

# AUTHORIZATION OF CUSTOMS AND TRADE FUNCTIONS

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## HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE ONE HUNDRED NINTH CONGRESS SECOND SESSION

APRIL 26, 2006



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## **AUTHORIZATION OF CUSTOMS AND TRADE FUNCTIONS**

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**WEDNESDAY, APRIL 26, 2006**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:06 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Thomas, Bunning, and Baucus.

### **OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Thank you all for being patient. The hearing will come to order. Of course we welcome everybody, and particularly those who took a lot of time to travel or to be here, and took a lot of time out of their busy schedule to prepare for this.

The purpose of our hearing today is to review the operations of customs and trade functions of our government. This review will assist the committee in preparing legislation to reauthorize these functions.

There is considerable history in this committee, the Finance Committee, related to Customs. For most of that 200-year history, the customs authority was exercised by the Department of Treasury, and hence the oversight by this committee. The Homeland Security Act of 2002, however, moved the United States Customs Service out of the Treasury Department and into the Department of Homeland Security. This committee retains jurisdiction over the customs and commercial trade facilitation functions exercised by the Department of Homeland Security. There are other senate committees of course with interest in the Department of Homeland Security, even when it comes to the narrow issue of port security.

I look forward to working with my colleagues in this committee and other committees to develop good legislation that fully addresses our collective concerns going forward.

The Homeland Security Act provided that Treasury would retain jurisdiction over customs and revenue functions, but that Treasury could delegate some or all of those functions to the Department of Homeland Security.

That Act, now 4 years old, also authorized the Secretary of Homeland Security to reorganize the department. In January, 2003, the Secretary announced the reorganization that merged the Customs Service with other functions to create the Bureau of Customs and Border Protection.

The investigative function, however, was taken out of Customs and added to the newly created Bureau of Immigration and Customs Enforcement. One of the questions before the committee is how well that division of responsibility to enforce our customs laws is working, and hence one of the reasons for this hearing.

In May, 2003, Treasury delegated authority over customs revenue functions to Homeland Security, with certain exceptions. The main exception is that Treasury retained authority to approve certain types of regulations. Another question before the committee today is how well that delegation of authority works.

In July, 2005, then Secretary of Homeland Security announced the second reorganization of the department. As a result, the Commissioner of Customs and the Assistant Secretary for Immigration and Customs Enforcement now report directly to the Secretary and Deputy in Homeland Security.

Now, that is where we stand today. Customs and trade facilitation are critical to the health and growth of our economy. But that is just one side of the coin. The other side is trade security.

The task that we face is finding the right balance to ensure that the dual demands of facilitating the smooth flow of international trade and securing our borders are fully manned.

Now, to remind you again, the Finance Committee has a long history of deliberating that balance in its oversight of Customs. Some may think the answer is 100-percent physical inspection of all cargo entering the United States. Some argue that is not feasible.

Then trade security becomes a function of balancing the most appropriate data collection and targeting systems. That is also the basis for facilitating the smooth flow of international trade across our borders.

Our success in achieving each objective comes down then to the reliability of the data that are being collected and the analysis of that data. I will turn to that point when we have questioning of witnesses.

To help ensure that the right balance is struck, the Homeland Security Act provided that there be no reduction in staffing customs revenue functions within the Department of Homeland Security. Yet between March of the year 2003 and March of this fiscal year, staffing levels have declined in key job categories at Customs and Border Protection as much as 16 percent.

That is not to say that the management of customs revenue functions cannot change over time, but it does raise a concern that our customs revenue and trade facilitation needs are not being fully met.

Similarly, the time spent on commercial investigations in the Bureau of Immigration and Customs Enforcement is projected to be down over 15 percent from fiscal year 2004 through this fiscal year. This raises a concern that our trade enforcement needs are not fully being met.

Today's hearing presents an opportunity to explore these concerns. We will also hear from industry experts who share their perspectives on these issues. Separately we are going to hear from the Chairman of the International Trade Commission regarding the Agency's fiscal 2007 budget request.

The Commission's work is very important. Its independent analysis informs us about our developments of good trade policy, and the Commission also facilitates a rules-based system of international trade by administering a portion of our trade laws.

In accomplishing its mission, the Commission has demonstrated sound management of its resources. So we look forward to hearing the Chairman's testimony. Now I call on the ranking Democrat, a person who is very familiar with this work as former chairman of the committee. We worked together on this hearing and have worked together on most everything that comes before our committee. Senator Baucus?

**OPENING STATEMENT OF HON. MAX BAUCUS,  
A U.S. SENATOR FROM MONTANA**

Senator BAUCUS. Thank you very much, Mr. Chairman.

