevent unsafe products from entering the marketplace while facilitating legitimate trade and travel that are essential for the nation's prosperity and global competitiveness. It is not an easy job and, for the most part, CBP has performed admirably. Although it is understandable that CBP has placed the highest priority on security and anti-terrorism, it is clear that CBP needs to play a critical role in our national economic security as well by effectively executing its trade enforcement and facilitation missions. We are here today to assess CBP's progress in this endeavor.

As much as things have changed since my days as Commissioner, I am also struck and distressed by how much they remain the same in terms of progress towards implementing the tools necessary to effectively address CBP's national economic security mission. Reflecting back to my days on this committee, it became clear to us that significant changes needed to be made to the old paper-based, transaction focused, inefficient means of clearing imported merchandise into the United States. With the leadership of this committee, after nearly five years of struggling to create comprehensive legislation to achieve these goals, the Congress enacted the Customs Modernization Act (the Mod Act) in the fall of 1993, soon after I became Commissioner. This legislation significantly changed our customs laws to enable modern techniques and procedures to be applied to the importing process.

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As we moved to implement many of the provisions of the Mod Act, it became clear that the Customs' automation system, the Automated Commercial System (ACS), was not capable of handling many of the new streamlined procedures called for in the Mod Act. I was also told at that time that the decades old ACS system was nearing collapse due to the sheer volume of trade. It became very clear that a new automation system was critical to achieve the modernization objectives of the Mod Act.

It was also clear that, to reduce the burden on the trade community and to improve the targeting capabilities of CBP and other government agencies, we had to find a way to consolidate the data requirements placed on importers by the numerous government agencies involved in regulating imports. To address both issues, we began working with the Congress to seek funding for ACE, the new Automated Commercial Environment, to streamline the importing process and ITDS, the International Trade Data System, designed to provide a "single window" for government data requirements on imports. Needless to say, it is extremely disappointing that nearly 20 years later, after the expenditure of many millions of dollars, we are still far from completion of ACE or ITDS.

Where we are today?

CBP in recent years, under the leadership of former Commissioner Bersin and current Acting Commissioner Aguilar, have recognized the importance of the CBP's economic security mission and have made strides to address CBP's shortcomings in this area by making ACE and ITDS development priorities of the organization. CBP has also launched some outstanding trade facilitation initiatives, such as Centers of Excellence and Expertise (CEE), and has embarked on working with the trade to develop a "Simplified Entry" process, currently in pilot mode, and has made concerted efforts to open the dialogue with the trade community to simplify other processes to ease the administrative burden on importing into the United States.

Notwithstanding these positive efforts, we are not where we need to be. In my judgment, the commercial operations of CBP are lagging vis-à-vis the security mission of CBP. Despite significant efforts and millions of invested dollars, we are a long way from bringing ACE and ITDS to successful conclusion. The business community is frustrated because they have invested millions of dollars in security programs to support CBP, but they don't feel they have gotten an adequate return on their investment because CBP has not reciprocated in meaningful actions to facilitate trade. They believe that the entry and clearance process is still too cumbersome and costly, and that, without ITDS, government data requirements are duplicative and overly burdensome.

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All of these issues are exacerbated by the current environment of shrinking budgets and the fact that congressional oversight is now diffused in the many committees having jurisdiction over CBP resulting in mixed signals on setting the organization's priorities.

Where do we go from here?

ACE and ITDS implementation are crucial!

While it is always easier to describe a problem than to find a solution, it is clear the top priority to address these issues is to find a way to bring ACE and ITDS to successful conclusion and retire ACS as soon as possible. I understand that the current budget appropriation for CBP only provides for operation and maintenance of ACS and nothing for ACE development. This is a short-sighted approach that will not only foster the continuation of costly and burdensome systems but will further delay the goal of creating a single modern system to facilitate trade and enhance CBP's enforcement mission.

It is easily understood in this tight budgetary environment, why additional funding for ACE development was not appropriated, particularly in light of the many millions of dollars already expended on this program over the years with few tangible results. Again, an historical perspective might help here. During my term as Commissioner, I worked very hard but unsuccessfully to convince the Congress to fund ACE development. At that time we were convinced, having built ACS on our own, that we were capable of building the next generation of automation (ACE) as well. The clear message I received, however, was that in light of a recent (at that time) debacle with IRS attempting to build its own automation system which failed miserably, the only way Congress would ultimately approve ACE funding would be if Customs brought in outside experts to do the job.

Several years after my departure that is exactly what happened and the IBM team was awarded the contract to build ACE. Unfortunately, the program was then viewed as a contracted IT effort rather than a CBP initiative, resulting in CBP's key operational leaders not being engaged as actively as they should have been. Consequently, operational requirements were not well defined and the process bogged down with a lot of wasted effort and well deserved criticism from many sources. Another factor leading to scheduling delays and higher costs for the program was that in the aftermath of 9/11, CBP redirected much of its programming efforts from facilitation to border security.

This problem has now been addressed by CBP with the creation of the ACE Business Office, which actively and effectively involves key stakeholders at every level. As a result, we have seen some real progress in recent months with the successful development of the so-called M1 task for rail and sea manifests. The irony is now that CBP is making tangible progress, the investment dollars are drying up, with still so much more to be done, particularly to address the needs and challenges of importers. It is critical that a mechanism be found to re-open the flow of ACE (and ITDS) development funds, while holding CBP accountable in meeting established goals and objectives. To deliver a successful ITDS program, it is also critical to find a mechanism to ensure that all relevant participating government agencies are working diligently to achieve the broader goals of "single entry" by allowing importers to input all necessary import data once to be shared between agencies as appropriate.

Embargoed until May 17, 2012 at 10am

Improved communication

In addition to moving as swiftly as possible to complete ACE and ITDS implementation, it would be useful to seek an improved mechanism to facilitate a constructive dialogue involving CBP, the trade community and congressional leaders to explore mechanisms to assist CBP in more effectively carrying out its trade facilitation/enforcement mission without undermining its security efforts. To CBP's credit, the Trade Support Network, with over 300 members from the trade community, was established early on and has coordinated successfully with CBP throughout the ACE effort. CBP has done a better job in reaching out to the trade community in recent years via the TSN and other mechanisms.

However, there does not appear to be an effective mechanism in place to ensure that the business community's voice is really being heard by either CBP or the various congressional committees that have jurisdiction over CBP. Some would also question whether COAC has achieved its originally stated purpose of ensuring that meaningful private sector input is being provided to CBP in advance of critical policy decisions being made in the commercial arena. For example, some have suggested that COAC should be more proactive, rather than reactive, in setting the COAC agenda and others have suggested that COAC was more relevant when it reported directly to the Department, rather than to CBP. It also has been suggested that a mechanism be found for COAC to meet periodically with key congressional committees from time to time to discuss trade priorities.

Embargoed until May 17, 2012 at 10:00

Reorganization

I am aware that, largely out of frustration with the status quo, some trade community advocates have pushed legislation mandating a reorganization of CBP. As a former Commissioner and someone who led a major reorganization during my term of office, I understand the good intentions of this legislation, but I would argue for preserving maximum flexibility to the Commissioner in restructuring the organization. CBP should, however, be open to a dialogue with interested parties on all issues affecting its ability to carry out its trade mission, including reorganization. Some have questioned, for example, whether the Office of International Trade, created in 2006 largely to better serve CBP's trade mission, has been effective in achieving this goal, particularly in light of the fact that virtually all field trade officers are part of the Office of Field Operations. Others have suggested that the Office of Trade Relations needs to be expanded and enhanced to better serve the trade community.

Conclusion

Thank you, Mr. Chairman for the opportunity to share my views with you today. I realize I have not offered any bold new solutions. But hopefully the perspectives that I have provided can assist the Committee in formulating a strategy moving forward. This concludes my statement and I am prepared to answer any questions at this time.

Chairman BRADY. Mr. Sekin.

STATEMENT OF DARRELL SEKIN, JR., PRESIDENT AND CEO, DJS INTERNATIONAL SERVICES, AND PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. SEKIN. Good morning, Chairman Brady and Ranking Member McDermott. I am Darrell Sekin, Jr., President of the National Customs Brokers and Forwarders Association of America and also the President of DJS International Services, a small family-owned customs brokerage and freight forwarding firm located in Colleyville, Texas.

Since my start as a Customs broker in 1975, the industry has undergone an enormous change, particularly in the area of automation. Customs automation is a powerful tool facilitating smooth trade flows and sharpening enforcement of trade laws.

Customs automation is the communications channel between the importers and CBP. Customs brokers are instrumental to this process: information, data and transmitting the information necessary for the agency to function. That is why my first point to the committee needs to be about the importance of ACE and to underscore the comments of Mr. Weise.

The funding requests from the administration is inadequate, and the pending House Appropriation Bill guarantees nothing for ACE development. Currently ACE functionality is the bridge that only goes halfway over the river, practically speaking, it cannot process entries, its core responsibility until release is finished. Release is in the on-deck circle, and without funding for it, the system promises little incentive for Customs brokers who file 97 percent of the entries to participate.

My second point addresses the role of the broker. At one point during my career, Customs regulated each and every aspect of a Customs broker's business. In the mid 1980s, Customs agreed to separate the commercial and proprietary aspects of Customs brokerage from what has come to be known as Customs business. The latter signified recognition that we are an extension of Customs and that there must be intensive oversight and supervision of Customs-related activities.

We are therefore licensed by Customs and subject to costly penalties for errors and omissions in conducting Customs' business. In short, the exchange for the privilege of engaging in Customs brokerage and to ensure the integrity of the entry process, we are committed to meeting Customs' exacting standards and rigorous regulation. This is Customs and the Customs' brokers grand bargain.

Customs is now seeking to expand the role of the broker. A customs broker is viewed as a force multiplier because one customs broker reaches, educates, and acts for a multitude of importers, whether they be small, medium, or large-sized businesses. There are many ways that customs brokers can collaborate with Customs, such as education and certification. To enhance the professionalism of the customs broker, our national association developed a broker certification program that requires a rigorous course of study and examination, and also includes a continuing education requirement.

We have begun in partnership with Customs a series of educational seminars for Customs officials.

NCBFAA is presently engaging with Customs in an effort to update the Customs regulations that apply to customs brokers.

We must also generate support for new Customs programs and we are working closely with Customs on ACE and on the air cargo advanced screening pilot. We have also agreed to assist with incorporating customs brokers into the development of the New Centers of Excellence and Expertise. And finally, we must advocate for a series of high-priority Customs issues.

NCBFAA recognizes that there are many challenges for Customs to accomplish its missions. We support a number of steps that will improve the commercial operations performance of the agency such as drawback modernization and simplification and a prospective system for anti-dumping and countervailing duties. We must encourage efforts to expedite and facilitate the trade function of other Federal regulatory agencies. One such means to that end is the International Trade Data System, a component of ACE that provides each participating agency a window on the importation process. We support the committee's efforts to gain continued adequate funding for ITDS.

Mr. Chairman, NCBFAA greatly appreciates the opportunity to outline our views on Customs oversight and new policy development. We stand willing to support the committee and all of its work to accomplish these objectives.

Chairman BRADY. Thank you very much, Mr. Sekin.

[The prepared statement of Mr. Sekin follows:]

WRITTEN TESTIMONY

OF

DARRELL SEKIN JR., PRESIDENT

NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.

Embargoed until May 17, 2012 at 10am

BEFORE THE

SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

May 17, 2012

Good morning, Mr. Chairman. I am Darrell Sekin, Jr., President of the National Customs Brokers and Forwarders Association of America (NCBFAA) and also the President of DJS International Services, Inc., a small, family-owned customs brokerage and freight forwarding firm, located in Colleyville, Texas. I have worked in the industry for over forty years and have been a licensed customs broker since 1975.

Since that time, the industry has undergone enormous change, particularly in the area of automation. Gone is the world of typewriters and paper documents, giving way to the Automated Broker Interface (ABI), our avenue into the Automated Commercial System (ACS). This system, which my fellow customs brokers and I helped develop in the late 70s and early 80s is, still the primary system for filing entries in 2012, although it has evolved into much more: interfacing with other federal agencies, collecting the revenue, assisting with matters of national and homeland security, providing statistical information for measuring the economy, and supplying the enforcement tools needed to ensure the safety and well-being of the American public.

Customs automation is a powerful tool, facilitating smooth trade flows and sharpening enforcement of trade laws. Customs automation is the communications channel between importers and U.S. Customs and Border Protection (CBP). Customs brokers are instrumental to this process, gathering the data and transmitting the information necessary for the agency to function. As the volume of international trade reaches the point where CBP cannot hope to examine each individual shipment crossing our borders, the agency relies on automation and, in turn, on customs brokers as a reliable mechanism to meet its responsibilities.

At one point during my career, Customs regulated each and every aspect of a customs broker's business. We were in essence a private sector adjunct to the Customs Service. Recognizing that there were commercial aspects to the business where regulation was unnecessary and unwarranted, in the mid-80s our industry and Customs agreed to separate the commercial and proprietary aspects of customs brokerage from what has come to be known as "customs business." The latter signified recognition that we are an extension of Customs and that there must be intensive oversight and supervision of customs-related activities. It is understood that care must be exercised in permitting an enterprise to engage in this business. At stake are the government's revenues and consumer health and safety.

Thus, becoming a customs broker requires us to pass a very difficult, technical examination. Generally, only ten per cent of aspiring brokers pass that exam. We are licensed by CBP and subject to costly penalties for errors and omissions in conducting customs business. In short, in exchange for the privilege of engaging in customs brokerage and to assure the government of the integrity of the entry process, we are committed to meeting CBP's exacting standards and rigorous regulation. Conducting "customs business" is a privilege that is not easily accomplished nor maintained. It is CBP's and the customs broker's "grand bargain" – Customs can rely on the accuracy and integrity of the information they receive; a customs broker assumes a special, unique place in accomplishing the agency's mission.

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Recognizing this, CBP is seeking to expand the *role of the broker*. A customs broker is thought of as a "force multiplier" because one customs broker reaches, educates and acts for a multitude of importers, most notably small and medium-sized businesses. A single professional broker can provide reliable information from hundreds of American companies who otherwise would have limited ability to process an entry to the satisfaction of Customs. CBP has thus sought to leverage the reach of customs brokers in order to further facilitate trade and promote the vitality of the American economy.

But, at this point, it is important to know the limits of what a customs broker can provide to CBP. First, a customs broker is retained to work in the interests of his client, the importer. His expertise is acquired by the importer to expedite the entry of imported merchandise into American commerce, paying the correct duties and fees and demonstrating to government agencies that the requirements of U.S. law are being met. His client is the importer, to whom he must direct his primary loyalty.

A customs broker's understanding of the transaction and knowledge of its specifics is based entirely on the representations of his client – unless he has good reason to believe otherwise. Importantly, the customs broker does not see the goods during their passage into the United States; he must reasonably believe what he is told by a client whose integrity is unchallenged. As thousands upon thousands of customs entries are processed daily, the customs broker cannot and does not physically examine the merchandise being imported. Thus, he works on behalf of the importer who is the party liable for the correctness of the information provided to CBP.

That being said, however, there are many ways that customs brokers can collaborate with U.S. Customs and Border Protection, to their mutual advantage and, in the end, furthering the well-being of the importer and the importing process. Since 2011, the National Customs Brokers and Forwarders Association of America (NCBFAA) and CBP have worked intensively together to explore ways to achieve this and to meet the challenges of commerce in the 21st Century. Although this dialogue has not been concluded, following are some ideas that we have discussed that seem to have merit:

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Education and Certification

1. **Professionalism of Customs Brokers**: We recognize the professionalism of the customs broker must be enhanced so that he/she can address the ever-evolving requirements of international commerce. The national association has developed a certification program for customs brokers that requires a rigorous course of study and examination. We are considering an additional requirement that brokers acquire practical experience in the industry before they are fully licensed. NCBFAA is also considering a regimen of continuing education in order to keep their credentials in good standing.

2. **Customs Broker Exam**: We have discussed the possibility of the Association administering the customs broker examination, in lieu of the present exams administered by CBP. This would be akin to the way that the bar assumes responsibility for testing new lawyers.

3. **Educating CBP**: We have begun, in partnership with CBP, a series of educational seminars for senior customs officials. This would educate officials on the functions and capabilities of a customs broker so that this expertise can be better leveraged by CBP. We believe that great advantage can be achieved by also participating in the curriculum established for educating new customs officers at their academy and in the ports.

Embargoed until May 17, 2012 at 10am

Customs Broker Responsibilities

NCBFAA is presently engaging with CBP in an effort to update customs regulations that apply to customs brokers ("Section 111"). Among the issues under discussion:

1. Clarifying the broker's responsibility to validate new clients;

2. Modernizing the regulations to align with current electronic capabilities and business practices;

3. Participating in the Importer Self-Assessment (ISA) pre-certification program, potentially performing the comprehensive review of the ISA applicant's package and evaluating the applicant's readiness to participate in the program; and

4. Promote the interests of the broker's small and medium-sized clients who would otherwise qualify as "trusted partners."

Generate Support for New Customs Programs

1. **ACE**: NCBFAA has assumed responsibility for educating its members on the value of the new CBP Automated Commercial Environment (ACE), with the goal of rapidly improving participation by the broker community. The Association has appointed an "ACE Champion," communicated broadly on the importance of the new system, and witnessed an increase from 1% to almost 10% participation in a matter of months.

   The Association and its members have also worked for several years as key members of the Trade Support Network (TSN) in the design of ACE. NCBFAA

is currently partnering with CBP in the development of "cargo release," as well as insisting on completion of auxiliary features such as document imaging and edits.

2. **Centers for Excellence and Expertise**: The Association has agreed to assist with incorporating customs brokers into the development of the new Centers for Excellence and Expertise. Designed to focus on commodity lines, these Centers will greatly enhance the resources available to importers and customs brokers, while providing CBP with uniformity and consistency, as well as expediting the processing of customs entries. The Centers are new and their capabilities are just emerging. It will be important for them to serve small and medium-sized businesses whom we represent, not just the large importers who already have substantial capabilities whom we also represent.

3. **Air Cargo Advanced Screening**: NCBFAA and its COAC members are working with CBP in the roll-out of the Air Cargo Advanced Screening (ACAS) pilot, which will rely on freight forwarders' participation in order to reach small and medium-sized shippers. ACAS will provide security-required data earlier in order to protect the U.S. against terrorist attacks against our international air cargo system.

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Advocate For A Series of High-Priority Customs Issues

The National Customs Brokers and Forwarder Association recognizes that there are many challenges for CBP to accomplish its mission. We understand, then, that the Association must be involved in addressing public policy issues designed to improve the performance of the agency.

1. **ACE funding:** Construction of the Automated Commercial Environment is vital to Customs meeting its core responsibilities. The present system – ACS – is close to 30 years old and must be replaced. The Administration's FY2013 budget request is patently inadequate: $138M provides no capacity for continued program development; instead CBP is relying on carry-over funds from past years that are being used now but will be depleted by mid-FY2013. The Ways and Means Committee has long championed completion of ACE, but the time is at hand when the Committee must make a strong statement within the House that completion of "cargo release" and other core functionalities must continue even in these austere times.

2. **Drawback:** Drawback is the customs process of crediting *exporters* of products with the *import* duties that they have paid for those products or their components. As drawback customs brokers know, the process for

obtaining drawback is hopelessly complex, time-consuming and resource-intensive for both the practitioner and for CBP. For several years, members of the Association have worked with CBP, their partners in the trade community and the Committee to simplify and modernize these processes. As ACE further eliminates paperwork, it is time to enact legislation that will accomplish these objectives. We strongly urge inclusion of drawback simplification in upcoming customs authorization legislation.

3. **Anti-dumping/countervailing duties**: As you consider ways to promote more effective enforcement of the trade remedy laws, we encourage the Committee to codify the recommendations of the Commercial Operations Advisory Committee (COAC) to design and implement a **prospective** system to assess anti-dumping and countervailing duties. We believe a prospective system would better promote fair trade by informing the marketplace of fairly traded prices at the time purchasing decisions are made. A prospective system would also enable CBP to more effectively collect duties owed and be less resource intensive for both importers and the government – thereby freeing up CBP resources to better target bad actors who purposefully seek to evade proper duties owed.