It had been a costly war. A revenue bill was on the floor, and one member of Congress said, "We hear much said about taxes, about our funds being pledged to the public creditors, and about the national faith being violated."

The war was the War of 1812. The Congressman was John Randolph of Virginia, and the bill was the Tariff Act of 1816. It was nearly 200 years ago. The Senate had just established this committee, the Committee on Finance. The very first thing that it did was to consider and pass that bill.

That bill dealt with the duties of the United States Custom Service. We are here today to carry on that long tradition of overseeing Customs. We are here to discuss the customs and trade functions of the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, and the International Trade Commission.

This committee has many times considered legislation to authorize Customs' commercial functions. In 1994, the Finance Committee authorized the National Customs Automation Program. Once fully implemented, that program will allow importers to file papers electronically.

In the wake of 9/11, the Finance Committee wrote the Trade Act of 2002. Among other things, that law requires shippers to file their entire cargo manifest with Customs 24 hours prior to loading the goods at foreign ports.

Customs has a difficult job. On the one hand, it is responsible for facilitating international commerce. Our Nation's economic health depends on it; trade accounts for one in ten American jobs, and trade accounts for one-quarter of our economic growth.

On the other hand, Customs must weed out shipments of counterfeit goods, illegal drugs, and instruments of terror. An attack on our international trade system could cause untold pain and suffering. It could also be economically devastating.

For example, the shutdown of a handful of west coast ports in 2002 labor disputes cost the economy \$1 billion a day. To its credit, the Bureau of Customs and Border Protection has worked hard to adjust to the threat of terrorism, while also discharging the historical duty to facilitate trade. Yet the pressure is tremendous to focus on security at the expense of trade.

I am concerned that from personnel to ports, our customs infrastructure may not be keeping pace with the growth in trade. The Bureau of Customs and Border Protection has added much-needed officers, but it has far fewer staff allocated to trade facilitation than it did 10 years ago.

This committee should examine whether our port infrastructure can keep pace with the massive increase in shipments from abroad, but we also should examine the customs strategy to push our borders out and collect information and cargo before it ever leaves a foreign port.

That could make targeting of legitimate or harmful shipments more effective. That could ensure that the movement of legitimate cargo is more efficient.

When we think of international trade movements, we tend to think of enormous container ships. But there is more to trade than that. Three hundred trucks cross the border every day at the Port at Sweet Grass, MT. That may not sound like much, but in Montana, we depend on those 300 trucks.

In Montana, we have a hard time getting and keeping experienced customs personnel who know the trade coming in from Canada. States like mine need Customs and Border Protection to secure the northern border, but we also need customs solutions that work for small and medium-sized businesses reliant on cross-border trade.

Thanks for coming today. I look forward to what each of you has to say as we move to reauthorize Customs. I look forward to our continuing nearly 200 years of this committee's work to balance the interest of trade and security in our great Nation.

The CHAIRMAN. Thank you very much, Senator Baucus.

The first panel is already at the table: Ms. Marian Duntley, chairman of The American Association of Exporters and Importers; Mr. Jerry Cook, vice president, government and trade relations, Sara Lee Branded Apparel; Mr. Peter H. Powell, chairman, National Customs Brokers and Forwarders Association of America; Mr. Brian Monks, director of anti-counterfeiting operations, Underwriters Laboratories and board of directors, the International Anti-Counterfeiting Coalition; and last, Mr. Mic Dinsmore, CEO, Port of Seattle, Seattle, WA.

We will have you testify in the order that I introduced you. I know that all of you probably have longer statements. Without asking, those will be incorporated in the record if you want them to be, and then you summarize in the 5 minutes that have been allotted to you. Ms. Duntley?

**STATEMENT OF MARIAN DUNTLEY, CHAIR, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, WASHINGTON, DC**

Ms. DUNTLEY. Thank you. Chairman Grassley, Ranking Member Baucus, and members of the Senate Finance Committee, my name is Marian Duntley. I am the corporate customs manager at Toyota Motor Sales, here today representing the American Association of Exporters and Importers, AAEI, as chair of its board of governors.

We thank you for the invitation to join you today, and appreciate the opportunity to share some of our observations, comments, and

suggestions for your consideration as you reauthorize U.S. Customs and Border Protection.

The time is now for CBP to reestablish a productive balance between trade security and trade facilitation. Our written testimony fully discusses these trade security related matters, as well as several trade facilitation and operations issues.

Today I will be talking about five issues: C-TPAT development and evolution; U.S. business data confidentiality; International Trade Data System; improving coordination between Federal agencies; and, if time permits, paying for trade security and trade facilitation; a study of customs fees; and AAEL's tax policy initiative.