4. **Role of the Broker**: As previously mentioned, the Association is working with CBP to evolve this concept. We believe that this can best be accomplished within the rulemaking process, including modernization of Section 111 of the Customs Regulations. We respectfully ask the Committee to encourage this process.

5. **Court of International Trade (CIT)**: NCBFAA requests the Committee to examine ways that the Court of International Trade can be empowered to more expeditiously resolve international trade disputes. We support efforts by the CIT Bar Association to recommend changes in the jurisdiction and authority of the CIT to the Committee.

6. **Other Government Agencies**: Increasingly, customs brokers must interact with the laws regulating imports that bestow enforcement responsibilities on agencies other than CBP (e.g., the Food and Drug Administration, the Consumer Product Safety Commission and over 40 other agencies). We have strong working relationships with those agencies, both through our national and regional associations and through the individual brokers at the ports. We encourage efforts to expedite and facilitate these enforcement activities. One such means to that end is the International Trade Data System (ITDS) which is a component of ACE and provides each participating agency a window on the importation process. We support the Committee's efforts to gain continued and adequate funding for ITDS. At the same time, we express our appreciation to the Committee for its support for the continued exclusive

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regulation of customs brokers **by CBP**, not creating duplicate regulatory schemes at other agencies.

7. **CBP Field Operations**: NCBFAA supports CBP efforts to re-focus its attention on the partnership of commercial facilitation with homeland security. We well understand the importance of commerce to our nation's economic well-being. In a word, our international economy translates into jobs here at home. CBP's organization must reflect that renewed focus. Additionally, efforts within the Office of Trade to develop policy that is facilitation-oriented must translate into action at the ports, where trade policy is implemented. Lines of communication between policy-makers at headquarters and operators in the field must be wide open. We also believe that the new Centers for Excellence and Expertise will be one path to this result, but only if their efforts are fully enforced by field operations personnel. NCBFAA urges the Committee to ensure that these Centers are adequately staffed, as well as making sure the professional CBP import specialists continue to be made available in the ports, but in greater numbers. NCBFAA recommends that the Committee closely monitor the development of these Centers while they can be influenced to meet your goals for commercial operations.

Mr. Chairman, NCBFAA greatly appreciates this opportunity to outline our views on customs oversight and new policy development. We stand willing to support the Committee in all of its work to accomplish these objectives.

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Chairman BRADY. Mr. Mullen.

STATEMENT OF MICHAEL MULLEN, EXECUTIVE DIRECTOR, EXPRESS ASSOCIATION OF AMERICA

Mr. MULLEN. Mr. Chairman, Mr. Ranking Member, I very much appreciate the opportunity to testify today at the hearing and applaud the committee for taking the time to examine the critical

issues around streamlining and modernizing the shipment clearance process at our Nation's entry ports.

I am the head of a trade association that represents the major express package companies: DHL, FedEx, TNT and UPS. Since the trade committee last held a hearing on these issues 2 years ago, I think it is fair to say that considerable progress has been made. CBP has adopted an approach known as Co-Creation, which Commissioner Aguilar described, where the private sector is engaged from the outset in the development of new security and border clearance programs. Co-Creation was used successfully to develop the air cargo advanced screening and the simplified entry pilot projects, which are described in detail in my written testimony.

The Centers of Excellence and Expertise have implemented the concept of account management for two industries, and CBP is planning to expand this approach to additional sectors. "The Border Agency Executive Council" was created to reinvigorate the commitment of government agencies with border authorities to the international trade data system. And the European Union has become the sixth partner to sign a trusted partner mutual recognition agreement with the United States.

Former CBP Commissioner Alan Bersin should be given credit for much of this progress, and current Commissioner David Aguilar is carrying forward these efforts with strong dedication.

But despite these positive developments, a great deal remains to be done. A disappointing lack of progress can be seen in the following areas: ACE funding has been seriously reduced and is now only sufficient to maintain the current operational status. Critically needed new capabilities are not being developed.

The ITDS goal of a single transmission of information from the trade and a single government release remains an unfulfilled vision. As the agencies continue to deploy standalone IT systems to meet their unique requirements, the progress toward the ITDS goals is actually receding. Despite strong appeals from the trade, the de minimis level for rapid clearance for low-value shipments has not been raised above $200 where it has remained for nearly 20 years. The Peterson Institute of International Economics has done a study that has shown significant savings to the private sector approaching $100 million a year, and some savings also to the public sector would result from raising this level.

C–TPAT benefits have not been expanded, and tier 3 status continues to be limited to importers only, denying several highly-qualified members in the carrier and other trade communities the opportunity to hold this status. We are not seeing progress toward a unified trusted partnership program in the United States, and the trade community continues to be plagued by the need to comply with unique programs for different agencies. As the number of such programs is increasing, we are actually going backwards in this area also.

In the best of all possible worlds, what should the border clearance process look like by the end of this decade? The government should look at the border as a business entity that needs to be managed and develop all of the capabilities needed to do so. With sufficient political will, I believe it is possible to create a border 20/20 environment over the next 8 years with the following capabili-

ties: Government information requirements will be met by a single transmission of the minimum data elements necessary, submitted as early as possible in the supply chain; no paper documents will be required as part of the clearance process; all government agencies will coordinate to issue a single release prior to the goods arriving at the port of entry; ACE will be fully operational and will be the only U.S. trade clearance system; Centers of Excellence and Expertise will exist for all major import categories; the government will have a single trusted trader program in which all agencies with border authorities participate with a single application and validation process; the U.S. de minimis level will be at least a thousand dollars and will be automatically adjusted for inflation without the need for additional regulatory or legislative action.

To sum up, this concept of the 2020 border represents an ambitious proposal. The building blocks to create each of these capabilities are in place today, but realizing this vision requires a congressional oversight management process that transcends narrow jurisdictional concerns and treats the effort as a single project. Nothing less than the international competitiveness of U.S. industry and ultimately U.S. jobs are at stake.

Thanks very much again, and I look forward to discussing these issues with you.

Chairman BRADY. Thank you, Mr. Mullen.

[The prepared statement of Mr. Mullen follows:]

TESTIMONY OF

MICHAEL C. MULLEN
EXECUTIVE DIRECTOR
EXPRESS ASSOCIATION OF AMERICA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
UNITED STATES HOUSE OF REPRESENTATIVES

May 17, 2012

Streamlining and modernizing the border clearance process for goods entering the United States is a critical challenge. Key aspects of this process still use antiquated approaches that do not reflect 21st century business operations, IT capabilities or public-private sector partnership opportunities. The trade community is encouraged that the Subcommittee on Trade of the Ways & Means Committee is holding this hearing to examine these important issues.

No segment of the trade community is more engaged on these issues than the members of the Express Association of America (EAA). EAA members are DHL, Federal Express, TNT and UPS, the four largest express consignment operators in the world, providing fast and reliable service to the U.S. and more than 200 other countries and territories. These four companies have estimated annual revenues in excess of $100 billion, employ more than 1.2 million people, utilize more than 1000 aircraft, and deliver more than 30 million packages each day. The multitude of customers utilizing the services of EAA members ship an extensive variety of commodities domestically and internationally and would benefit significantly from a streamlining and modernizing of customs' and other government agencies' border clearance operations.

Embargoed until May 17, 2012 at 1:00 pm

I. Trade Facilitation and Streamlining

A. Co-Creation – the New Public-Private Partnership

On October 28, 2010, Al-Qaida in the Arabian Peninsula attempted to ship explosive devices hidden in printer cartridges coming out of Yemen and destined for the United States on express delivery air cargo flights. This plot was successfully thwarted thanks to good intelligence, and this potentially tragic incident had the unexpected benefit of raising the concept of a trusted partnership between government and the private sector to a new level. The day after the Yemen bombs were discovered and the plot disrupted, the four member companies of the Express Association of America (EAA) – DHL, FedEx, TNT and UPS – had a telephone conference with senior U.S. Customs and Border Protection (CBP) and Transportation Security Administration (TSA) officials. All participants in the call agreed that providing information on air cargo shipments earlier than the Trade Act mandate of four hours before arrival was required. The express companies were permitted to take the lead in developing an operationally feasible approach to providing this data as early as possible in the supply chain. The express firms found the data could be transmitted several hours before the shipment left the last point of departure on its trip to the United States, and each company worked with the CBP National Targeting Center to develop the technical means to deliver the information.

This project became the Air Cargo Advance Screening pilot or ACAS. ACAS represents a breakthrough in the development of public-private partnerships to achieve mutual security and trade facilitation goals, or, as the CBP Commissioner has described it, ACAS is a "game changer". To establish ACAS, CBP and TSA employed an approach that has come to be known as "co-creation", in which the private sector determined at the outset an operational concept for the project, how the data would be transmitted, and how the reaction to the results of the risk assessment would be managed. These pillars of the project were then discussed with the government and refined to ensure the effort would meet their requirements. The private sector also decided the pace and direction of the expansion of ACAS to additional countries, within a set of priorities that was determined by CBP and TSA. This approach differs significantly from the normal method of allowing the business community to comment on the government's approach to a security issue only after a regulation has been drafted. After the pilot project has run for a sufficient amount of time and the results are analyzed, the ACAS private sector participants will engage with CBP and TSA to draft a regulation that is based on the operational lessons learned from the pilot and that incorporates the flexibility and operational feasibility of the approach employed in the pilot. ACAS will evolve into the ACE air cargo module.

The process of "co-creation" has now become the preferred method at CBP for designing new requirements that will impact the trade community in a significant way. The Simplified Entry program was developed using this process, where a public-private sector working group determined the parameters of a pilot that would test the information requirements, transmission channels and operational parameters for providing entry data earlier. Members of the Express Association of America are also key participants in the Simplified Entry pilot. Just as the ACAS pilot is fundamentally changing manifest data as we know it, Simplified Entry will result in entry data being provided much earlier than is the case today, with release also being granted earlier, at wheels up when the plane departs for the United States for air cargo. Simplified Entry also is testing the operational protocols and data transmission channels that will develop into the cargo release module of ACE. In this regard, the participation of the Food and Drug Administration (FDA) and other government agencies in Simplified Entry is imperative to allow the project to develop validated concepts for a unified government release at the border.

The kind of highly developed partnerships between the public and private sectors represented by the ACAS and Simplified Entry pilots provide the most significant benefit to being a member of a trusted trader program. They allow the trade community to shape the parameters of the government's approach to streamlining the entry process and meeting new security challenges. Having the opportunity to ensure the government shipment clearance process is aligned with operational business requirements represents a true partnership between co-equal parties, and allows the government to realize the benefits of best practices from the trade community to improve supply chain efficiency.

B. Relevant C-TPAT Benefits

But improving the benefits of the traditional Customs-Trade Partnership Against Terrorism (C-TPAT) program should remain a high priority. CBP should create a Tier III membership category, which currently is only restricted to importers, for carriers and other members of the supply chain. Beyond any specific benefits in terms of fewer inspections, Tier III membership is a formal recognition that a firm goes above and beyond CBP's security standards. Providing this status for carriers would allow the creation of end-to-end Tier III

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supply chains. Express consignment operators represent a gold standard for supply chain security management, with minute-by-minute control of a shipment from the time it enters their systems to delivery to the final customer. Their physical, personnel and IT security procedures significantly exceed C-TPAT standards, making these companies excellent candidates for Tier III status. Another potential new C-TPAT benefit would be reducing bond requirements. Companies in C-TPAT are low risk for duty evasion or product diversion or other problems for which the bond program is designed. CBP should also be required to measure inspection rates and clearance times and verify that C-TPAT members are experiencing fewer inspections and getting their goods cleared faster than a non-member. Fewer inspections is the core C-TPAT benefit that would encourage a company to join, particularly a small and medium enterprise.

C. Realizing Mutual Recognition Agreement Benefits

Mutual recognition between C-TPAT and other countries' trusted trader programs has the potential to harmonize clearance requirements and simplify the entry process on a global basis, but the reality of the mutual recognition agreements established so far is falling well short of this goal. Only the validation step of the partnership program is being mutually recognized, which does have some value in reducing the number of validation visits a company will experience. But much more could be done. Countries could agree on a single application process and set of information requirements for these programs, and the agreement also could serve as a basis for harmonizing customs declaration data elements. The World Customs Organization has provided a template for taking these additional steps. Mutual recognition agreements should provide a single risk assessment process for program participants that genuinely results in fewer inspections and a more rapid clearance for both imports and exports. Congress should require an annual report from CBP that describes how the benefits of mutual recognition agreements are aligned between the U.S. and partnering nations. The report should describe how C-TPAT members receive analogous benefits in other countries to those the U.S. provides to members of the foreign trusted trader program. On both sides the benefits should be commercially meaningful.

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D. Unifying U.S. Trusted Trade Programs

But mutual recognition should start at home. Congress should require all agencies with border clearance responsibilities to participate in a single trusted trader program with the private sector. C-TPAT could serve as a model for this program, with other agencies adding their requirements to the application and validation processes as needed. The costs of applying to a myriad of different programs are a disincentive that discourages participation, as considerable resources are involved in meeting varying program requirements. As an initial step, Congress should mandate consolidation of C-TPAT and TSA's Certified Cargo Screening Program (CCSP) with a single application and vetting process. This will require harmonizing the company based approach of C-TPAT with the location based approach of CCSP, but that should not be an insurmountable obstacle.

The Certified Importer Program has become a now well-developed model of a unified trusted trader program that allows a product to be validated from the raw materials stage, through manufacturing, testing, and quality control to delivery via a secure supply chain. The program ensures government requirements regarding product safety, security, and trade compliance are

met and exceeded by the best practices of highly compliant importers. Certified Importers maintain risk signal detection controls that provide alerts to appropriate government agencies if a problem is detected or a recall required. In return for meeting these high standards, certified imports should receive a consolidated, automated release from all government agencies, prior to arrival at the port of entry. These shipments also should be exempt from transaction-based certificates and document requirements at time of entry, as well as from new government user fees when the importer's high self-management standards are meeting the requirements the user fee is designed to enforce. Congress should specifically authorize the Certified Importer Program and mandate engagement by an initial core group of agencies, to include CBP, FDA, USDA and CPSC.

E. Implementing Account Management – the Centers of Excellence and Expertise

The Centers of Excellence and Expertise (CEE) have been very successful in meaningfully implementing the concept of account management. CBP announced plans to add two additional centers recently, one in Detroit for automobile and aerospace imports and a second in Houston for petroleum, natural gas and minerals. CBP should be encouraged to continue to expand the CEE concept for managing low risk imports from Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) members. By centralizing the import process for trusted shippers in what is essentially a virtual port of entry, groups of CBP experts can become very familiar with specific industries' supply chains, the volume and type of commodities they ship, and their standard risk management procedures. CEEs represent a significant step in raising the concept of trusted partnerships to a higher level by providing a single point of contact and a communication channel for rapidly resolving any issues that arise with a low risk importer's shipments. This is the kind of relevant benefit to C-TPAT membership that industry has long desired.

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II. Modernization

A. Raising the De Minimis Level

A critical modernization measure, that also would improve enforcement, would be raising the level for de minimis shipments, which require no payment of duties or taxes or official customs clearance, from the current $200 to $1000. This level has not been raised for almost 20 years, despite the explosion of ecommerce and the corresponding increased participation of small and medium businesses in international trade. A higher de minimis level offers significant benefits to both the trade and CBP.

By reducing and simplifying the workload for CBP, the changes would allow officers to focus their efforts more on security issues and higher risk shipments. The changes would allow CBP to reallocate resources from entry document processing and review to security, targeting and enforcement activities. Officers could dedicate more time to manifest review, risk assessment and more productive and focused inspections. These increased efficiencies may even allow a reduction in the number of CBP officers assigned to entry ports. Due to better utilization of CBP resources, studies have shown that the proposed changes will likely result in a net reduction of costs to the Government.

The increase in value thresholds will not adversely affect security and enforcement, as full manifest detail and pre-arrival information is still required for all shipments. The entry reform changes apply only to smaller and lower value shipments, thus there is no increased risk of commercial violations. Simplified entry and release of these low value shipments facilitates CBP focusing of resources on larger commercial shipments where such enforcement will likely have more effective results.

For the trade community and the public, increasing the de minimis level is advantageous to several parties, beyond the reduced labor/operator expense reductions for the importers due to filing fewer formal entries. With more shipments eligible for simplified entry procedures, companies and individuals would realize reduced brokerage expenses. Total costs would be reduced for all customers, but small businesses with numerous low value shipments would see a proportionately greater reduction in costs. The advantages would also accrue to personal shippers in the form of simplified procedures for entry and release, less paperwork and reduced costs. With internet purchases increasing every year, the proposed changes would simplify the entry process for personal use shipments, which should not be subject to the restrictions intended for commercial shipments.

Through Free Trade Agreements and the APEC forum the United States has focused the attention of other countries on the need to raise their de minimis levels. Raising the U.S. level would improve our credibility in these efforts and demonstrate needed leadership. The bill introduced by Representative Schock last year to raise the de minimis level to $1000 has attracted nearly 200 co-sponsors, so a higher de minimis level enjoys broad bipartisan support. The increased level also is supported by an overwhelming majority of the trade community.

CBP has made recent progress in raising the informal entry level from $2000 to $2500. Canada and the United States have agreed to mutually raise their informal entry level to $2500 as part of the Beyond the Border Agreement. The formal rulemaking process to implement this step has been underway for over six months, but hopefully the final rule will be issued soon.

B. Implementing ITDS

Another vitally important trade modernization step the U.S. Government could take is the implementation of the International Trade Data System (ITDS). The competitiveness of U.S. industry continues to suffer from the lack of a unified government approach to the border clearance process. Despite initiating the ITDS process in 1995, we seem to be no closer today to the goal of submitting a single transmission of required information and the receipt of a single government clearance for an import. Proliferation of unique agency IT systems is exacerbating the problem and requiring the trade community to submit similar data elements to different systems and on different timelines.

The U.S. Government should require a single, consolidated set of data elements that are submitted once by the trade to satisfy all government requirements. The ITDS single submission should be the basis for providing U.S. Government-wide release of goods prior to arrival at the border, unless information analysis indicates the need for a hold. All agencies should use risk-based algorithms and automated targeting as the basis for a common decision on the release of goods.

The more than 15 year history of ITDS demonstrates that taking the approach has failed of allowing each agency to more or less voluntarily decide whether they will participate in a meaningful way in the project. I thought the SAFE Port Act of 2006 mandated quite clearly that

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participation in ITDS was required, but progress since then has been minimal. Congress should mandate creation of a specific plan for the near term implementation of ITDS with a timeline of set dates when each agency will achieve full operational engagement in a single release process. Based on volume, CBP and FDA would be the two logical agencies to begin the effort by creating a unified clearance process.

C. Eliminating Paper

We are long past the date when the 19th century practice of paper documentation for clearing imports and exports should have been eliminated. Express consignment operators are among the world's most highly automated companies, but one EAA member estimates they provide over one million sheets of paper per year to CBP as part of the shipment clearance process. With CBP's Document Imaging System (DIS) reaching full operational capability this year, Congress should establish a date when paper documents will no longer be accepted as part of the border clearance process, and mandate that agencies requiring paper declarations, licenses and other forms for trade purposes obtain the documentation through DIS.

D. Modernizing Brokerage Operations

Congress could provide additional measures to promote customs modernization regarding the brokerage process. The first step should be establishing a national permit for customs brokers. The current requirement for a brokerage to have an individual licensed broker designated as a permit qualifier in each of 42 customs districts is cumbersome and outdated. It is difficult to keep a licensed broker in each district due to location, cost of living, etc. There is little practical reason for this requirement other than to have a person available for customs to contact locally. Since CBP developed the Remote Location Filing Program (RLF), there is even less reason for this outdated requirement, and we can accomplish the same objective without having a licensed broker in each district. Having one national permit without local district permit qualifiers will have no impact on broker responsibilities or liability.