Regarding C-TPAT, businesses are not required to participate in C-TPAT. However, those businesses who choose to apply are making a substantial commitment to work toward the goal of creating a more secure and efficient supply chain in partnership with CBP.

AAEI has been outspoken in our appreciation of CBP's extraordinary sense of commitment in attempting to incorporate a multiplicity of commercial realities, retaining the program's voluntary nature, and avoiding the fundamental error of imposing a "one size fits all" mandate.

AAEI greatly appreciates the improvements that have been made to the C-TPAT program, such as the move to a 3-tiered benefit structure. However, to encourage companies to join or to continue their membership in C-TPAT, CBP must clarify and expand upon the benefits, especially for Tier 3 participants.

C-TPAT membership must provide U.S. businesses with a measurable return on investment. Otherwise, U.S. businesses will be reluctant to undertake additional expenses to exceed CBP's minimum security criteria and standards.

Our concerns regarding U.S. business data confidentiality are driven both by private sector competitive issues and international business ownership and management. We would ask that the committee carefully examine the concerns we conveyed today and support further study of the area.

The expanded use of proprietary cost data does not increase CBP's ability to target shipments with certain anomalies and characteristics. In short, the collection and storage of the increasingly detailed trade data may become alarming to the U.S. trade community when such data are exchanged with other Federal agencies without adequate protections, as well as foreign governments.

However, the apparent lack of controls or restrictions upon many of these foreign governments necessitates AAEL's concern. U.S. businesses must have better assurances that information supplied to foreign governments for security purposes would not be used against them in a competitive business context.

At present, AAEL member companies are not sufficiently convinced that their proprietary data are secure. Regarding the International Trade Data System, AAEL strongly supports the creation of ITDS to improve upon the improvements that have already been made through the Automated Commercial Environment.

Participation is necessary by all of the approximately 79 Federal agencies that depend upon electronic data for international commerce. The ACE/ITDS window promotes information-sharing within a single system between all levels of government.

This streamlined sharing of information will accelerate border clearance times, reduce costs, and cut down on inefficient paper-based systems by eliminating redundancies and increasing efficiencies. ACE and ITDS are taxpayer-friendly, to be sure.

Federal agencies will have a much easier time spotting anomalies and trends in the electronic context than is ever possible in a paper-based solution. Similarly, it would allow Federal agencies to spend money more wisely and improve targeting of high-risk shipments, as well as travelers, thereby facilitating the flow of legitimate cargo and people. ACE/ITDS will also ensure that the U.S. remains a leader in the increasingly competitive world of global trade.

Regarding improving coordination between Federal agencies, our member companies have been at the forefront of cooperating with CBP by joining its trade security and trade facilitation partnerships, such as C-TPAT and ISA. Yet many members do not receive the full benefit of these programs because they are regulated by other Federal Government agencies. We are proud to be working with several of those, including the FDA, to build upon some of the benefits that we have gotten through the C-TPAT program.

Lastly, AAEI supports the concept of providing tax incentives to private investment for investments in security, and we would be happy to discuss this with the committee at a later time.

[The prepared statement of Ms. Duntley appears in the appendix.]

The CHAIRMAN. Thank you very much. Now I move on to Mr. Cook.

**STATEMENT OF JERRY COOK, VICE PRESIDENT, GOVERNMENT AND TRADE RELATIONS, SARA LEE BRANDED APPAREL, WINSTON-SALEM, NC**

Mr. COOK. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Baucus, and Senator Bunning, I want to thank the Finance Committee for its active support of the trade and customs operations.

My name is Jerry Cook, and I am vice president of Sara Lee Branded Apparel. Sara Lee Branded Apparel is one of the largest U.S. apparel companies in the world with our brands, including Bali, Playtex, Wonder Bra, and Hanes.

Sara Lee has been a dedicated partner in the trade community's effort to work with the Federal Government to provide security to the Nation while continuing to facilitate international trade.

Sara Lee is one of the seven founding member companies of C-TPAT. My remarks today will address commercial processing and security measures, the inter-related disciplines between government and trade.

Congressional support is needed to deliver an enhanced system of commercial processing which builds upon the evolving concept of trusted accounts, or green lanes, to build upon the realities along with the inherent differences in trade that comes in by land, sea, air, as well as the types of cargo and point of shipment.

CBP has addressed the high priority security issues while challenged with increased cargo imports by over 754,000 different consignees. The five cornerstones of this process are advanced mani-

fest information, CSI, C-TPAT, risk management, and new technology.