Another important step would be to authorize the sharing of brokerage information between related, fully integrated companies, specifically from the licensed brokerage company to related business units within a single corporate entity and with third party service providers. The current regulations on this issue are antiquated in light of the significant changes that have occurred in modern business practices, and actually do not allow the brokerage unit of a company to share information with the security unit. Importers expect their logistics providers to provide integrated, end-to-end business solutions that encompass services in addition to customs brokerage, while also ensuring a high level of supply chain security without imposing burdensome and unnecessarily bureaucratic requirements for them to provide information to different parties within the company or written permissions. Legislation needs to allow sharing brokerage information both internally and externally to develop new products, provide a full range of services to customers, or outsource certain administrative tasks such as billing and/or collections.

Embargoed until May 17, 2012 at 10am

E. Funding ACE

Achieving all the trade facilitation and modernization goals outlined above depends critically on one action: implementation of the Automated Commercial Environment (ACE) must be adequately funded. Budget cuts in recent years have reduced ACE to a maintenance mode where new functionality is not being created. CBP has significantly improved its management of the program over the past two years, which has been recognized by OMB. Despite the reduced resources, sea and rail manifest capabilities are being successfully implemented. The management problems that plagued ACE development in the past seem to be under control.

In March this year a business coalition supporting increased ACE funding, organized by the U.S. Chamber of Commerce, sent a letter to Secretary of Homeland Security Napolitano highlighting the need to increase funding for ACE. The 27 year old Automated Commercial System which ACE will replace is at the limit of its capabilities and requires significant maintenance support. ACE will not only improve government security processes and allow integration of other government agencies' requirements into a single technological framework, but also is a required capability to improve the international competitiveness of the U.S. trade community.

Congress should authorize incremental, carefully managed increases to ACE funding to achieve discrete improvements in system capabilities. The first such step should be providing an additional $80 million in the FY2013 budget to fund the development of the cargo release module. The Simplified Entry program is providing the operational concept for cargo release, and this capability will allow the initial integration of other government agencies into a single release process.

Embargoed until May 17, 2012 at noon

III. The 2020 Border

In the best of all possible worlds, what should the border clearance process look like by the end of this decade? The government should look at the border as a business entity that needs to be managed and develop all the capabilities needed to do so most efficiently and safely. With sufficient political will, I believe it is possible to create the following environment over the next eight years:

- Government information requirements will be met by a single transmission of the minimum data elements necessary, submitted as early as possible in the supply chain, which satisfies security, trade compliance, product safety and other regulations.
- Information requirements will be tailored to product and mode of transportation.
- No paper documents will be required as part of the clearance process.
- Based on a consolidated risk assessment process, all government agencies will coordinate to issue a single release prior to the goods arriving at the port of entry.
- ACE will be fully operational and will the only U.S. trade clearance system.
- Centers of Excellence and Expertise will exist for all certified importer products and will have the authority to resolve any anomalies or unique issues with clearing goods on a real time basis.
- The U.S. Government will have a single trusted trader program, in which all agencies with border authorities participate, with a single application and validation process.

- Penalties will not be issued to members of the trusted trader program, and their bond requirements will be reduced to the minimum necessary.
- Members of the U.S. trusted trader program will be full members of any foreign program mutually recognized by the United States, without the need for additional application and validation procedures, and will receive benefits comparable to the U.S. program.
- Information requirements will be harmonized with our closest trading partners so required export data from one country will satisfy the import requirements of the receiving country.
- The U.S. de minimis level will be at least $1000 and will be automatically adjusted for inflation without the need for additional regulatory or legislative action.

This concept of the 2020 border represents an ambitious proposal. The building blocks to create each of these capabilities are in place today, but bringing them to realization requires a Congressional oversight and management process that transcends narrow jurisdictional concerns and treats the effort as a single project. Nothing less than the international competitiveness of U.S. industry, and ultimately U.S. jobs, are at stake.

I deeply appreciate the opportunity to appear before the Subcommittee on Trade and look forward to discussing these issues with you.

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Chairman BRADY. Mr. Williams.

STATEMENT OF JOHN WILLIAMS, EXECUTIVE DIRECTOR, SOUTHERN SHRIMP ALLIANCE

Mr. WILLIAMS. Mr. Chairman, Members of the Subcommittee, thank you for inviting me to this hearing. I am John Williams, the

executive director of the Southern Shrimp Alliance, and a shrimper with over 40 years in the industry.

I am here to talk about Customs enforcement, something that is not a typical area of the expertise for a shrimper but it has become a central part of my duties.

Customs enforcement should not be the responsibility of a fisherman. There should not be blatant circumvention schemes where millions of pounds of shrimp pour into our market from a country that has no ability to produce that product. There should not be businesses publicly advertising their expertise at evading anti-dumping duties. Since 2005, the Southern Shrimp Alliance has identified a wide variety of schemes designed to evade anti-dumping duties. In that time, I have learned that our industry's experience is not unique. Nearly every trade remedy imposed has been undermined. Circumvention affects all of us.

On shrimp imports alone, circumvention has resulted in hundreds of millions of dollars in uncollected duties. This means that dumped shrimp continues to be sold in our market at prices that limit what shrimpers receive for their catch.

My experience working with Customs has been positive. One operation closed down dusted shrimp circumvention. Customs worked to establish that Cambodia, Indonesia, and Malaysia were transshipment points to evade both duties and the import alerts issued by the FDA. Customs has also closed fly-by-night shrimp importers simply by opening investigations into their activities.

As much as the shrimp industry has benefited from these activities, there is also frustration. I am often frustrated with the glacial place of progress on addressing certain schemes that seem to be open and obvious. Customs officials, in turn, express frustration on the limits of their abilities to address circumvention. Our experience has convinced me that Customs needs assistance in improving its enforcement of trade remedies. I believe that given the right tools, Customs will do the job. For this reason, the Southern Shrimp Alliance enthusiastically supports H.R. 5078, the Preventing Recurring Trade Evasion and Circumvention Act, introduced by Congressman Boustany and Richmond last week.

The PROTECT Act makes circumvention a priority trade issue that Customs must address. The toughest part of our early interactions with Customs was the lack of continuity with those officials responsible for enforcement. Reorganization agency just made it worse.

The PROTECT Act simplifies this. If enacted, Customs would have a trade remedy law enforcement division with a director that reports to an assistant commissioner. Because high-level enforcement positions have sat vacant with Customs, some have questioned whether the agency considered the enforcement of trade remedies to be a priority.

I know from my own experience that Customs takes enforcement seriously, but there is little public record to support that. Under current law, Customs provides very little accounting of these activities. Under the PROTECT Act, Customs is obligated to give a detailed accounting of its enforcement efforts in an annual report to Congress.

The PROTECT Act also makes addressing circumvention a principal negotiating objective of the United States in trade agreement negotiations.

Malaysia has become an obvious transshipment point for all kinds of products evading anti-dumping duties. From our work with Customs, I understand that the Malaysian government has refused to cooperate with investigations. At the same time, we are negotiating with Malaysia to join the transpacific partnership. Circumvention must be addressed in these negotiations.

The PROTECT Act also instructs Customs to seek to negotiate and enter into bilateral agreements to circumvention. Like with trade remedy enforcement, if Customs declines to use this authority, the agency must explain inaction to Congress on an annual basis. The PROTECT Act substantially increases Customs capacity to address circumvention by removing restrictions on the information available for use in commercial targeting. The Act also encourages enforcement by authorizing the sharing of confidential information between various Federal agencies. The PROTECT Act also improves Customs' capabilities by enhancing its ability to collect information and authorizing Customs to make adverse inferences against noncooperating parties. This bill also prevents the abuse of the new shipper review process and promotes better application of single entry and continuous bonds to ensure duty collection.

In closing, I believe that these are vital steps forward, and I am deeply appreciative of the fact that Congress has taken these problems seriously as evidenced by this hearing today and Legislative proposal the PROTECT Act. By introducing the PROTECT Act, Congressman Boustany and Richmond have given me some hope that in the future, Customs enforcement may not be a part of my job.

Thank you, and I look forward to any questions you have.

Mr. BRADY. Thank you, Mr. Williams.

[The prepared statement of Mr. Williams follows:]

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TESTIMONY OF
JOHN WILLIAMS
EXECUTIVE DIRECTOR
OF THE
SOUTHERN SHRIMP ALLIANCE

BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
SUPPORTING ECONOMIC GROWTH AND JOB CREATION
THROUGH CUSTOMS TRADE MODERNIZATION,
FACILITATION, AND ENFORCEMENT

May 17, 2012

Embargoed until May 17, 2012 at 10am

Mister Chairman and Members of the Subcommittee, thank you for inviting me to participate in this hearing. I am John Williams, the Executive Director of the Southern Shrimp Alliance.

For over forty years, I have worked in the shrimp industry, first as a teenage deckhand in Sneads Ferry, North Carolina, then as captain of a boat, then as a vessel owner and operator, and then as owner of multiple shrimp trawlers out of Tarpon Springs, Florida. In four decades, I have learned a lot about shrimping and I have also learned quite a bit about things that are not directly related to catching shrimp but are a necessary part of working in this industry.

After our fishery was on the verge of a total shutdown, I, like many other shrimpers, had to learn our system of fisheries management. In the last decade, the shrimp industry has gone from a position of constant confrontation and friction with federal regulators to one where the industry now fully participates in the regulatory process and often partners with federal agencies in addressing difficult scientific and management issues. I am convinced that that this cooperative approach has produced far better outcomes for the resource and everyone involved.

After our prices collapsed following the explosion of shrimp aquaculture throughout poor parts of the world with lax environmental regulations and minimal labor protections, I, like many other shrimpers, learned painful lessons about international trade. We have learned to distinguish the myths from the realities in the conventional wisdom that aquaculture is simply a more efficient way for producing seafood. We have learned that the positive story of aquaculture development told as part of a public relations strategy sits on top of uncomfortable facts like continued government subsidies, weak regulatory authority, crass exploitation of vulnerable sources of labor, and irreversible environmental harm.

And as we have worked to insure a place for commercial shrimp fishermen in the future, I, like many other shrimpers, am also learning about marketing niche products. Shrimpers are always lectured that the survival of our industry depends not on a level playing field with imports but the development of a premium market for wild-caught product. However, the prevalence of fraud in the seafood market, as evidenced by the enforcement challenges seafood imports have posed to U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs Enforcement ("ICE"), has undermined any faith the industry can have in the ability to maintain such a market once it has been fully developed. Nevertheless, the industry is undertaking any and all efforts to assure its survival. More and more shrimpers are learning not just how to become more efficient fishermen but how to get the best price for their catch once they have returned to port.

Participating in the shrimp industry has led to a lot of strange turns. I have enjoyed the challenges of becoming familiar with fisheries management, international trade, and marketing theory and practice. But when we started working closely with Customs, I would not have believed someone if they told me that I would end up testifying to Congress about issues related to Customs enforcement. However, in seven years, after countless meetings and briefings on circumvention of the antidumping duty orders on shrimp and, more disturbingly, the regulatory actions of the U.S. Food and Drug Administration, I have become acutely aware of the limits on the government's ability to insure compliance with our trade laws even by well-intentioned government officials.

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I. The Substantial Cost of Petitioning for, Winning, and Enforcing a Trade Remedy

My involvement with customs enforcement began a decade ago, when the Southern Shrimp Alliance was organized to deal with a flood of cheap farmed shrimp imports. Prices for landed shrimp at the docks were plummeting for everyone in the industry; from the fleets of trawlers down in the valley of Texas to the day shrimpers working in the Pamlico Sound in North Carolina.

On any given topic, the thousands of shrimpers in the industry have thousands of different opinions. But in the face of the import flood, we were all pretty much agreed that action had to be taken. The industry organized to address the threat to its existence. I remember sitting in a hotel conference room in one of the earliest meetings, literally passing a hat around to be able to pay for the room. We quickly became aware that bringing a trade case was a substantial undertaking, particularly because so many different countries were dumping shrimp in our market.

Everyone who had come together got to work finding the money necessary to have a shot at obtaining relief. In light of the amounts required, it was a huge undertaking. The fact that we were able to raise the money to bring a case is, on its own, one of the great collective achievements of this industry. Even more so because the lion's share of the support came from fishermen, who opened up their own wallets to contribute to the cause and worked collectively with several state governments to effectively tax themselves to fund the litigation.

But getting the money together was only the first step. After we filed petitions for relief from dumped imports from Brazil, China, Ecuador, India, Thailand, and Vietnam in December of 2003, the industry had to prosecute the case. With their survival hanging in the balance and in the face of tremendous commercial pressure, shrimpers and processors gave detailed accounts of how unfairly-traded imports were harming their respective businesses. Officials from the U.S. International Trade Commission, in fact, came down to Tarpon Springs to see my business first hand. In the end, we proved to the satisfaction of the Commission that shrimpers were suffering material injury by reason of unfairly-traded imports and antidumping duty orders were issued by the U.S. Department of Commerce on shrimp from the six countries in February of 2005.

Getting antidumping duties imposed was only the second step. Just as soon as we had fully demonstrated that the industry was materially injured, we were forced to disprove what turned out to be inaccurate predictions about how much a devastating tsunami had hobbled the shrimp farming industries of India and Thailand. Again, shrimpers and processors were asked to provide substantial amounts of information to the U.S. International Trade Commission in the wake of Hurricane Katrina in order to justify maintaining the trade relief that had just been won.

This changed circumstances review before the Commission was unexpected, but even without that review, the industry has to participate in the annual administrative reviews conducted by Commerce to insure the effectiveness of the trade relief. In addition, we have also had to track and consult with the United States Trade Representative and Commerce regarding all of the challenges brought against the antidumping duties on shrimp at the World Trade Organization. The industry has also participated directly in numerous appeals of dumping duty determinations at the Court of International Trade and the Court of Appeals for the Federal Circuit.

In short, the investment needed to bring and maintain relief against unfairly-traded imports is substantial. The costs are required because our laws, appropriately, allow input from many different affected parties before trade relief is imposed. Just as we have to demonstrate material injury by reason of unfairly-traded imports, exporters and importers are given multiple opportunities to show that no unfair trade is occurring. And just as we are able to respond to claims by exporters and importers that imports are fairly traded, exporters and importers were given the chance to disprove that the shrimp industry was injured, that the injury resulted because of dumped imports, and that antidumping duties were required to prevent further injury.

We understand the process and we understand why the system invites broad participation before action is taken. Circumvention, however, changes the calculus. We can accept the high costs of a trade remedy if everyone is playing by the rules, but when the response to a trade remedy is widespread illegal circumvention there is a gross imbalance in how our system is

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structured. Where circumvention is rampant, our industry must bear the burdens of due process while foreign exporters and U.S. importers become laws unto themselves.

Shortly after the petitions were filed, we saw huge changes in the sourcing of imported shrimp. The following are just a few examples. Shrimp imports from Indonesia, previously a small supplier of farmed shrimp, exploded. Countries like Cambodia, which did not have a functional commercial shrimp industry, began to export large quantities of shrimp. Shortly after the antidumping duty orders were imposed and the "dusted" shrimp exclusion was granted, we saw, for the first time, massive quantities of peeled shrimp from China entering the U.S. market as "dusted" shrimp. Similarly, according to ship manifest data, the one Chinese exporter excluded from the antidumping duty order saw its shipments outstrip anything from its past historical experience. We saw inexplicable growth in exports of frozen shrimp from China to Malaysia and, at the same time, similar increases in the exports of shrimp from Malaysia to the United States. We also saw large increases in imports of farmed shrimp from Mexico and in Chinese shrimp shipped "in-bond" to U.S. ports purportedly for consumption in other countries.

We have seen circumvention on a massive scale and have accordingly spent the last seven years working to bring these schemes under control. We did not expect that enforcement of the trade remedies would be an essential component of maintaining trade relief. But, every year, tens of millions – if not hundreds of millions – of pounds of shrimp enter the U.S. market at absurdly low prices in a fraudulent manner to avoid the discipline of our trade remedy laws. These evasion schemes have significantly weakened the trade relief we worked hard to win. As a practical matter, circumvention has meant that fishermen already facing tight margins and increasing costs received less at the dock than what the market price would have been with a fully-effective trade remedy. After paying for the initiation and litigation of the case, we should not also have to be responsible for policing the trade remedy as well.

As shrimp boats continue to be tied up and shrimpers exit the industry, what sticks with me the most is that this continuing harm occurs because of the ***illegal*** actions of foreign exporters and U.S. importers. We are not talking about some theoretical argument about the validity of the antidumping laws. We are talking about the intentional, knowing, and premeditated violation of our government's laws and regulations.

Frankly, many in our industry resent the fact that we have had to spend so much time addressing circumvention. As we have learned more about the prevalence of circumvention, we are astonished at how far things have gotten out of control. Over the last several years, we have been stunned to learn how the schemes we face are used, to lesser or greater degrees, to circumvent nearly every trade remedy in place. We have found common cause with domestic industries across a wide spectrum that are confronted with the same illegal activity that has gutted our trade relief. We have moved past attempting to convince people that circumvention is widespread to, instead, trying to get a handle on how to rein in a practice that threatens the fundamental utility of trade relief for many different industries.

In sum, the Southern Shrimp Alliance has become knowledgeable about Customs enforcement because we have been left with no other choice. Unchecked, the circumvention experienced in the market after trade relief would have entirely undermined the effectiveness of the trade remedies. And although we have worked successfully to address some of the unlawful

evasion with various federal agencies, unless we maintain vigilance these same tactics will once again threaten the basic efficacy of the trade relief we worked very hard to obtain.

II. Two Agencies, Two Very Different Approaches

From a practical standpoint, the first question the shrimp industry confronted was how to address circumvention. As the scope of circumvention schemes became evident, we first consulted with the United States Trade Representative and Commerce. Our experience with Commerce has been, to date, frustrating.

In response to mounting, irrefutable evidence of widespread circumvention impacting a large number of antidumping duty orders, Commerce has responded by narrowly defining its obligations in addressing circumvention and identifying Customs as the agency virtually exclusively responsible for policing the collection of antidumping duties. Commerce administers and vigorously enforces anti-circumvention provisions that address ***legal*** circumvention of trade remedies, but has exercised its discretion to avoid directly addressing ***illegal*** circumvention even when evidence of such schemes is discovered in the course of Commerce's administrative reviews.

One example of this is how Commerce has chosen to address potential problems with the way in which importers identify entries of shrimp imports from China as either subject to antidumping duties or not subject to antidumping duties. Large quantities of shrimp from China continue to enter the United States, with very little of it identified as subject to antidumping duties. The public record in administrative reviews does not allow us to determine how much, exactly, is being claimed as subject to duties, but other information that has been made public gives an indication that it is not very much.

With the antidumping duty order on Chinese shrimp, the China-wide duty deposit rate is 112.81%, with some individual exporters receiving lower rates. And yet, in a report to Congress on collections of antidumping and countervailing duties, Customs noted that for the $38,518,126 in shrimp imported from China during fiscal year 2008, a grand total of ***$56*** in antidumping duties was deposited with the agency.[1] If those numbers are right, they imply that nearly all of the shrimp entered into the United States from China was claimed to have been exempt from any antidumping duty deposits.

The public records of Commerce's conduct of administrative reviews of the antidumping duty order on shrimp from China confirm that the agency has found incidents of shrimp incorrectly imported as not subject to antidumping duties.[2] Nevertheless, despite the agency's

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[1] U.S. Customs and Border Protection, AD/CV Duty Enforcement Actions and Compliance Initiatives, Fiscal Year 2009 Report to Congress at Appendix D, p.49 (March 13, 2009).

[2] Issues and Decision Memorandum (comment 7) accompanying Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China, 74 Fed. Reg. 46,565 (Sept. 10, 2009) (Final Results and Partial Rescission of Antidumping Duty Administrative Review) ("The Petitioners correctly note that at verification the

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experience and the overwhelming evidence regarding circumvention of the antidumping duty order on shrimp from China generally, Commerce has elected to not look behind importers' self-identification of what entries of shrimp are or are not subject to antidumping duties.

Commerce's see no evil, hear no evil, speak no evil approach to circumvention is of particular concern now, as the agency considers whether to revoke the antidumping duty order with respect to a Chinese exporter. Specifically, the agency must determine how to deal with evidence recently made public regarding substantial alleged evasion of the shrimp antidumping duty orders by one U.S. importer with exporter affiliates in foreign countries, including China. Summarizing the evidence amassed from investigations conducted by ICE and NOAA Law Enforcement agents, the Assistant U.S. Attorney alleged that the importer had engaged in significant unlawful circumvention of antidumping duties:

> As to shrimp from countries subject to anti-dumping duties, particularly Vietnam, Ocean Duke transhipped the shrimp through Cambodia and labeled it, falsely, as product of Cambodia (thus not subject to anti-dumping duties). After the imposition of the anti-dumping duties on shrimp in 2004, between May 2004 and July 2005 Ocean Duke imported as product of Cambodia over 15 million pounds of aquacultured, or farmed shrimp, with a declared value of over $42 million. However, during all of 2004 and 2005, Cambodia produced only an estimated 385,000 pounds of aquacultured shrimp. Internal emails and statements of former employees confirm the transhipment of shrimp from Vietnam through Cambodia, thus making possible the export of 15 million pounds.[3]

This appears to be a case of first impression for Commerce. The domestic industry feels strongly that the evidence relating to alleged circumvention is compelling enough to preclude revocation, while the U.S. importer and its exporter affiliate strenuously disagree, arguing that no convictions have been made based on these allegations as the defendants were convicted of crimes regarding seafood mislabeling in the same proceeding. In the past, Commerce has avoided meaningfully addressing evidence of circumvention. Doing so again here will affirmatively result in another substantial hole being opened in the scope of the antidumping duty order on shrimp from China.

Of late, Commerce has publicly expressed concern about widespread circumvention. I am hopeful that this concern will eventually win out over bureaucratic goals of limiting

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Department found certain importers improperly classified subject entries as non-dutiable.").

[3] "Government's Position with Respect to Sentencing," United States v. Lin, CR-11-00297(B)-PA at 5 (Feb. 6, 2012).

Both in the criminal trial where the Government's filing was made and in the current administrative proceeding before Commerce, respective counsel for the importer and the criminal defendants have contested the validity of the Government's allegations, argued that no criminal convictions have resulted from the alleged unlawful activity, and observed that the presiding Judge did not account for the allegations in sentencing the defendants for crimes related to the mislabeling of fish products.

responsibility and preserving resources. Until that happens, however, the domestic shrimp industry will continue focusing its energies and resources on working with Customs and ICE to address circumvention.

Because of our work with other industries that are also seriously impacted by circumvention, I am aware that our experience with Customs has not necessarily been representative of what other industries have experienced working with the agency. From other industries, I have heard complaints that Customs' enforcement efforts seem like an impenetrable black box and that circumvention allegations submitted by these industries appear to go nowhere. Although the shrimp industry has had its own share of frustration in trying to get the agency to focus on particular circumvention schemes that are impacting the U.S. shrimp market, our experience has been on the whole positive.

My personal view is one of great appreciation for the time and effort expended by enforcement officials at Customs and ICE counteracting rampant circumvention. Customs and ICE enforcement personnel take their responsibilities very seriously. The men and women that I have met within that agency are, by and large, deeply offended by illegal circumvention. They are, in many instances, frustrated by their inability to do more and lament hurdles to enforcement. The Southern Shrimp Alliance has on several different occasions publicly expressed gratitude for Customs' enforcement actions. The response of some Customs officials to our statements has been to disclaim credit and protest that the agency has not been able to do nearly enough to deserve praise. We try to thank them and they tell us that we should be pressing harder on the agency for not being more aggressive.

There is no question that Customs could do more, but there is no denying that the agency's actions have helped our industry. In my direct experience with Customs, based, in part, on information that the Southern Shrimp Alliance has provided to the agency, the shrimp industry has benefited from:

- The Commercial Targeting Division's development of a guidance for differentiating between true "dusted" shrimp and non-"dusted" shrimp which facilitated an intensive examination and sampling program at the ports confirming widespread abuse of the exclusion;[4]

- The Office of Regulatory Audit's conduct of quick-response audits on importers suspected of fraudulently identifying country-of-origin to evade antidumping duties and other regulatory controls;[5]

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4 HQ H034575, "Request for Internal Advice; Shrimp from China; Antidumping Duty" (May 10, 2010) and U.S. Government Accountability Office, Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention, GAO-09-258 at 15-16 (February 2009) ("GAO Seafood Fraud Report").

5 GAO Seafood Fraud Report at 16.

- Innovative and creative efforts by Customs' laboratories to confirm illegal transshipment of shrimp;[6] and

- The closure of many fly-by-night importing operations following the opening of investigations by the agency.

Although there is a lot more that must be done before the problem of circumvention as experienced ***just with shrimp imports*** is brought under control, these efforts are greatly appreciated by our industry. Where seafood importers used to dismiss our analysis as unfounded speculation, Customs has confirmed shrimpers' fears regarding the prevalence of fraud within the U.S. seafood market.

Customs' (and ICE's) findings have made it impossible to claim that circumvention does not occur and, even if it does, occurs only in isolated instances. Published accounts of the agency's estimates of the extent of circumvention of the shrimp antidumping duty orders, coupled with the Southern Shrimp Alliance's own estimates regarding circumvention schemes, support the conclusion that illegal circumvention has resulted in the evasion of ***hundreds of millions of dollars*** in antidumping duties. Circumvention to this extent has significantly undermined the effectiveness of trade relief.

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III. Preventing Circumvention

While we have had some success in addressing some forms of circumvention of our antidumping duty orders, every time one avenue is shut down, another scheme takes its place. Just as one depressing example, we labored for well over a year to develop evidence demonstrating that three Malaysian companies were transshipping Chinese shrimp to the United States to evade antidumping duties and an FDA Import Alert. Once these three companies' exports were shut down, thanks, I believe, to Customs' enforcement efforts, six new Malaysian companies – with no prior history of exporting shrimp – began exporting similar quantities of shrimp to the United States.

Because of our well-publicized efforts in this area, the Southern Shrimp Alliance has now become something of a clearinghouse for information and allegations regarding evasion of the antidumping duty orders. Where once we struggled to find ways to marshal compelling evidence to prove what we believed to be happening, now we are alerted to schemes that we could not have imagined on our own. One whistleblower provided the Southern Shrimp Alliance with a treasure trove of documents setting out a circumvention scheme we are still trying to fully unravel.

In many ways, addressing circumvention is like fighting the mythological Hydra of Greek legends; cut off one head and two grow back. But I feel strongly that you do not back away from a job just because it is difficult. In this case, giving up in the face of seemingly intractable opposition would lead to a terrible result. The bad guys would win. People who violated the law would be rewarded and those who abided by the law would suffer.

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[6] Id. at 15.

I do not believe that the persistence and broad scope of circumvention is due to a lack of commitment on the part of those Customs officials responsible for enforcement. Policy makers in the agency may believe that resources are better allocated elsewhere, agency lawyers may see their jobs as reining in overzealous investigators, and other officials may protest that enforcement detracts from trade facilitation but the people who deal with fraud on a daily basis want to see the problem stamped out.

In working with Customs, I have heard numerous officials voice the same concerns on limitations about what they can do to meaningfully address circumvention. That is why the Southern Shrimp Alliance is deeply appreciative for the introduction of H.R. 5078, the "Preventing Recurring Trade Evasion and Circumvention Act," by Congressmen Boustany and Richmond. The PROTECT Act directly addresses a number of issues that Customs officials have flagged for us over the years.

For example, I have been repeatedly informed that an inability to investigate facilities suspected of transshipment in Malaysia has been a major impediment to uncovering illegal circumvention originating from that country. Section 104 of the PROTECT Act goes directly to that problem by instructing Customs to seek to negotiate and enter into bilateral agreements with other countries to improve enforcement of trade remedy laws. If Customs attempts to do so and another country is not amenable to such an agreement, the PROTECT Act authorizes Customs to take that fact into consideration when addressing evasion alleged regarding that country's exports. Just as importantly, if Customs declines to seek to negotiate and enter into bilateral agreements under this authority, it will have to defend its inaction in an annual report to Congress.

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I have also been repeatedly informed that even where Customs can investigate a foreign facility and determines that it is not capable of producing the merchandise exported to the United States, Customs still must amass some evidence that the goods were actually produced by someone who would be subject to antidumping duties. Section 102 of the PROTECT Act directly addresses this concern by augmenting the agency's ability to collect information and authorizing Customs to make adverse inferences wherever a party has failed to act to best of their ability to comply with requests for information.

In addition, the PROTECT Act closes down some of the ways in which the new shipper review process has been abused, removes limitations on invaluable data that was not previously available for commercial targeting, and facilitates the sharing of information between agencies responsible for administering our trade laws. The PROTECT Act also charges Customs with developing policies for the application of single entry and continuous bonds to facilitate the collection of antidumping and countervailing duties – tools that have been underutilized in ensuring compliance with trade remedy laws.

All of these features of the PROTECT Act are a substantial improvement over existing law. But even more important than the substantive changes proposed by the bill is the fact that the PROTECT Act raises the profile of circumvention. The bill establishes an enforcement division dedicated to enforcing trade remedies and responsible for interacting with domestic industries about their circumvention concerns. The bill also makes addressing circumvention one of the principal negotiating objectives for trade agreements. And the bill requires Customs

to provide an annual accounting of the specific steps the agency has taken to address circumvention. These are all welcome developments and I look forward to this bill becoming law.

I do not believe that the enactment of the PROTECT Act in and of itself will solve all problems related to circumvention. The success of the bill will depend upon what Customs does with the authority granted to the agency by this legislation. However, if Customs fails to take aggressive action and diverts resources elsewhere, it would fly in the face of what the PROTECT Act stands for. Congressional oversight will still be required to insure that Customs maintains focus, but such review will be substantially eased because of the reporting requirements imposed by the bill.

Other problems remain. As long as our law allows anyone, including foreign nationals, to act as importers of record, fly-by-night companies will continue to proliferate. These entities simply disappear whenever Customs or ICE begin to make tough inquiries, only to pop up elsewhere (or sometimes at the same address) under a different name. This is not a problem limited only to trade remedy law enforcement and I am hopeful that the agency will do a better job in the future of articulating the risks to revenue and public safety posed by an inability to limit who acts as an importer of record.

Similarly, our review of current trade patterns has shed light on the major deficiencies in the "in-bond" importation process. Abuse of "in-bond" importation extends well beyond circumvention of trade remedies and as Customs identifies specific examples of abuse, we would all benefit from the agency's publication of those findings. Unless someone uses the "in-bond" system or has attempted to document abuse of that system, the vulnerabilities inherent in the current structure of "in-bond" importation are not obviously apparent.

Still, the PROTECT Act provides a framework for identifying and documenting these problems to the extent that they undermine trade remedies. This is a significant improvement over the status quo. We are extremely grateful for the serious consideration given circumvention by Congressmen Boustany's and Richmond's bill and for the Committee's willingness to address enforcement in this hearing.

Thank you again for inviting me to share my experience on Customs enforcement with the Committee and I look forward to answering any questions you might have.

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Chairman BRADY. Mr. Glassman.

STATEMENT OF KARL GLASSMAN, CHIEF OPERATING OFFICER, LEGGETT & PLATT, INCORPORATED.

Mr. GLASSMAN. Good morning, Chairman Brady, Ranking Member McDermott, and members of this committee. Thank you for holding this hearing on topics that are critical to our business,

employees, economy, and trade laws. I am the Chief Operating Officer of Leggett & Platt, a global manufacturer based in Missouri. We have 18,000 employees in 18 countries and 28 States and make a wide variety of products.

For the last 3 years, we, along with many of you, have been focused on duty evasion. Clearly, there is work to be done to create an effective enforcement program that ensures aggressive and timely action.

Duty evasion has directly affected my company. Since 1883, we have manufactured mattress innersprings. While we now make many products, we are the world's largest innerspring producer, and they are the heart of our business.

Chinese innersprings first entered the U.S. in the early 2000s, at prices lower than our cost of production. We manufacture innersprings in China for the Asian market and know it is not cost effective to produce and ship innersprings from there to here. Still increasing volumes of Chinese innersprings continued to be imported at very low prices.

In late 2007, after significant injury to our U.S. operations from the low-priced springs, we filed successful trade cases against China, South Africa, and Vietnam. Since February of 2009, Chinese innersprings have been subject to anti-dumping duties from 164 to 234 percent. Even before the final anti-dumping order was issued, Chinese innersprings began being transshipped to evade duties. Prior to July 2008, there were no innersprings shipped from Hong Kong, yet by September of that year, over 35 containers per month, worth $1.5 million in sales and more in duties, were being shipped here at the same dumped Chinese prices. This made no sense to us so we hired a private investigator who found no evidence of legitimate production in Hong Kong.

We traced 13 shipments of innersprings from China to Hong Kong and then from Hong Kong to the U.S. in just 2 months. We estimate 1 million innersprings illegally evade the anti-dumping order each year. This represents over $50 million in uncollected duties. If those innersprings were produced in the U.S., it would account for over 58 full-time jobs earning more than $2.4 million in wages and benefits per year.

We regularly provide Customs with specific evidence of evasion. Since October of 2008, we have met with or sent information to Customs on 30 occasions. Despite these regular communications, including with the RED team, we have no indication of any enforcement activity in our industry. This is a systemic problem. We and 13 other affected industries, collectively employing tens of thousands of American workers formed the Coalition to Enforce Anti-Dumping and Countervailing Duty Orders. Our stories are strikingly similar: the same invasion schemes, lack of meaningful enforcement, and an ongoing commitment of company resources to attempt to enforce our own orders.

The consequences of duty evasion are significant. We estimate that Treasury loses over a billion dollars in unpaid duties each year with $400 million just from the seven of the Coalition's industries.

The ripple effects of duty evasion up and down supply chains, on our workers' salaries, and on our Communities cannot be ignored.

Coalition members have met with Customs, ICE, Commerce, USTR, Treasury, this committee's staff, Senate Finance staff, and several Members of Congress and their staff concerning these issues. We are encouraged by the efforts of many members to help find a solution.

Any legislation or policy changes must include meaningful provisions capturing three core themes: First, prompt action. Evasion must be addressed quickly. These are industries and employees that our government has said are injured and who need and deserve the benefit of their anti-dumping order.

Second, full use of existing tools. Our agencies should use all available tools and authority, including requests for information, audits, civil penalty proceedings and expertise of affected industries.

Third, publicized results. Publishing regular decisions and reports with meaningful details, and informing the industries reporting evasion, would provide an immediate deterrent to cheaters, increase transparency and accountability and demonstrate the agency's will and capabilities to combat evasion.

Codifying practices that are less than fully effective is not enough. Our enforcement agencies need structured programs with appropriate levels of responsiveness, transparency, and accountability. We must find a solution. The alternative is unacceptable. We are committed to helping come up with solutions that go beyond business as usual and deliver an effective enforcement program.

Mr. Chairman, members of this subcommittee, thank you for the opportunity to address you today. I look forward to your questions.

Chairman BRADY. Mr. Glassman, thank you for bringing forward the issue of trade fraud. It has been prevalent for some time, getting more complex. It is a major challenge for us moving forward so thank you for focusing on that.

[The prepared statement of Mr. Glassman follows:]

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON WAYS AND MEANS

TRADE SUBCOMMITTEE

MAY 17, 2012

TESTIMONY OF KARL G. GLASSMAN

CHIEF OPERATING OFFICER, LEGGETT & PLATT, INCORPORATED

Good afternoon, Chairman Brady, Ranking Member McDermott, and Members of this Committee. Thank you for holding this Hearing on a set of topics that are critical to our business and employees, to the U.S. economy, and to our trade laws.

I am the Chief Operating Officer of Leggett & Platt, a diversified global manufacturer headquartered in Carthage, Missouri. We have over 18,000 employee-partners in 18 countries across the world. Here in the United States, we have operations in 28 states, and manufacture a wide variety of engineered components and products.

Over the last three years, we, along with many members of Congress, have focused a great deal of energy on the growing and serious problem of evasion of our trade laws. While a solution has not yet been reached, the focus on the issue, and the many questions that have been asked, have only underscored its significance. It is clear that important work remains to be done to ensure that the actions of the government agencies charged with enforcing our trade laws reflect the importance of aggressive and timely enforcement and the significant consequences for American industries and their employees if enforcement efforts continue to fall short.

It might be helpful for me to describe how duty evasion has affected Leggett & Platt. Our company's original product was the mattress innerspring, which we patented in 1883 and have manufactured continuously since. While we now produce a wide range of products, innersprings are the heart of our business. We are the largest innerspring manufacturer in the world.

Chinese innersprings began coming into the United States in the early 2000s, at prices lower than our cost of production. We manufacture innersprings in China for the Asian market, and know first hand that it is not cost-effective to produce and ship innersprings from China to the United States. Nevertheless, more and more Chinese innersprings continued to enter the U.S., at very low prices.

By December 2007, our U.S. innerspring operations had deteriorated to the point that we filed antidumping cases against innersprings from China, South Africa, and Vietnam. As you know, deciding to bring a trade case requires a very significant commitment of a company's time, personnel, and money, at a time when the industry has been financially devastated by low-priced imports. Winning a trade case requires satisfying rigorous legal requirements through a transparent, contested quasi-judicial process. Commerce must find that goods are improperly subsidized and/or sold in the U.S. at less than fair value (dumped), and the ITC must establish that a domestic industry has suffered (or is threatened with) material injury. The standard for material injury is very high, but both agencies ultimately ruled in our favor. Our cases all resulted in antidumping duty orders. Since February 2009, innersprings from China have been subject to antidumping duties ranging from 164% to 234%.

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Unfortunately, even before the final antidumping order was issued, we started seeing evidence that Chinese innersprings were being transshipped to the U.S. through third countries to evade duties.

For example, imports from Hong Kong, at the same low prices as the dumped Chinese innersprings, skyrocketed overnight. Prior to July 2008 there had been no innersprings shipped from Hong Kong, yet by September 2008 over 35 container loads per month – easily worth $1.5 million a month in commercial sales, and much more than that in duties – were being shipped here.

Hong Kong	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2005	-	-	-	-	-	-	-	-	-	-	-	-	-
2006	-	-	-	-	-	-	-	-	-	-	-	-	-
2007	-	-	-	-	-	-	-	2,071	-	-	-	-	**2,071**
2008	-	-	-	-	-	-	1,480	10,166	47,201	52,290	40,304	17,674	**169,115**
2009	58,250	16,128	36,152	23,892	10,886	3,743	1,845	8,682	9,231	21,483	8,735	11,377	**210,404**
2010	13,522	16,367	18,388	32,345	34,537	29,502	23,892	3,100	-	-	-	-	**171,653**
2011	-	-	-	-	-	-	-	-	-	-	-	-	-
2012	-	-											-

Given our knowledge of Hong Kong's market and the bedding industry, this made no sense to us. We hired a private investigator who was unable to find any evidence of legitimate innerspring production. We also traced 13 shipments of innersprings from China to Hong Kong and then from Hong Kong to the U.S., in December 2008 and January 2009 alone. Shipments from Hong Kong abruptly stopped in September 2010.

Since the order went into effect, we also have seen skyrocketing imports from Taiwan and Malaysia, again, places where there was no prior production of innersprings.

Taiwan	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2005	-	-	-	-	-	-	-	-	-	-	-	-	-
2006	-	-	-	-	-	-	-	-	-	-	-	-	-
2007	-	-	-	-	-	-	-	-	-	-	-	-	-
2008	-	-	3,100	-	-	4,932	7,460	5,625	8,219	15,520	7,296	5,340	**57,492**
2009	3,220	6,794	3,396	23,380	15,008	22,680	19,200	23,654	16,790	4,288	15,046	13,680	**167,236**
2010	17,660	6,560	9,756	9,740	17,642	26,382	28,130	11,278	18,822	15,108	5,918	9,446	**176,442**
2011	10,936	15,656	-	10,032	22,837	14,500	10,991	7,400	7,210	7,364	7,660	7,640	**122,226**
2012	15,508	7,530											**23,038**

Malaysia	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2005	-	-	-	-	-	-	-	-	-	-	-	-	-
2006	-	-	-	-	-	-	-	-	-	200	-	-	**200**
2007	-	-	-	-	-	-	-	-	-	-	-	-	-
2008	-	-	-	-	-	-	-	-	-	-	-	-	-
2009	-	-	-	-	11,436	23,426	27,970	37,736	25,676	29,001	21,386	9,286	**185,917**
2010	15,154	28,766	7,124	17,988	30,951	32,246	42,254	26,200	19,895	22,961	31,868	36,744	**312,151**
2011	46,106	23,247	276	33,825	54,725	42,560	36,145	15,849	24,020	19,327	20,608	27,837	**344,525**
2012	30,004	19,723											**49,727**

We have developed substantial and credible evidence that many of the exporters in these countries are involved in transshipment schemes, and are actually shipping Chinese-produced

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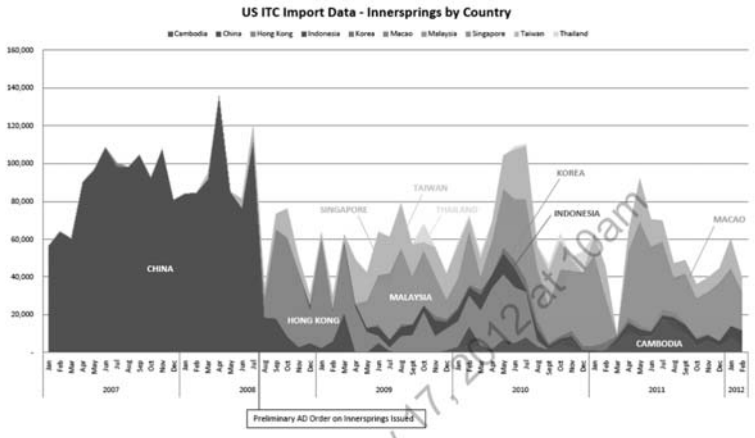
innersprings to the U.S., all of which should be covered by duties up to 234 percent. We estimate that potentially 1 million or more imported innerspring units illegally evade our antidumping order every year. Conservatively, this would represent over $50 million dollars in antidumping duties – on our product alone – that should have been paid to the U.S. Treasury.



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To understand the scope of this issue for our industry alone, if those innersprings had been produced in the United States, it would account for over 58 full time employees, earning over $2.4 million in wages and benefits per year. Our suppliers and their employees and communities would similarly benefit. Evasion of other industries' trade orders has resulted in much larger amounts of duties going uncollected, with even larger consequences for their employees and communities.

We have regularly provided Customs with specific evidence of evasion. Since October 2008, we have met with or sent information to Customs on more than 30 separate occasions. Despite our best efforts to help Customs, the innersprings continue to come into the United States without paying lawfully-owed duties.

In September 2011, we again met with Customs to discuss this problem. At that meeting, we first learned about Customs' RED Team, a task force created after the Senate Finance hearing on this same issue in May 2011. Customs' officials agreed to make the review of one of our e-Allegations (originally submitted in 2009) a line item at the RED Team's October meeting and relay results back to us. Despite numerous follow-up calls and emails, Leggett has not been made aware of any specific enforcement actions or seen any market changes that would indicate enforcement has increased in our industry.

Ours is not an isolated problem. In September 2009, we, and four other industries, formed the Coalition to Enforce Antidumping and Countervailing Duty Orders to work together to find a solution. Today the Coalition includes 14 industries, employing thousands of American workers in high-quality manufacturing, agriculture, and aquaculture jobs, all with trade orders that are being undermined by duty evasion. Every industry in our Coalition could tell you stories very similar to ours. Our members

have also invested their time and money to develop direct and reliable evidence of evasion using techniques such as transshipment through third countries, misclassification at the time of importation, the use of falsified documents, and mis-labeled country of origin markings.

One of the most remarkable aspects of our Coalition has been the striking similarity of the evasion schemes, the lack of meaningful enforcement, and the efforts and huge commitment of resources made by our varied members to essentially enforce and police their own orders. Companies bring trade cases because they have their backs against the wall, and face a choice between fighting to defend their industry or going out of business. As you would imagine, it is incredibly frustrating and disappointing for companies to limp into the ITC and Commerce after deciding to invest the enormous amounts of resources to bring a trade case, only to see their hard-earned remedy undermined by evasion that our government is either unwilling or unable to successfully combat.

The consequences of duty evasion are significant. For example, we collectively estimate that the Treasury loses almost $400 million each year in unpaid duties due to the illegal evasion of orders in just seven of the Coalition's industries. A survey across the wide range of industries with trade orders would undoubtedly yield a much, much larger number. Moreover, the ripple effects of duty evasion – up and down our supply chains, on our workers' salaries, and on our communities – cannot be ignored.

Members of our Coalition have met, individually and collectively, with Customs, ICE, Commerce, USTR, Treasury, this Committee's staff, Senate Finance staff, and numerous Senators and Representatives and their staff concerning these issues. We have been very encouraged by the efforts of many of our Senators and Representatives, and their staff, to help find a solution.

We believe it is imperative that any legislation or policy changes addressing this problem include meaningful provisions capturing three core themes.

First, <u>prompt action</u>. The most important thing for affected industries is that evasion be addressed quickly. We do not believe that successful commercial enforcement and criminal enforcement are mutually exclusive. However, ten cases of prompt commercial enforcement – even if this means simply collecting the duties – will be more effective in changing the cheaters' behavior than one criminal "perp walk" five years after an entry is made.

Prompt commercial enforcement would limit the impact in the market of merchandise entered using a duty evasion scheme. Setting reasonable timelines and deadlines for action would ensure that evasion is promptly addressed. Taking action years after evasion occurs or is reported means that domestic producers continue to be hurt by illegal trade practices while more time passes. Every day this practice continues is a day that U.S. industries and employees are not getting the benefit of the remedy that Congress intended them to receive when they brought and won their trade cases. It is ironic that strict statutory deadlines ensure prompt action when a petition is filed to address the injurious effect of imports, but enforcement of an order arising from that petition can drag out for years.

Second, <u>full use of all existing tools</u>. We need to know that the government agencies responsible for enforcing trade orders are <u>required</u> to use <u>all</u> their existing tools and authority to combat evasion. Tools like risk-based targeting, while important and useful, are not enough by themselves. Such tools must be coupled with prompt enforcement using all existing tools and authorities, such as issuing CF-28 requests for information, conducting audits and focused assessments, and using information already being collected.

Prompt and aggressive use of these tools by actively-engaged enforcement agencies will show trade cheats that our agencies are paying attention and will use every means at their disposal to enforce these orders.

We believe that our agencies can do more to work together on this problem. For example, Customs and Commerce could, and we believe should, share, with each other and with domestic parties, more proprietary information that is gathered in the course of their enforcement and administrative programs.

We note that Congress has recently legislated that Customs change its practice in cases where Customs believes intellectual property rights are being violated. They now intend to share confidential information and physical samples of imported goods with holders of trademarks and other marks, in order to allow the owner of the mark to evaluate whether the imported good is infringing their intellectual property. This important change reflects the recognition that the affected industries are in the best position to assist in enforcement. The same is true in duty evasion. Companies and industries who have fought for and obtained relief under the trade laws are the single best source of expertise and information to assist our enforcement agencies when duty evasion is suspected. Yet, while our enforcement agencies are willing to accept the evidence we develop, we have no idea whether the information is helpful, or what is being done with it. Our members would like nothing more than to have our agencies help us to help them be more effective.

We also believe that an actively engaged agency – one that is utilizing the full extent of its existing authority to address this illegal behavior – would have a deterrent effect on future duty evasion. Our experience has been that, for these unscrupulous importers, success begets further cheating. Without fear of enforcement from the agency tasked with policing our borders, they can and will continue to evade these duties, at increasing volumes.

Third, publicized results. Publishing regular and timely public reports that contain meaningful amounts of detail, and informing the companies reporting the evasion in the first place, will promote a number of important policy goals.

First, this will promote deterrence of companies and individuals who are tempted to try to evade duties. Publicizing the results of a vigorous enforcement program will send a clear message that our enforcement agencies will use all tools at their disposal to combat evasion, that the U.S. government is on to them and will no longer tolerate the blatant disregard of our laws, and that parties tempted to engage in such illegal behavior do so at their peril. We believe it will provide an immediate and effective deterrent to parties that might otherwise consider attempting to engage in evasion.

Second, it will promote transparency of the process. Today's opaque system leaves the stakeholders injured by the evasion wondering whether anything is being done to help them, and also allows agencies to handle evasion allegations with little to no oversight.

Third, it will promote accountability. Transparency goes hand in hand with accountability, and we have seen other situations where Customs has significantly improved its operations when required to publicly account for its internal activities. Requiring public reporting will promote accountability, and we believe will result in a more efficient and effective enforcement program.

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Fourth, it will promote recognition of the enforcement agencies. Successes should be promoted, in order to give credit to the agencies and to educate both the trade cheats and the trade community about the talents of our enforcement professionals.

Fifth, it will promote credibility of our enforcement processes. The lack of effective enforcement fosters the perception that our enforcement agencies lack credibility, either because they lack the will or the capabilities to aggressively investigate and combat duty evasion.

Similarly, it is clear that many foreign parties view our trade orders as something that can be evaded with impunity. In late 2010, Senator Ron Wyden published the results of an informal investigation conducted by his staff that revealed just how pervasive the culture of duty evasion has become. By conducting very basic research, they documented numerous offers to evade trade orders. These offers were openly advertised on the Internet, or were quickly elicited when requested.

* * *

Whatever form a solution takes, Leggett & Platt, and the members of our Coalition, will evaluate its effectiveness in the context of these core principles. Codifying practices that are less than fully effective is not enough. It is time to require our enforcement agencies to step up and perform, in the context of a structured program that has appropriate levels of responsiveness, transparency and accountability.

We must find a solution to this problem. Our laws must be promptly enforced, for the integrity of U.S. laws, for the credibility of our agencies, and for the industries and their employees that have been injured by unfair imports. The alternative is unacceptable. The challenge of duty evasion is not about trade philosophy – it is about effective enforcement of U.S. trade laws. Leggett & Platt, and all of the members of our Coalition, are committed to working with all stakeholders to come up with sensible, pragmatic, and effective solutions that go beyond "business as usual" and deliver an effective enforcement program.

Our company, and the other members of our Coalition, work hard to comply with all laws, in the U.S. and worldwide. We have been absolutely shocked to see the way unscrupulous individuals and companies brazenly evade U.S. law, and are equally dismayed by the lack of response we have seen from those charged with enforcing our laws. We support and encourage this Committee to move forward with meaningful, effective legislation to help fix this problem.

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to address you today. I look forward to your questions.

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Chairman BRADY. Mr. Williams, my congressional district abuts Dr. Boustany. We have got a few shrimpers around Texas as well. Very interested in your testimony.

I want to welcome Mr. Weise back to the committee and thank you for your expertise. You heard me perhaps in the first panel talk about the need for measurements. In fact, United States is

ranked ninth in efficiency by one measurement, lower than that, Customs' efficiency 13th in the world, international shipments, 17th. Whether that comparison's accurate or not, the point is that we have become much more efficient, and to do that you have to measure the efficiency and the accuracy and the enforcement.

So I wanted to ask Mr. Sekin and Mr. Mullen and to ask any of you to chime in if you wish, how are your customers measuring efficiency of shipping, Mr. Sekin, and how are your members, Mr. Mullen, doing the same? What do you use to measure efficiency, time, cost, for both imports and exports?

Mr. SEKIN. I think one of the ways that our client's measure efficiency is how quickly their shipments are processed, how many examinations they get and when, shipments are detained for examination, how long does that detention last? There is a great deal of expense when a shipment is detained for examination at the seaport, such as demurrage charges or per diem charges on the container. It can be very expensive. So a customer would measure how quickly they get their product and can get it into the marketplace.

Chairman BRADY. Would you be willing to survey your members to ask what some of those indicators might be with the broad range of them that might be that they would feel comfortable sharing with us as we go forward?

Mr. SEKIN. We would. We will get back to you with that.

Chairman BRADY. Thank you very much. Mr. Mullen?

Mr. MULLEN. Mr. Chairman, this is a very important subject, and I would share what my colleague said about the importance of time for release, the time from when the product actually arrives at the port of entry to when it is ultimately released. If there is a hold imposed, what the time is required to resolve the hold, and I think a particularly meaningful measurement that could be developed is that several government agencies, it is hard to know exactly, but one number we use is that nine government agencies have border control authority, so in other words, have the authority to stop a product at the border for one reason or another. Most of those choose to discharge those responsibilities through CBP, but some do not. But for each one of those agencies, a statistic should be developed of all the products that are coming in that are under the regulatory control of that agency, let's choose FDA as an example.

Of all the products FDA regulates, what percentage are stopped for some reason, an inspection or some other reason, are put on hold? And of that percentage that are put on hold, what percentage do they actually find that there is a violative product, a noncompliant product? So to improve trade efficiency, what you would want is that the number of overall products that are being held, that percentage keeps going down, and the number of violative products they find keeps going up. That would be a very good measurement.

Chairman BRADY. I appreciate that. On the time for release, what is the trend? Is it getting shorter? Is it getting longer? Does it vary?

Mr. MULLEN. I think overall it has gotten better for some agencies, but for some agencies it has gotten worse.

Chairman BRADY. Can you survey your members as far as indicators they think would be meaningful as we move forward as well as to the comfort level they have in sharing with us?

Mr. MULLEN. I certainly can.

Chairman BRADY. Any other witnesses want to weigh in?

Mr. WEISE. Just briefly, and I think you raised this with Commissioner Aguilar. I think Customs has come a long way in trying to measure the right things. I mean, back in my day, we used to try to measure the instances of noncompliance as opposed to measuring what total compliance should be. Once we got to that point and we were able to demonstrate that we could show marked improvement to get the compliance levels up to was roughly 90 percent and the duty gap was only 1 percent. So we were collecting 99 percent of what we should be collecting in reviews, and we had 90 percent compliance level on most of our many importers. But it is important to have those measurements and metrics on both sides, both from an efficiency standpoint as well as an enforcement standpoint.

Chairman BRADY. And our challenge, too, on enforcement is that we often measure progress by bulks, by volume versus what percentage you are actually stopping, you know, at the border accurately, and it is hard to be noble about what that bulk of fraudulent shipments is, so that presents a particular challenge. Yes, sir, Mr. Williams?

Mr. WILLIAMS. Yes, I think if we are going to measure, have any kind of measurement in our industry, you know, we are quite a bit different from other folks here, I think it would be our price. You know, that would determine, help determine the amount of circumvention that is going on in our industry, and that would be certainly a measurement by our price how much it goes up and down.

Chairman BRADY. Good point. Thank you, sir. I will turn the questioning over to Mr. McDermott.

Mr. McDERMOTT. Thank you, Mr. Chairman. As I listen to Mr. Williams and Mr. Glassman, I try to figure out in my mind what can we up here do to make it better? I mean, what kind of rules and regulations should we write for Customs or is it a lack of personnel? And I get a different view from Mr. Glassman and Mr. Williams about how effective the agency is. Can you tell—I mean, one is dealing with fish and another is dealing with high tech stuff and whatever. Is it the sector you are into that Customs is better at than they are in another sector? Or is it the region you come from? Or is it something else? Why do I get these different views from the two of you?

Mr. GLASSMAN. Mr. Congressman, I would speculate that the fact that the FDA is involved in the food aspect of Mr. Williams' product may be one of the points of difference. I can only benchmark ourselves against the 13 other industries in our coalition, and they have twin experiences to ours, constantly giving CBP information and it going into that proverbial black hole and no follow-up. I don't think that there is any need for additional tools. We don't think that there is need for additional expenditure on resources. What we are asking for is to use the tools that are available to the agency today to enforce timelines so there is accountability.

I certainly subscribe to Chairman Brady's position on measurement. The very basic theory of continuous improvement is to effect development or improvement, you have to have a measurement system. Timelines are a measurement system. So we need to invoke that into the process.

Mr. McDERMOTT. If I understand you, then, what you are saying is we don't need more people, we don't need more money. What we need is enforcement of what is going on by using some kind of timeline that it has to be done within 2 weeks or 3 weeks or whatever it is.

Mr. GLASSMAN. And they also, sir, can leverage the information that is given to them. I will give you a specific example. In a meeting with CBP staff a year or so ago, they said do us a favor and present to us a list of the top 10 importers of record, and then correlate that very tightly with the recipients of those goods that you believe are, in fact, circumventing. We did that very thing. Two weeks ago we were asked for that same information. That is information that is available to CBP and isn't utilized. We have full-time employees purveying databases to try to get information that goes into that black hole. Really what we are asking for is time and attention and enforcement of our trade laws.

Mr. McDERMOTT. So explain to me, then, what you think is not going on. I mean, they have the data, you presented it to them, but nothing happened. Is that just sloth or is that they are overworked or it is not complete data or they don't know, or is there some other reason why it doesn't get dealt with? Because it seems like it is all there on the table for anybody who would look. Then the next thing is why didn't they take the action? How do you explain it to yourself?

Mr. GLASSMAN. I admit it is frustrating. I believe it is a lack of focus and accountability. One of the real benefits of the PROTECT Act, as Mr. Williams delineated, is there is an expectation of accountability and focus on circumvention. The fact that circumvention isn't something in enforcement, isn't something that gets a lot of visibility is a question to us. We are as baffled as you are, sir.

Mr. McDERMOTT. Is it that there are better teeth in the PROTECT Act or more teeth or——

Mr. GLASSMAN. The fact that there is a systematic approach, the fact that we are using the 10 plus 2 information for commercial uses is a benefit. The weakness that we believe in the particular proposed Act, though, is the accountability or the tools of measurement, the timelines, the transparency. Those are the things that we think can help augment the PROTECT Act to end up with a better end product.

Mr. McDERMOTT. So you are talking about additions to Mr. Boustany's proposal in terms of tightening of the teeth?

Mr. GLASSMAN. It would potentially be a merging of the PROTECT Act and the ENFORCE Act that Congressman Neal made reference to earlier today.

Mr. McDERMOTT. So a marrying of the two?

Mr. GLASSMAN. That is correct, sir.

Mr. McDERMOTT. Okay. Thank you very much. Thank you, Mr. Chairman.

Chairman BRADY. No, thank you, Mr. McDermott. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Mullen, I have heard from some in the trade community that agency holds from agencies such as FDA, USDA, and DEA can delay shipments several days longer than the CBP holds. To your knowledge, have members of your association experienced difficulties with paperwork requirements or any other requirements from agencies other than the Customs and Border Patrol, and in your view, what can be done to improve the multi-agency processes and how can Congress streamline legitimate trade processing?

Mr. MULLEN. Well, thank you, Mr. Davis. It is a serious problem, and I think the comment was made during the first panel that on a percentage basis more holds come from other agencies now than those that are imposed by CBP for security problems. And I think several things actually could be done to help alleviate this problem. The first thing is that a number of other agencies of the Federal Government don't see trade facilitation as being part of their mission, and they are enforcing a regulatory process that is based on a desire to identify product safety and other problems that is critically important, and that part of their mission is critical to the health and safety of the American people, but they need to understand that they have become partners in a supply chain at this point, and they need to look at what they can do to provide more trade facilitation for legitimate shippers.

So there are a couple of efforts underway right now to really expand the basic C–TPAT model and create trusted trader programs that would incorporate other agencies, and the Certified Importer Project is the most important, I would say, of those efforts right now, where if a company can validate its supply chain from one end to the other, it shows that it has good manufacturing processes, a secure supply chain, those products should receive expedited treatment when they arrive at our border.

A second thing that could be done is many of the holds that other agencies put on products are because of document requirements or for some small inaccuracy in the information that was submitted electronically. Those kinds of problems, where it is a highly—otherwise a highly compliant importer shouldn't hold up the release of the product. Let the product go, and the document can be provided or that little inaccuracy in the submission of the information can be corrected after the product has already been released. There are all kinds of ways to audit this process to make sure that what the government requires is actually provided.

And then the third thing I would say is some of these other agencies could do a better job if they centralized some of their resources. If it is just a question of examining documents, which often are available electronically, if trying to do that—instead of trying to do that at every port of entry where their products are coming in, it is a virtual process, centralize those resources in a place where the right expertise would be available, and it might be available for a longer period than 8 hours a day.

Mr. DAVIS. Do you think it would be more effective to have a common data warehouse that all the agencies could draw from? A shipper, in effect, signs on to what would be the equivalent what we call in the private sector is part of a customer master and then

the different agencies can flag the information that is relevant to them, but it is all transparent to speed, to expedite the process through. In fact, not unlike making a credit card transaction. If there is something that comes up, it flags automatically by whatever network is observing that and then action can be taken appropriately. Would that fit the model that you are talking about?

Mr. MULLEN. Something like that would, I think, be excellent if you are talking about consolidating the information.

Mr. DAVIS. I think if you just have to fill out a form one time—I mean, we see it in the entitlement programs all the time, one error ripples across agency after agency and just creates a tremendous backlog.

Mr. Weise, as the committee continues to evaluate ways to improve trade processing and benefits to trusted traders, what other trade streamlining measures should we consider as a Trade Subcommittee? In fact, in your view how effective has the CBP been at consulting and working with other agencies and what, if anything, can Congress do to facilitate CBP's collaboration with other agencies and the private sector?

Mr. WEISE. As I said in my statement, I think Customs is doing much better than they have in the past in recent years, that is CBP. The creation of CBP, obviously in the aftermath of 9/11, their focus was pretty much security, security, security, and the concern was we might have a physical container with explosives, et cetera. So rightfully so. But they are doing a much better job. They have a number of outreach programs, they are reaching out to try to partner with the business community, but there is much more that can be done.

And I think, again, when you look at resources, the issue we were just talking about in terms of your centralized data, that is the International Trade Data System we tried to do back when I was Commissioner in the 1990s. The import community is being asked to do a lot in terms of doing C–TPAT, putting in systems that will make sure that their supply chain is secure. What they are asking from the government is don't be duplicative about the data you are asking for. You are asking for so much from so many sources. If you want us to do all this to help secure the supply chain, help us out by asking for data one time, it can be shared across all agencies, and then to Mr. Mullen's point, all of the information that different agencies require aren't critical for the release process. They may be critical at some point before these products enter consumption, but are not critical release.

Mr. DAVIS. Do you see the shippers actually being, or CBP actually sitting down with the shippers, business process managers, their systems people to actually see the—you know, the level of granularity I think in many of the shippers is much more sophisticated than what the Federal Government actually uses, and I think a partnership could accomplish both ends very easily to speed that but also accomplish the same end.

Mr. WEISE. Exactly. My point that I made in my testimony as well, it is more complicated. There is no unified voice anymore, even from a congressional perspective. You have the Ways and Means Committee and the Senate Finance Committee, having a particular focus on what CBP should be looking at and you have

the Homeland Security Committees that may have a different perspective, so CBP is getting mixed signals.

To me one of the things that is lacking that I said in my submission is that we need to find a way to have communication consistent across the business community, CBP, and the Congress to make sure that there is a clear direction that is being provided and that people are being held accountable in CBP in carrying out those policies. I think that is what has been difficult because of all the complexity of this very much larger organization with all these different committees. There is not a unified message that is being received that needs to be carried out.

Mr. DAVIS. Great. Thank you very much. Yield back, Mr. Chairman.

Chairman BRADY. Thank you. I think this hearing has been a good bipartisan opportunity to focus on the nuts and bolts of trade, making sure that Customs has the resources, the authority, and the focus on its trade enforcement missions as well as streamlining legitimate trade. Work of Customs is key in determining our competitiveness in the 21st century, and I very much thank the witnesses for their time and their patience and their very thoughtful testimony. Our record is open until May 31, 2012. I urge interested parties to submit statements to inform our Customs authorization legislation, included as I requested on the measurements, the indicators that we might consider on making sure we are actually measuring the progress.

With that, thank you. This hearing is adjourned.

[Whereupon, at 12:21 p.m., the subcommittee was adjourned.]

[Submissions for the Record follow:]

Statement of Senators Ron Wyden, Olympia Snowe, Claire McCaskill, and Roy Blunt

Submission for the Record by
Senators Ron Wyden, Olympia Snowe, Claire McCaskill, and Roy Blunt

House Committee on Ways and Means, Subcommittee on Trade Hearing on:
Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation and Enforcement

May 17, 2012

Chairman Brady and Ranking Member McDermott, thank you for holding this important hearing.

Tasking the Department of Homeland Security with facilitating trade and enforcing trade laws has created challenges. Challenges to which Customs and Border Protection, or CBP, have not adequately responded. That's why there is such broad, bipartisan, bicameral support for legislation to reshape CBP to hold it accountable to its core mission.

With respect to CBP, a central concern of ours is the issue of duty evasion. Increasingly, foreign suppliers are laundering merchandise through third countries, or engaging in other nefarious schemes to avoid our nation's trade remedy laws.

For over two years, we have constructively engaged with industry, with workers, and with the relevant government agencies to determine the magnitude and scope of the problem of the evasion of anti-dumping and countervailing duty orders, or AD/CVD.

One effort included determining how easy it may be for an unscrupulous importer to evade an AD/CVD order. Senator Wyden's staff set up a fictitious company on a popular online business to business platform. Within a matter of days they identified Chinese suppliers that detailed in writing how they would transship goods to avoid U.S. anti-dumping and countervailing duties.

Evasion of AD/CVD is a major problem. CBP treats allegations of duty evasion like a hot potato to quickly hand off to a faraway bureaucrat or another government agency.

Last Spring, the Senate Committee on Finance convened a hearing into the matter. Many of us participated in the hearing. CBP testified that they would renew their efforts to combat duty evasion by establishing a "task force" to inform their efforts. While we were pleased that CBP recognized that there is a problem, it is clear to us that the agency has failed to adequately address it.

At the request of Senators Wyden and Snowe, the Government Accountability Office conducted an examination of CBP's practices. The GAO began the requested investigation well after CBP established its task force and set out to improve its efforts to deter duty evasion. Regrettably, the GAO report issued today provides little confidence that CBP is taking the necessary steps needed to protect revenue and American jobs.

The GAO report shows that, even when CBP suspects that certain products are imported through evasion, there is little communication among ports of entry to take coordinated steps to stop it.

CBP boasts about its renewed use of single transaction bonds to insure revenue, but, according to the GAO, there isn't communication or coordination to ensure that each port requires these bonds on suspicious cargo. We are all for competition, but we are not for port shopping.

Unfortunately, the GAO critique of CBP's bonding practices is not a new one. The gaps identified by the GAO are the same identified last year in a report issued by the Inspector General of the Department of Homeland Security.

Duty evasion – merchandise laundering – is not some new issue that allows for time to see how CBP responds. The problem is well-known and so is CBP's response to it: inaction.

Furthermore, CBP's discussions with our staff indicate that even when a single transaction bond is actually obtained for questionable cargo, the agency continues to liquidate the previously entered merchandise, which triggered the original suspicion. In other words, without the legal jargon, even when CBP takes one step to stop evasion, they continue to assign what they suspect are incorrect tariff rates to merchandise that raised their suspicion.

What's also concerning is that the GAO determined that CBP still has not adopted a practice of systematically collecting the vital information needed to detect and deter evasion. This was a problem identified nearly two years ago. This includes:

1. How many confirmed cases of evasion it has detected

2. The outcomes of the evasion allegations submitted by private sector tipoffs. When CBP testified before the Senate, it said that a key element of its efforts to combat evasion is the information it receives from the private sector, yet it does not keep track of what happens with such information.

3. Failing to systematically determine how much in duties is assessed for evasion and how much are collected. The GAO determined that CBP only collects two percent of the duties it assesses due to evasion. In fact, of the $208 million it assessed in just civil penalties between 2007 and 2011, CPB collected only $5 million. CBP is unable to provide information about the duties CBP determined were owed through successful evasion investigations and how much of those duties were collected.

4. When evasion is uncovered, CBP does not systematically keep track of the country-of-origin, the product information, the method of evasion, and who the importer of record is.

In other words, whatever system CBP uses to detect evasion, it does not appear to be based on the most relevant data. And when CBP suspects evasion of a specific product, there is no integrity in its approach to combating it and to ensuring that duties and penalties that are owed can actually be collected.

Over the past two years, we worked with petitioners, respondents, producers, importers, organized labor, and various federal agencies. We worked to understand the problem of evasion better, and how to combat it better. We came up with the ENFORCE Act, which enjoys broad support. In fact, there is no private sector opposition to the bill of which we are aware. As a result, the foundation is laid for Senate passage of legislation that includes the main elements of the ENFORCE Act. A central component

of the legislation would require CBP to adhere to timelines for investigating allegations of evasion and, along the way, take steps to ensure that an affirmative determination that evasion occurred enables the agency to actually collect the AD/CVD duties and penalties that are owed.

Enactment of meaningful legislation, like the ENFORCE Act, to combat duty evasion will not happen without the leadership of the House Committee on Ways and Means. As it considers this issue and advances its own legislative approach, our hope is that you will keep in mind this final point:

Just as CBP needs statutory discipline to facilitate trade, it needs statutory discipline to enforce our nation's trade laws, particularly AD/CVD laws that represent a key element of protecting American producers from unfair imports and whose even and consistent application help sustain broader public support for American trade policy.

Despite two years of intense congressional pressure – including two Senate hearings, several legislative proposals, GAO testimony and an Inspector General report little has changed at CBP. If the agency is to do the most effective job at combating AD/CVD evasion possible, we conclude that it will require Congress to act where CBP's leadership has not.

There is no evidence, that without statutory discipline, CBP will effectively use its current authority to detect or deter evasion and carry out its responsibility to protect American businesses and the workers upon which they rely from unfair trade practices.

We thank you for considering our views and look forward to working with the Committee on this and other important issues.

Statement of AAFA

we wear™ jobs

Written Testimony
Submitted by the
American Apparel & Footwear Association (AAFA)

Before the
House Ways & Means Committee Subcommittee on Trade
On
Supporting Economic Growth and Job Creation through
Customs Trade Modernization, Facilitation, and Enforcement

May 17, 2012

Thank you for providing us this opportunity to submit testimony in relation to the hearing cited above. We applaud the subcommittee for addressing this issue at a time when the need for balancing security and trade facilitation is essential.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. AAFA members produce and market apparel and footwear throughout the United States and the world. In short, AAFA members make everywhere and sell everywhere, with trade preference beneficiaries and free trade agreement partners, with some of the most of advanced economies and some of the fastest developing markets to some of the poorest countries on earth, in this hemisphere and around the world.

While apparel, footwear, textiles and textile products represented only 5.7 percent of all U.S. imports in 2011, these products accounted for almost half (48.0 percent) of all import duties collected by U.S. Customs and Border Protection (CBP) during the year – to the tune of $13.7 billion.

Consequently, any efforts undertaken by your subcommittee to reform CBP's trade facilitation, enforcement or security activities would have a significant impact on the U.S. apparel and footwear industry in general and AAFA's members in particular.

At the outset, we would like to reiterate AAFA's unwavering commitment to national security. AAFA members recognize the importance of preventing the importation of high-risk shipments into the United States, particularly the smuggling of weapons of mass destruction and related materials. AAFA members are committed to working with CBP and other U.S. law enforcement agencies to prevent this from happening and to keep America secure and safe from terrorist threats.

AAFA members have been at the forefront of these efforts, investing significant resources to secure their supply chains and working collaboratively with the government to make the United States secure.

Striking the right balance between enhancing national security and facilitating trade is critical to AAFA members. Today, 99 percent of all footwear and 98 percent of all apparel sold in the United States is imported. Therefore, the smooth flow of trade in and out of the United States is essential.

However, new legislation and new federal regulations over the last few years have created significant new import obligations for U.S. apparel and footwear firms that were developed and implemented with limited industry consultation or

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without full consideration of the measures' economic implications. Further, some groups unsatisfied with the pace of globalization continue to ask Congress to impose new documentation burdens and costs on industry or require new targeting or enforcement doctrines that are frankly duplicative of currently mandated obligations. Some of these concepts are embodied in pending legislation titled the "Textile Enforcement and Security Act (TESA)."

Layering on new requirements, increasing penalties, singling out "textiles" for priority targeting or making it more costly to import should not be embraced as the solution to better enforcement. Already, CBP has more staff devoted to the commercial enforcement of "textiles" than for commercial enforcement of virtually all other industries – combined.

Instead, the Subcommittee should develop legislation that will improve and expand the already solid partnership between CBP and the importing community – a principle already embedded in numerous doctrines such as informed compliance and reasonable care, and which has proven vital to the success of many programs such as the C-TPAT program.

This testimony outlines many of the concerns of AAFA members as well as outlines proposals that could address these concerns as well as other issues important to AAFA members. We respectfully urge the Subcommittee to consider the following concerns and suggestions as the Subcommittee develops legislation to reauthorize and reform CBP and its operations.

CBP Documentation Requirements – A Major Obstacle to the Success of FTAs

AAFA believes that the tremendous risks and significant burdens of CBP's current paperwork and documentation requirements for apparel and textile goods under free trade agreements (FTAs) (or preferential trade programs) represent the biggest single impediment to growing the apparel and textile trade under the FTAs. These requirements also represent a good example of the issues described in the previous section.

When making claims for preferential tariff treatment of textiles and apparel under an FTA (or preferential trade program), importers are required to provide origin conferring documentation upon request to U.S. Customs and Border Protection (CBP). The paperwork burden for preferential claims is tremendous, in most cases requiring in the range of 100 unique documents for *each garment style* (or sku) contained in the entry. These excessive documentation and paperwork requirements appear to be unique only to apparel and textile goods importers and not to importers of other consumer goods.

These documents must be able to clearly demonstrate that each garment style qualifies for preferential treatment, or the importer risks denial of the preference claim (including potentially all prior claims previously made, and all future claims for that FTA). All submitted documents must demonstrate a direct correlation of the materials or components to the finished garment by way of style numbers, fabric type and construction. Documents are required to be in English, or accompanied with an English translation, regardless of the origin of the documents, and paper copies must be stored in two locations—at the overseas factory and with the importer. If there is an error in the documentation, CBP may consider the entry to be a case of transshipment.

Because of the potential impact to U.S. importers, significant time and resources must be allocated to preparing the documents. Due to the sheer volume of the documents that must be provided, a verification for one entry can involve numerous back and forth discussions that last several months.

Appendix A contains a sample list of the various documents required verify a preference claim for apparel and textiles under most FTAs and preferential trade programs.

This process is derived from the guidance CBP has provided to the trade on submissions of apparel and textile goods under various FTAs and trade preference programs. *Appendix B* contains an example of that guidance (for CAFTA-DR in this case).

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Regrettably, even this painstaking, time-consuming, and burdensome process does not provide any guarantees that an importer's shipments won't be held or subject to CF-28s or audits. To the contrary, apparel and textile goods shipments under FTAs and preferential trade programs are subject to a significantly higher risk of CF-28s and other inspections than apparel and textile good shipments from any other region of the world.

The documentation and paperwork burden required for these verifications can only be described as onerous. *Appendix C* contains pictures from two different angles of an example of the paperwork required in response to one such CBP verification. Please note that these pictures don't even include the timecards or tickets that are also required for these verifications. This volume of paperwork is the norm, and not the exception.

Moreover, each CBP port addresses the CF-28 response differently and passing review in one port does not mean the same shipment with the same documentation would pass verification in another CBP port. Indeed, some ports contradict the others.

And this documentation morass has very real, and very devastating, consequences for apparel and textile goods importers. CBP considers an error in the documentation a case of transshipment. As such, any documentation error in the documentation for apparel and textile goods shipments under CAFTA-DR is subject to stronger penalties than other entry errors, up to and including banning an importer from participation in the FTA program.

Automation – Full Funding and Completion of ACE is Crucial, but Automating Apparel & Textile Documentation Requirements is Critical

AAFA applauds the tremendous strides CBP has made over the last decade in moving all documentation requirements to an electronic interface. We support full funding to ensure completion of the Automated Commercial Environment (ACE) system as a means to complete this necessary and critical transition.

Regrettably, the documentation required apparel and textiles submissions under FTAs and preferential trade programs (as described in the previous section) are not electronic. Instead, every submission must be made available in hard copy (paper) format. Further, this documentation must be maintained not only by the importer, but a second copy (again in paper format), must also be maintained by the supplier factory in the FTA partner country.

Moving from Onerous Documentation to Account Management

Core to the issues described above is that CBP manages its enforcement of this trade on a shipment by shipment basis rather than through account management. The absence of the account perspective means that extensive documentation is required for each shipment rather than the trade pattern, posing burdens on the U.S. exporter, the producer, the U.S. importer, the regulatory agencies, and the ports.

This is particularly troubling given that many apparel companies, particularly those operating in the CAFTA-DR region, rely upon a supply chain that has consistent suppliers and a predictive pattern of trade. If this supply chain cycle was governed by an account structure, CBP and the trade could harmonize those predictive abilities to encourage U.S. exports and not burden the trade.

Moreover, existing paperwork requirements are not well-suited to address fraud issues, which is the stated purpose of these burdensome documentation requirements. In fact, one of the most well-known fraud cases associated with CAFTA-DR deals with a presumed supplier company. Yet the enforcement tools that CBP uses, as expressed through CBP's documentation requirements, are focused on a different part of the supply chain entirely – the importer. This focus often gives CBP only an indirect

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ability to address the real problems with fraud while saddling potential enforcement partners of CBP – the informed importer exercising due care – with extra and unnecessary costs.

One Way to Move Forward - Apparel & Footwear Should be the Next CBP "Centers of Excellence"

By requiring that CBP make apparel and footwear their next "Centers of Excellence," the Subcommittee can ensure that CBP makes significant strides in addressing many of the concerns raised in the previous sections– transparency, education, consistent enforcement, and cooperation with the trade – that are enabled by the holistic approach and the account management style of operations that are the core tenets of the Centers. The Centers of Excellence will make CBP more effective in both commercial and criminal enforcement by enabling CBP to focus its limited resources on targeting bad actors, instead of wasting critical resources on the assumption that all entries, regardless of who makes those entries, could be potentially bad. This, in turn would hopefully begin to move CBP away from the current focus on documentation and paperwork requirements.

Protecting Intellectual Property Rights (IPR)

Counterfeiting is a major problem for the U.S. apparel and footwear industry. Footwear, apparel, and fashion accessories consistently rank among the top 5 counterfeit goods seized by CBP every year.

Not only do fake goods pose a significant threat to public health and safety, these fakes steal jobs from hardworking American families, rob U.S. apparel and footwear companies of their brand reputation and deprive the U.S. government of valid tax revenues.

CBP stands at the front line of this war against counterfeits.

Therefore, we urge the subcommittee to make permanent a provision approved by Congress at the end of last year that authorizes and enables CBP to share information with rightsholders regarding suspected counterfeit product imports.

The Use of Security Data for Commercial Targeting

As you know, the *Trade Act of 2002* established a firewall between commercial and security data. Specifically, the act provides that security data is to be used exclusively for ensuring cargo safety and security. Some have advocated for removal of this firewall, particularly in light of CBP's implementation of the Importer Security Filing (ISF), otherwise known as "10 + 2."

The trade community advocated strongly for the firewall in 2002, as there are many differences between security data and commercial data including timing, potential for change in terms of sale in transit, identity of the filing entity and the standard of care.

Further, as noted previously, the AAFA fears that, without a clear firewall, security data could be used for "commercial enforcement" to help protect, or increase, the revenue generated from the high import tariffs imposed on our industry. The AAFA is concerned that CBP officials in certain ports could compare ISFs and entry forms and then fine companies for simple and unintended errors or discrepancies between the two sets of documents in what essentially could be a game of "Gotcha!" Even worse, the discrepancies could be used as a reason to hold shipments for "further investigation," something our industry already experiences on a much higher than average basis due to our industry's revenue implications.

However, the U.S. apparel and footwear industries recognize the value in using this security data for enhanced targeting in certain specific areas. Further, modification of the firewall should not be an impediment to implementing other priorities such as creating apparel and footwear Centers of

As Submitted for the Record

Excellence or offering tangible benefits for security investments like C-TPAT so long as the enforcement firewall remains in place.

If it is determined that the information could enhance commercial targeting in certain areas, like intellectual property rights (IPR) or product safety, we could support adding, through a so-called "positive list" approach, the use of security data for specific commercial targeting needs instead of removing the firewall as a whole. For example, if the use of ISF data is deemed crucial to improving CBP's IPR enforcement capabilities, an issue important to AAFA members, the firewall could be modified to allow CBP to use ISF data specifically for IPR enforcement purposes.

Maintaining the enforcement firewall while permitting the use of 10+2 data for specific commercial targeting purposes would honor the agreement made to manufacturers in 2002 and would allow CBP to improve its commercial targeting capabilities in certain, specific areas when necessary.

Informal Entry

We urge the Subcommittee to make permanent CBP's recent proposal to increase the value of the shipment allowed under informal entry and to remove the restriction on the ability to use informal entry for apparel, footwear, travel goods, and other fashion accessories.

The proposed rulemaking would benefit apparel and footwear companies of all sizes, particularly small and medium-sized (SME) apparel and footwear firms. Increasing the value and allowing apparel, footwear, and fashion accessories to benefit from informal entry will simplify entry requirements and reduce transaction costs for apparel and footwear companies, particularly SMEs, making them more competitive in the global economy.

Further, we urge the subcommittee to explore the concept of a mechanism that would automatically raise the limit under informal entry in response to changing market conditions.

Conclusion

Again, we hope that the subcommittee takes into account the important concerns and views of the AAFA and its members when it develops legislation to reform and reauthorize CBP.

Thank you for your time and consideration in this matter.

Please contact Nate Herman at 703-797-9062 or by e-mail at nherman@wewear.org if you have any questions or would like additional information.

ATTACHMENTS

- Appendix A – CBP Documentation Requirements
- Appendix B – CBP Guidance on CAFTA-DR Documentation
- Appendix C – Pictures of Actual Set of Documents Required for a CBP CAFTA-DR Verification

As Submitted for the Record

Appendix A

DOCUMENTS NECESSARY TO VERIFY A PREFERENCE CLAIM UNDER AN FTA OR PREFERENTIAL TRADE PROGRAM

Please find below is a sample list (from CAFTA-DR) of the documentation that is necessary to verify a preference claim under an FTA or preferential trade program. There are 100 unique documents required for *each garment style* (or sku) contained in an entry.

Entry Documents
Entry Document (7501)
Textile Certificate of Origin
Multiple Country Textile Declaration (if available/applicable)
Purchase orders (for merchandise)
Invoices (for merchandise)
Proof of Payment
Bill of Lading
Packing List

Yarn Acquisition
Purchase Orders (for raw materials including fibers, threads, yarns and fabrics)
Invoices (raw materials including fibers, threads, yarns and fabrics)
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components.
Affidavits for Yarns from the Manufacturer
Affidavits for Yarns from the Supplier

Knitting Operations
Purchase Order for fabric
Invoice for Fabric
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components.
Knitting Records
Employee Time Cards
Employee Payment Records
Affidavits for Fabric from the Manufacturer
Affidavits for Fabric from the Supplier

Cutting Operations
Cutting records and/or production summaries (including work performed by subcontractors)
Employee Time Cards
Employee Payment Records

Sewing Operations
Sewing records
Employee Time Cards
Employee Payment Records

Finishing Operations
Daily Finishing Records
Employee Time Cards
Employee Payment Records

Inspection Reports
In-line inspection reports
Final inspection reports

Factory Information
Factory Profile

Product Information
Bill of Materials for the Garment
Fabric Consumption (this is not so common anymore, but we've had to produce this in the past)
Affidavits for thread from the Manufacturer
Affidavits for thread from the Supplier
Proof of Payment
Shipping Documentation, including bills of lading, delivery receipts, packing lists for raw materials and components

October 10, 2007

CMP-1 OT:TPP:TE NM

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
OFFICE OF FIELD OPERATIONS

FROM: Executive Director, Trade Policy and Programs
Office of International Trade

SUBJECT: TBT-07-019 Documents Used to Verify Free Trade Agreement and Legislated Trade Program Claims for Textiles and Wearing Apparel

BACKGROUND:

Customs and Border Protection (CBP) is tasked with the enforcement of Free Trade Agreements (FTAs) and legislated trade programs that govern the importation of textiles and wearing apparel into the United States. Upon the request of CBP, importers who make trade preference claims for textiles and wearing apparel must provide sufficient records to substantiate their claims that goods meet the preference rule of origin for a country that has a FTA or legislated trade program.

Whether an agreement requires the use of yarn or fabric originating in the United States or in the region or country of the agreement, or U.S. cut or knit-to-shape components, determines the types of records importers must submit to substantiate a claim. When requested by CBP, the primary documents importers must submit to confirm each raw material source are indicated below.

The following requirements hold whether U.S. materials or regional materials are used:

1. An affidavit completed by a party having direct knowledge of the yarn or fabric formation is necessary to substantiate the origin claim.
   a. Such an affidavit (or declaration) should identify the factory that produced the yarn or fabric, giving the full name and address.
      - The address of the actual production facility, not a corporate office or post office box number, is required.
      - Someone at that location must make the declaration.
      - The contact person's name, phone number, and fax number must be legibly printed on the affidavit.

b. Affidavits claiming the yarn was produced in the United States will not be accepted if the party that produced the fabric in question did not also produce the yarn. The yarn producer must complete the affidavit.
c. Affidavits will not be accepted from converters or dyers who are not responsible for the actual production of the yarn or fabric.

2. The affidavit should have a description of the goods, such as fiber content, yarn count and fabric type, as well as some identifying characteristics, such as an invoice or order number.
a. If the importer purchased the yarn or fabric, he should provide a commercial invoice for the material.
b. If the fabric is a U.S. product, the importer should provide the bill of lading showing its movement from the United States to the beneficiary country.

3. A blanket certificate of origin should contain a description of the product, and the fabric description must not vary among the orders covered by the blanket certificate reference or contract number.

Documents to Support Claims Involving Agreements/Groupings Requiring U.S. Yarn or Fabric

1. Records demonstrating that the imported merchandise was produced using U.S. formed yarn or fabric, or U.S. cut or knit-to-shape components. Such records include certificates of origin, purchase orders, invoices, delivery notices, and, in some cases, records of yarn, fabric, or panel formation from the actual producer of a component.
2. Transportation and export records (e.g., bills of lading).
3. Entry documents showing movement of the inputs into the regional country of final production.

Documents to Support Claims Involving Agreements/Groupings Requiring Regional Yarn or Fabric

1. Records demonstrating that a party to the transaction sourced regionally formed yarn, fabric, or cut or knit-to-shape components clearly dedicated to the final imported merchandise. Such records include purchase orders, invoices, delivery notices, etc. These documents should demonstrate a direct correlation of the materials or components to the finished good by way of style numbers, fabric type and construction, or other means.
2. Transportation and export records (e.g., bills of lading) from the regional country of origin of the yarn or fabric to the regional country of final production.
3. Entry documents showing movement of the inputs into the regional country of final production.
4. Documents showing movement and delivery of inputs within the regional country of final production.

ACTION:

When making claims for preferential tariff treatment of textiles and wearing apparel under a FTA or legislated trade program, upon the request of CBP, importers must provide documents as indicated above. These documents must demonstrate that the goods qualify for the preferential treatment. If documents cannot be presented to substantiate the claim, the preference claim will be denied and all prior claims may be reviewed for sufficiency.

Please pass this memorandum to Port Directors, Assistant Port Directors, Import Specialists, CBP Officers, Entry Specialists, Brokers, Importers and other interested parties.

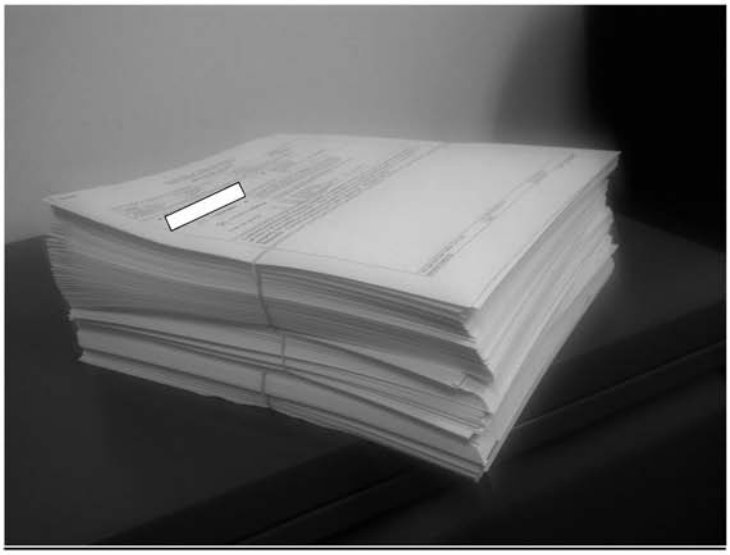
INFORMATION:

For additional information, please contact Ms. Nancy Mondich at 202-863-6524, Ms. Jacqueline Sprungle at 202-863-6517, Ms. Susan Thomas at 202-863-6516, or Mr. Robert Abels at 202-863-6503.

/s/

Brenda B. Smith

Appendix C



Statement of AAEI

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

1050 17th Street, N.W., Suite 810
Washington, DC 20036

Comments of the American Association of Exporters and Importers on
"Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement"
before the House Ways and Means Committee, Subcommittee on Trade

May 17, 2012

A. Introduction and Overview

AAEI appreciates the opportunity to offer these comments on today's hearing on "Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement", held by the House Ways and Means Committee, Subcommittee on Trade.

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

B. Modernizing ACE and ITDS

For the past several years, AAEI has testified before this Subcommittee about the need for the successful implementation of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS). Since AAEI last testified before this Subcommittee on May 20, 2010, the international trade community's need for U.S. Customs and Border Protection (CBP) to complete these data systems has become urgent for the reasons cited below.

a. ACE

AAEI has worked with CBP on a number of initiatives (e.g., Centers for Excellence and Expertise, Simplified Entry) to move "trusted traders" (i.e., companies with good internal controls and a history of compliance) into account-based management programs designed to regulate the company, rather than transactions. Regardless of the conceptual and operational progress that we make in developing these programs, the single most significant stumbling block to progress is the current state of the ACE. At the end of the day, all import operations are dependent on the quality of the data that CBP (and other government agencies) has available to make either admissibility decisions on a transaction or an account basis. Conversations between CBP and the international trade community about making fundamental changes on import operations that would truly modernize U.S. customs practices (within the constraints of the current statute) end up as an exercise in figuring out what is possible with the current data system or postponed as a future project under the banner "when ACE is complete."

AAEI urges Congress to exercise strict oversight over the ACE program in two ways: 1) the cost of "operation and maintenance" contracts for the current system; and 2) the procurement proposal for "cargo release" (which will be the foundation of the ACE system) and other programming required to provide needed ACE functionality. The sooner that cargo release and the other needed functionality is completed, the sooner the old system "ACS" may be turned off - we understand that maintaining the current "old" system (i.e., Automated Commercial System or ACS) costs $140 million per year. We expect those costs to continue unless Congress quickly addresses the funds appropriated for new functionality in ACE. The sooner we can make the transition, the lower costs should be as a result of retiring the old ACS system. It is our understanding that no information technology company will bid on any proposal for less than $30 million. Due to the high costs of current operation and maintenance, the Appropriations Committee has not allocated enough funds to enable CBP to move forward with procurement for "cargo release."

AAEI's highest legislative priority is enactment of Drawback Simplification. The drawback program was intended to increase U.S. jobs and manufacturing by increasing exports. That intent is even more important today with a sluggish economy and the Adminstration's goal to increase exports. Further development of ACE is absolutely essential for CBP to do the necessary programming for ACE to handle drawback claims that fulfill the goals of streamlining and simplifying drawback: 1) expanding the pool of U.S. companies filing drawback claims on finished exported goods; and 2) providing CBP with the internal controls necessary for the drawback program to pass muster with the General Accountability Office. We are keenly aware that CBP and the international trade community has lost precious time over the last 5 years without having the statutory framework in place for Drawback Simplification, and we fear further delays will erode the political support necessary for this important customs modernization effort. In short, there is no substitute for Congressional leadership in this matter.

Finally, we remind the Subcommittee that AAEI importer members pay the Merchandise Processing Fee (MPF), a user fee of 0.3463% (raised from 0.21%) assessed on the value of imported merchandise. While the fee is used for "customs modernization" which includes (and is not exclusively for) ACE, we believe that the MPF generates an enormous amount of revenue which is simply funneled into the general revenue fund of taxes collected and subject to authorization and appropriations. This process has proven to be cumbersome and defeats the original purpose of the MPF, which in part, was to provide a continuous revenue stream that would enable CBP to procure, deliver and manage such a large and complex information technology project. Unfortunately, the MPF has become hostage to the political issue of the day – offsetting budget deficits in the 1990's, providing homeland security infrastructure after 9/11, and now, being used as a source of cash in the absence of a federal budget. We would be remiss if we did not advise Congress that our members are weary of paying additional user fees for services (and systems) that the federal government does not deliver to the international trade community.

b. ITDS

In our testimony in 2010 to this Subcommittee, we stated the follows:

> The choice for Congress is stark – either fund completion of ACE and ITDS or prepare to spend multiple times that sum on information technology for each federal agency which has responsibility for regulating imported or exported goods. Multiple information technology systems which are not interoperable and require independent data submissions create gaps in intelligence, targeting, and risk profiles for agencies who are now working together at operations centers. Clearly, Congress, CBP and the international trade

community must work together over the next year to get ACE and ITDS back on track.

CBP has developed the ITDS data set and reached out to various government agencies. Although some progress has been made, we are concerned that the United States, once a leader in customs modernization and trade data systems, has fallen behind many developing countries which have state-of-the-art systems making them more competitive in the cost of doing business and lower transaction costs for international trade.

While we recognize that Participating Government Agencies (PGAs) fall into the jurisdiction of other Congressional Committees, AAEI implores the Congress to demand that the U.S. Treasury Department make quick progress in the roll out of ITDS to PGAs. Since the passage of Section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, P.L. 109-347, 120 Stat. 1929 (October 13, 2006), codified at 19 U.S.C. § 1411, requiring federal agencies to participate in ITDS and the OMB Memorandum on "Requiring Agency Use of the International Trade System" (M-07-23) dated September 10, 2007, there are no longer any acceptable excuses as to why further progress on ITDS has not been made.

C. Streamlining the Flow of Legitimate Trade through a Risk-Based Approach

AAEI has long advocated for CBP to deploy account-based programs to distinguish between low-risk and high-risk importers. We believe that CBP has made significant progress in "thinking out of the box" in this regard by developing two new pilot programs.

First, CBP has developed Centers for Excellence and Expertise (CEE) to create virtual teams to process the entries of imports in nine industry categories: agriculture and prepared products; automotive and aerospace; base metals and machinery; consumer products; industrial and manufactured materials; information technology and consumer electronics; petroleum, natural gas and minerals; pharmaceuticals, health and chemicals; textile, wearing apparel and footwear. We believe these industry categories make sense by redeploying CBP assets (i.e., its industry knowledge base) to better manage risk while providing more uniformity in the treatment of imported goods. AAEI is proud to have worked on the initial CEE pilot for pharmaceuticals with CBP.

Second, CBP has launched a pilot for Simplified Entry whereby a "trusted trader" could obtain release of the cargo from CBP earlier in the supply chain and filing a single monthly entry summary for all the shipments during the month. AAEI believes that this approach holds great promise to reduce transactional data and paperwork on repeat shipments by importers who are designated as low risk. CBP is to be commended for commencing a pilot to test this idea quickly from which we hope to learn whether it is a viable program later this year.

Additionally, we applaud CBP for moving forward with a Mutual Recognition Decision with the European Union (EU) to facilitate trade among "trusted traders" who are members of the Customs-Trade partnership Against Terrorism (C-TPAT) and Authorized Economic Operator (AEO) programs. We hope that CBP shares with the Subcommittee and the international trade community progress on its pilot for exporters to be covered by C-TPAT to ensure that U.S. exporters receive the benefits of mutual recognition from the EU.

It is our sincere hope that the Subcommittee will be supportive of CBP's efforts in this area and provide any necessary statutory authority required to allow CBP further experimentation with these programs and to roll them out to wider segments of the international trade community.

D. Trade Enforcement

AAEI supports CBP's recent enforcement efforts regarding intellectual property rights (IPR). CBP has worked with rights holders with respect to seizures of suspected counterfeit goods, and we believe this is a good development toward reducing the flow of violative goods while protecting American brands.

Additionally, we hope that the Subcommittee understands that progress on ACE and ITDS not only facilitates legitimate, but will reap benefits for trade enforcement as well. Without timely and accurate data about importers' internal controls and the merchandise imported into the United States, CBP will be unable to segment importers into different risk categories and redeploy its resources to high-risk shipments.

Finally, AAEI believes that it is important that the Subcommittee not ignore the important trade enforcement and oversight provided by the U.S. Court of International Trade (CIT) for both the government and importers. We suggest that the Subcommittee incorporate the "United States Court of International Trade Modernization and Trade Facilitation Act" (not introduced) into any Customs Reauthorization legislation that the House Ways and Means Committee plans to release in the 112th Congress. Since the CIT has exclusive jurisdiction over trade-related cases, including the provisions of this Act into a Customs Reauthorization bill would fulfill the Subcommittee's goal of enhancing trade facilitation and trade enforcement by:

- fixing a number of anomalies which exists in the current jurisdiction and powers of the CIT that have come to light in case law since the Customs Courts Act of 1980, P.L. 96-417, 94 Stat. 1727 (October 10, 1980);
- aligning the Court's jurisdiction more closely with current agency procedures, notably including the CBP's widespread use of post-entry customs audits; and
- expanding the Court's jurisdiction to include more U.S. customs and international trade statutes.

It is important for the CIT's jurisdiction to reflect modern customs practices and changes in the law enacted by Congress. Therefore, we hope the Subcommittee will consider the important judicial role of the CIT in trade modernization, facilitation, and enforcement.

E. Conclusion

In conclusion, we appreciate the opportunity to submit these comments and hope that the House Ways and Means Committee, Subcommittee on Trade carefully considers enacting a new customs law providing a legal framework with expected outcomes that the Congress expects from CBP to achieve these goals. We hope these comments help to reaffirm the importance and impact that customs modernization can have on U.S. companies to generate economic growth for the benefit of American workers in creating and protecting U.S. jobs. AAEI looks forward to working with the Subcommittee on this important issue.

Statement of RILA

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Stamped for the Record

May 17, 2012

The Honorable Kevin Brady
Chairman
Subcommittee on Trade
Committee on Ways and Means
Washington, DC 20515

The Honorable Jim McDermott
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
Washington, DC 20515

Dear Chairman Brady and Ranking Member McDermott:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written testimony to the subcommittee regarding customs trade modernization, facilitation and enforcement. RILA strongly supports the push by U.S. Customs and Border Protection (CBP) to reform and modernize its processes and dismantle antiquated systems, and commends the hard work and leadership of Acting Commissioner David Aguilar and Former Commissioner Alan Bersin. We are encouraged by CBP's continued aggressive outreach and reengineered trade processes, and look forward to customs reauthorization legislation that will ensure CBP has the resources to continue its progress. As the committee considers important issues to include in customs legislation, RILA urges consideration of four issues: authorization for full funding of the Automated Commercial Environment, Centers of Excellence and Expertise, simplified entry, and a provision to advance prospective assessments of antidumping and countervailing duties.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Modernization of Automated Commercial Environment and International Trade Data System is Crucial and Should Be Fully Funded

The modernization of CBP's Automated Commercial Environment (ACE) and International Trade Data System (ITDS) is critical to promote the efficient processing of trade in light of increased import volume. Full funding is essential for completing ACE, ITDS and the full adoption of a "single window" for import processing. These efforts will assist other government

agencies (OGAs) in identifying, documenting, and executing their plan to leverage ACE to improve business operations and further agency missions.

Recent CBP Initiatives Offer a Significant Opportunity to Streamline the Flow of Trade

Centers of Excellence and Expertise

The Centers of Excellence and Expertise (CEEs) initiative represents a significant opportunity to facilitate trade, manage risk, and increase efficiency, in particular for large importers who operate across multiple ports. Retailers see significant benefits in this initiative, particularly if other government agencies are involved. Retailers' diverse product range means that retailers' imports are regulated by a variety of other government agencies, including the Food and Drug Administration, Consumer Product Safety Commission, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and Environmental Protection Agency. Given the breadth of consumer products, it is likely that the CEE would need to communicate regularly with OGAs to address the full range of OGA requirements facing a mass retailer, and OGA engagement with the CEE will be critical.

A shift to management by account will likely require significant changes within CBP, but will have benefits in both trade facilitation and risk segmentation. CEEs will bring consistency, uniformity, and predictability to the import process, which will translate to time and money saved for retailers and other importers of all sizes.

Simplified Entry

Retailers are also very interested in the development of a simplified entry program and its potential for allowing improved targeting, streamlined and expedited filing, and transaction savings. The simplified entry pilot has been helpful in answering many questions about the program, and we appreciate and commend CBP's hard work in acting quickly to implement this groundbreaking program.

Because the simplified entry initiative holds such great promise, we urge CBP to open the program to additional participants and additional modes. The value of simplified entry for retailers lies mostly in the ocean mode, and we are very interested in seeing the pilot extended to include this form of transportation. Simplified entry has tremendous potential to streamline retail supply chains, and it is therefore very important that the program continue to receive appropriate resources and that CBP continue to test simplified entry as quickly as is reasonably possible.

Non-Resident Importers Currently Unable to Take Advantage of These Opportunities

Some of RILA's members are headquartered outside of the United States and are considered non-resident importers. They also have a substantial presence in the United States, import a large volume of goods into the United States, and employ thousands of U.S. workers. As non-resident importers, these companies are currently ineligible for Customs-Trade Partnership Against Terrorism (C-TPAT), Importer Self-Assessment (ISA), and other initiatives mentioned above, such as simplified entry and Centers for Excellence and Expertise.

We hope that CBP changes this requirement or creates a new definition of a non-resident importer so that importers that have a substantial presence in the United States are given the option to participate in these important programs.

Congress Should Adopt a Prospective System to Assess Antidumping and Countervailing Duties

RILA recognizes the importance of provisions to combat unfair trade practices. At the same time, predictable and reliable global sourcing is fundamental to maintaining American economic competitiveness, and U.S. trade remedy laws should be updated to reflect this modern reality. Specifically, RILA believes that Congress should codify the recommendation made by the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) and the Government Accountability Office to implement a prospective system to assess U.S. antidumping and countervailing (AD/CV) duties. RILA believes that a prospective system would improve duty collections and enforcement, reduce administrative burdens, decrease supply chain uncertainty, and enhance American competitiveness.

Because the Department of Commerce does not determine final AD/CV liability until years after goods enter the United States, CBP is required to maintain a separate and unique duty collection system for AD/CV duties and must routinely collect those duties long after the goods have entered the country. CBP leadership has repeatedly commented that the retrospective collection of AD/CV duties is fundamentally flawed and undermines enforcement and collection efforts.

In December 2011, the COAC formally recommended that the United States adopt a prospective system to assess antidumping and countervailing duties. COAC recommended that CBP work with the U.S. Department of Treasury and the Department of Commerce to jointly design a prospective AD/CV duty assessment and collection system, and that the agencies consult with the appropriate Congressional committees of jurisdiction so that the legislation could be drafted to implement this system.

U.S. companies are willing to pay fairly traded prices, but they need to know what they are so that they can make informed businesses decisions. Under a "prospective normal value" system, Commerce would determine a fair trade price (i.e. "normal value") and CBP would apply those results prospectively on a transaction-by-transaction basis. Thus, if subject merchandise were imported at a price below the normal value (i.e. at a "dumped price"), CBP would, at the time of import, immediately collect final AD duties equal to the amount of the price difference (the dumping margin). Zero duties would be assessed on non-dumped imports. The same system would apply for calculating and assessing CV duties.

Under such a system, therefore, injurious dumping or subsidization would be remedied immediately upon importation, and U.S. companies would know in advance what the actual fairly traded cost associated with each potential source is to make informed decisions regarding competitive strategies and sourcing.

Conclusion

RILA believes that CBP has made significant progress toward modernization under Commissioners Bersin and Aguilar. Recent initiatives such as the drive toward full implementation of the Automated Commercial Environment, the Centers for Excellence and Expertise and Simplified Entry have vast potential to facilitate trade, and it is essential that CBP continues to have the resources to develop these and other game changing programs. RILA also believes that Congress should codify repeated recommendations by COAC and GAO to switch to a prospective system to assess antidumping and countervailing duties.

Thank you for the opportunity to offer these comments.

Sincerely,

Stephanie Lester
Vice President, International Trade

Statement of NTEU

STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

ON

SUPPORTING ECONOMIC GROWTH AND JOB CREATION THROUGH CUSTOMS TRADE MODERNIZATION, FACILITATION AND ENFORCEMENT

BEFORE THE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 17, 2012

750 H Street, N.W. • Washington, D.C. 20006 • (202) 572-550

Chairman Brady, Ranking Member McDermott, distinguished members of the Subcommittee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 24,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 331 land, sea and air ports of entry across the United States.

Customs and Border Protection Entry Specialists, Import Specialists, Paralegal Specialists that determine fines, penalties and forfeitures, Customs Auditors and Attorneys and other trade compliance personnel are the frontline of defense against illegal imports and contraband. These employees enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties. They also stem the flow of illegal imports, such as pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency—collecting $38 billion in duties and fees on imports valued at more than $2.3 trillion in 2011.

TRADE ENFORCEMENT AND COMPLIANCE STAFFING

When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import duties and ensuring importers fully comply with applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions. Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues. This revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and manpower, devoted to CBP's trade functions

Lack of sufficient focus and resources costs the U.S. Treasury in terms of customs duties and revenue loss and costs American companies in terms of lost business to unlawful imports. According to CBP, "the preliminary revenue gap (estimated uncollected duties due to noncompliance with trade laws) was measured as 0.9 percent of all collections, and totaled $331 million, the highest since fiscal year 2008." (See CBP's Fiscal Year 2011 Import Trade Trends.)

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

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

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347.) Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied.

CBP satisfied this statutory requirement by freezing the number of maintenance of revenue function positions at the level in effect on the date of creation of the agency. In March of 2003 when CBP stood up, there were 984 Import Specialists on-board. That number was 265 Import Specialist positions less than the total number of Import Specialists in 1998 because a significant reduction in the number of revenue maintenance function positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP stood up. Section 412(b) of the HSA reflected Congress' concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fear that it would continue and be exacerbated by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the "March FY 2003 Staff On-Board" numbers of revenue maintenance function positions, including such vital trade facilitation and enforcement positions as Entry and Import Specialists, as a ceiling rather than a floor.

CBP's Resource Optimization Model

In March 2012, CBP released its 2011 Resource Optimization Model (ROM) that proposes even greater reductions in the numbers of on-board CBP Entry and Import Specialists. A provision of the SAFE Port Act, Section 403, required CBP to complete a Resource Allocation Model (RAM), by June 2007, and every 2 years thereafter, to determine optimal staffing for commercial and revenue functions. It directed that the model must comply with the requirements of Section 412(b) of the HSA of 2002. The CBP positions covered by Section 412(b) include Entry Specialists, Import Specialists, Drawback Specialists, National Import Specialists, Fines and Penalty Specialists, Attorneys at the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists.

The rationale for this provision arose from a Government Accountability Office (GAO) report (GAO-05-663) that stated, "as of June 2003, CBP has not increased staffing levels [at the POEs]" and "CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide…" Further, GAO observed that "not identifying optimal staffing levels prevents CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests."

The first Section 403 RAM, dated July 6, 2007, stated that "CBP has over 8,200 employees that are involved in commercial trade operations. The Model suggests that to carry out these commercial operations and to adequately staff the needs for priority trade functions, the optimal level of staff in FY 2008 would be over 10,000 employees" (page 12 of CBP Report to Congress on Trade Resource Allocation Model.) According to the 2007 RAM, 1,100 Import Specialists would be needed for optimal performance in FY 2010, an increase of 116 over the HSA Floor.

In 2009, CBP renamed the Section 403 SAFE Port Act mandated Report to Congress. Now called the Resource Optimization Model or ROM, the FY 2009 ROM reduced the FY 2010 optimal staffing levels for some revenue maintenance function positions, specifically the Entry and Import Specialist positions. For example, the FY 2009 ROM puts the number of Import Specialist positions needed in FY 2010 at the HSA floor number of 984, rather than 1,100 as stated in the FY 2007 RAM.

The FY 2011 ROM, released nearly one year after its congressionally mandated due date, states that to carry out commercial operations and to adequately staff the projected needs for priority trade functions, **the optimal level of Entry Specialist staff for FY 2013 through 2019 is in the range of 275-279, 134 positions less than the number established by the HSA of 409 positions and the optimal level of Import Specialist staff for FY 2013 through 2019 is in the range of 672-750, 234 positions less than the number established by the HSA of 984 positions.**

NTEU finds these proposed reductions in Entry and Import Specialists staffing numbers problematic because both these positions perform critical support work for 412(b) positions proposed to be significantly increased by CBP in the 2011 ROM.

For example, the 2011 ROM projects future need in the range of 268 to 301 for International Trade Specialists (ITS)--an increase of 194 positions above the HSA threshold of 74. It is the job of the ITS to target anomalies in trade patterns, but it is the job of the Entry Specialists to process targeted entries and Import Specialists act on ITS-identified targets, i.e., gather entries, review, and conduct importer interviews. It makes little sense to increase the number of employees who target trade anomalies while at the same time decreasing the number of those employees that process and investigate the targeted anomalies.

Another example is the proposal to increase Fines, Penalties & Forfeiture (FP&F) Specialists to 549 positions, 346 positions over the HSA threshold of 203, but Import Specialists write up the penalty cases that FP&F Specialists are responsible for resolving. How will the reduction of Import Specialists affect the referral of penalty cases to FP& F Specialists for adjudication?

Centers for Excellence and Expertise

In 2011, CBP established its first two Centers of Excellence and Expertise (CEEs) that ultimately will be responsible for all aspects of cargo processing, from assessment and segmentation of risk, through decisions on admissibility and release, to the liquidation of entries

and handling of protests. **Currently, there are 50 ports of entry staffed with commodity teams that process all types of entries and all types of commodities via the Harmonized Tariff Schedule.** In other words, each of these 50 trade ports has full tariff coverage (see Attachment 1 for list of 50 CBP trade ports and current allocation of Import Specialists per port.)

CBP proposes to establish a total of nine CEEs, commodity-specific offices where CBP "will begin processing entry summaries and subsequent activities (e.g., post-entry amendments, protests) for trusted traders…Within three years, the Centers will be responsible for handling all aspects of the import process for their industry sector...Eventually, all CBP cargo-related activities from manifest review through liquidation and protest, will be handled by the Center for all traders. The exception will be the conduct of non-intrusive inspections and physical cargo examinations, which will continue to take place in the Port where the shipment is physically located…With the initial focus on trusted trader transactions, only a limited number of Import Specialists and Entry Specialists will be required in the Centers. However, as the Centers are stood up, all of these positions will, over time, be removed from the Ports and transferred to the Centers as well." (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.)

Last October, CBP established the New York CEE that handles pharmaceuticals and chemicals and the Long Beach CEE that is in charge of electronics imports and last week CBP announced the establishment of two new CEEs in Detroit and Houston. The Detroit CEE will be a center for the automobile and aerospace industries, and the Houston CEE will be a center for petroleum, natural gas and minerals. The final five CEEs will be located in Miami (Agriculture and Prepared Products), Chicago (Consumer Products), Atlanta (Textiles, Wearing Apparel and Footwear), Buffalo (Industrial and Manufacturing Materials), and Laredo (Base Metals and Machinery.)

In 2007, Section 402 of the SAFE Port Act established the Office of International Trade. The "assets, functions and personnel of the Office of Strategic Trade" were transferred to the Office of International Trade and the Office of Strategic Trade was abolished. Under the new CEE structure, CBP proposes to transfer National Import Specialists, International Trade Specialists, and National Account Managers from "organizations within" the Office of International Trade to the Office of Field Operations and have them "placed in the Centers as they are stood up. Their current organizations will, over time, be disbanded, with the totality of these employees eventually reporting to their assigned Center." (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.) NTEU has expressed concern about the independence of National Import Specialists, the regulatory audit division and the Office of Regulations and Rulings and urge that they remain in the Office of International Trade.

NTEU supports the goals of standing up CEEs for known trusted traders such as national unity in decisions, nationwide enforcement efforts and reduction of the number of import transactions currently scattered across various ports of entry. NTEU, however, is not convinced that it is reasonable to assume that there will be adequate efficiencies in operations to justify a reduction in work force. Rather, there may be a need for an increase in the work force as the CEEs free up trade enforcement personnel to focus on higher-risk small and mid-sized traders

and undiscovered violations for which enforcement action should be taken. CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties. These are not the type of transactions expected from low-risk trusted traders whose transactions will be consolidated at the CEEs.

No definitive metrics have yet been developed to ensure that the establishment of CEEs will significantly enhance current levels of trade enforcement, as it will trade facilitation, so it may be premature to use the CEE as an argument to justify reductions in certain trade operations personnel.

NTEU also has concerns about trade compliance personnel having to conduct "virtual" inspections of imported goods for several reasons. It is difficult to recognize details of suspect goods (such as the warp and weave in textiles), hidden trademarks and other counterfeit clues without literally tearing apart the sample. Comments noted by CBP Offices after cargo exam are not viewable in the new Automated Commercial Environment (ACE) system by the Import Specialist reviewing the exam. And, in that the CEE structure is dependent on "virtual" cargo examination and clearance, local CBP port management's ongoing resistance to granting non-uniformed trade employees' telework requests to work "virtually", does not bode well for the CEE virtual inspection model.

Finally, there has been no study of the localized economic impact of transferring all non-uniformed trade employees, including all Import and Entry Specialists, currently assigned to 50 trade ports to nine CEE locations. 41 Ports of Entry will lose trade operations jobs and associated private sector businesses that may leave their current locations to increase proximity to one of the nine commodity-specific CEE locations. Also, it is unclear how much additional travel costs will be incurred by commodity-specific employees needing to potentially cross the country to visit showrooms to examine lines of merchandise or conduct importer interviews and compliance reviews. For example, Los Angeles and New York ports are the largest volume ports for imported textiles, wearing apparel and footwear, but the CEE will be located in Atlanta. (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.)

CBP Career Ladder Pay Increase

NTEU commends the Department for increasing the journeyman pay for CBP Officers and Agriculture Specialists. Many deserving CBP trade and security positions, however, were left out of this pay increase, which has significantly damaged morale.

NTEU strongly supports extending this same career ladder increase to additional CBP positions, including CBP trade operations specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administration duties should also be increased from GS-7 to GS-9. These upgrades are long overdue and would show CBP trade personnel that Congress recognizes the high level of expertise that these employees possess.

Study of Dedicated Funding

In 2011, the total value of all imports into the U.S. was more than $2.3 trillion. Processing these imports meant handling 23 million entry summaries by CBP Entry Specialists, Import Specialists and support staff. In addition to its security and trade missions, CBP works with over 40 federal agencies to help enforce a wide range of laws from consumer product and food safety, to environmental protection. It is clear that additional CBP commercial operations staffing and training funds are needed. Multiple proposals to increase customs fees are currently being promoted to support a great variety of proposed programs. Security needs, along with important national trade policy goals, require additional financial resources. NTEU encourages the Committee to request a study of the setting, collection and utilization of these customs and user fees. This study should determine the relationship between current fees and monies allocated for CBP services and assess the need for additional fees.

Conclusion

Customs revenues are the second largest source of federal revenues that are collected by the U.S. Government. Congress depends on this revenue source to fund priority programs. NTEU commends the Committee for conducting this hearing to review trade compliance and enforcement operations at CBP.

The more than 24,000 CBP employees represented by the NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade.

Thank you for the opportunity to submit this testimony on their behalf.

Attachment 1

Results

Service/Area Port	Current Allocation	New Allocation	Change
Anchorage	7	7	0
Atlanta	13	15	2
Baltimore	7	9	2
Blaine	14	14	0
Boston	15	18	3
Buffalo	50	40	-10
Champlain	28	39	11
Charleston	11	19	8
Charlotte	5	9	4
Chicago	50	37	-13
Cleveland	39	37	-2
Dallas	13	16	3
Denver	2	2	0
Detroit	59	58	-1
Dulles	2	•1	-1
El Paso	21	23	2
Great Falls	2	3	1
Hartford	1	0	-1
Honolulu	2	2	0
Houston	15	22	7
Jacksonville	1	4	3
JFK	89	34	-55
Laredo	59	62	3
Long Beach	95	109	14
Los Angeles	37	20	-17

Service/Area Port	Current Allocation	New Allocation	Change
Memphis	18	23	5
Miami	35	56	21
Milwaukee	1	•1	0
Minneapolis	2	7	5
Mobile	2	*** 5	3
New Orleans	7	*** 12	5
New York-Newark	90	93	3
Nogales	9	12	3
Norfolk	8	18	10
Otay Mesa	20	19	-1
Pembina	15	18	3
Philadelphia	16	14	-2
Phoenix	2	•1	-1
Port Huron	7	12	5
Portland, ME	4	4	0
Portland, OR	5	7	2
Providence	1	•1	0
San Francisco	39	27	-12
San Juan	9	4	-5
Savannah	6	19	13
Seattle	15	18	3
St. Albans	8	8	0
St. Louis	2	4	2
Tampa	4	4	0
Virgin Islands	3	** 0	-3
Total	**** 965	987	+22

U.S. Customs and Border Protection

Attachment 2

Examples of Virtual vs. Physical Examination of Merchandise Challenges

Assigning a tariff number: Certain handbags that are coated/covered with plastic carry duty rates from 16.7 to 20%. Determining whether a handbag is coated/covered with plastic can be done only by examining and touching the bag. Many importers try to enter the bags at a lower rate of duty by claiming the bags are not coated/covered with plastic. Recently Congress passed special legislation making certain textile shopping bags free of duty. Import Specialists are finding a significant number of importers claiming that their textile bags are eligible for this free duty rate. However, upon physical examination of the bags, Import Specialists find that they are coated/covered with plastic and are not eligible for the free duty rate.

Exclusion Orders: There is currently an exclusion order on plastic containers from China that is based on the construction of the container and how the lid interlocks with the bottom bowl of the container. An examiner has to view the actual sample to see this. In most cases, the container has to be cut in half so one can see if there is any space between the lid and the bowl where it interlocks to see of it is subject to the exclusion order.

Intellectual Property Rights Violations:

Below are some examples of physical examination of goods resulting in the seizing of items that were deemed to be counterfeit:

Tory Burch: Import Specialists examined an unmarked bag and by removing some textile material found a counterfeit Tory Burch trademark.

Timberland: Import Specialists examined a pair of boots. Normally, the Timberland mark is on the sole. By cutting out a piece of plastic, a counterfeit Timberland mark was found underneath.

Chanel: the Chanel mark is interlocking Cs. Importers bring in bags with interlocking Os. By carefully examining the bag, we see where they will be able to remove part of the O and it then becomes a bag with interlocking Cs -- a violation of the Chanel mark.

Nike sneakers: Import Specialists through training from the mark holders and experience are able to determine an item to be counterfeit by examining the retail box and the packaging material for the sneakers. Import Specialists have discovered counterfeits for Air Jordan's this way. Import Specialists also discovered other counterfeit Jordan sneakers by knowing where to cut the sneaker and find the offending mark. Many times you can find counterfeits by smelling the item because they use cheap glue and substandard packaging materials. This must be done by physically examining the item and cannot be determined by viewing photographs.

Otter cell phone cases: Import Specialists have been able to determine counterfeits by examining the packaging. Normally the quality is poor and that can't be determined by a picture.

Other clues that an item is counterfeit that require physical examination: The product feels heavy. This is the case with counterfeit handbags. The cheaper materials often result in the bag feeling heavy. Sometimes bags are heavy because the material that reinforces the outside of the bag is not leather or textiles, but cardboard. Also, zipper quality can really only be determined by physically examining the bag. Following the stitching on an entire bag also helps to determine if a bag is a knock off. You have to follow the stitching throughout the entire bag. No one is going to be able to do this with a photo.

Physically examining the sample also helps Import Specialists to properly appraise a counterfeit item and assign a manufacturer's suggested retail price (MSRP) which is a useful tool for a U.S. Attorney when considering whether to bring criminal charges.

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