These initiatives have allowed CBP and the trade to use their resources effectively and to take into account the needs for U.S. trade to remain efficient and competitive. It is also important to recognize the continued need for understanding, oversight, and commitment of the resources and sound policy directions necessary for CBP and its partners in the trade community to meet the ever-changing needs to compete in the global economy and achieve a safe and secure Nation.

CBP has moved in the right direction by embracing the emerging concept of trusted accounts. Trusted accounts are companies that have made the commitment to invest in personnel, procedures, and to assure that goods are properly documented with CBP and are produced and transported under circumstances that assure that goods and their shipping conveyances have not been converted into a terrorist threat.

They should be given priority at the port's arrival for immediate release, 24 hours, 7 days a week, to maximize infrastructure, utilization of inventory, and port security.

The streamlining of the entry process is an important companion to the efforts to focus CBP and trade resources on the immediate security issues raised by cargo movement. A truly streamlined entry process will allow importers to be treated by CBP as an account.

By reducing and eliminating less critical commercial requirements, those resources can be better diverted to advanced data transmission and targeting of inbound cargo. The streamline entry process is dependent upon the new automated programs of ACE and ITDS, as well as continued updates of the legacy system which still drives most of the customs transactions.

CBP has clearly and consistently followed the policy of consultation with the trade to avoid the mistakes that a dialogue should be able to anticipate. ACE is the program that we hope will generate the integrated information systems for all Federal agencies involved in the import and export process.

CBP has done the major work, but the other government agencies have not delivered their portion of the needed product. We recognize that the security initiatives are not temporary measures imposed on the global trade process. Therefore, it is paramount that these rules be crafted to match the real world and to be capable of evolving to match the changes in our trading systems.

Neither terrorists nor commercial competitors are waiting in the corner for the bell to ring. We are already in the ring, and we need to make adjustments to meet these challenges. The need today is to assure that we have focused on security in a way that does not allow traditional compliance issues to burden the security effort, and to ensure that we have streamlined the entry and the compliance process so that it does not drain resources away from the security effort, that we have provided the clarity, the predictability, the efficiencies needed for both government and the trade to foster.

The efforts to date by CBP with the support of the trade demonstrate that the programs in place have achieved success and will continue to do so with proper oversight and flexibility.

CBP has achieved its highest level of revenue collection while the overall duty rate has dropped, accompanied by 2/3 of all the imported trade arriving as duty-free. CBP's compliance measurements for non-security issues are at an all-time high.

Our efforts should be mutually aligned and not at cross-purposes. In closing, we have a challenging environment in which we must all work together to succeed. We value this partnership with CBP, and we appreciate the committee's time today to make incremental progress for the future.

[The prepared statement of Mr. Cook appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Cook. Now Mr. Powell.

**STATEMENT OF PETER H. POWELL, SR., CHAIRMAN, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, WASHINGTON, DC**

Mr. POWELL. Mr. Chairman, distinguished members of this committee, I am Peter Powell, CEO of the C.H. Powell Company, Westwood, MA, here today as chairman of the Board of the National Customs Brokers and Forwarders Association of America.

I do appreciate the opportunity to testify before you and comment on Customs authorization legislation.

First, let me say we are grateful for the support that the Committee on Finance has provided the international trade community over many years. Your special focus on trade and revenue gives you a unique appreciation for the commercial operation responsibilities of Customs and Border Protection.

You have shown that you are willing to hold CBP in strict account when the Bureau vows to balance commercial and security operations. Despite its promise, the truth is that CBP is not balancing its twin responsibilities of security in commercial operations.

Resourcing for trade facilitation has dramatically diminished as the agency has scrambled to meet criticism of its performance in the security realm. When the Government Accountability Office pointed to disappointing output in Customs Trade Partnership Against Terrorism validations, CBP quickly moved import specialists into these areas of responsibility, leaving a skeleton crew to serve the needs of U.S. trade.

The attention of CBP to its trade mission has rapidly diminished as it gives priority to the security programs. The answer? Congress must insist that CBP dedicate sufficient personnel to conduct its commercial trade mission.

Congress should set a floor for import specialists and other commercial operations personnel, fencing off those assets from diversion elsewhere.

CBP recently informed the Bureau of Census that they were withholding approval on their long-awaited automated export system regulations until Census relented on an unrelated matter. CBP wants to constrain what is called "Option 4," which is an expedited processing of exports for trusted American companies, and CBP wants to provide sensitive export data to overseas governments per its negotiations at the World Customs Organization.

Census feels bound by statutory constraints that require it to protect American export information. For its part, American exporters are opposed to providing information to overseas governments that might filter through to their competitors.

Our view? NCBFAA feels strongly that the wholesale delivery of export information to foreign nationals runs counter to our international trade interests. At a time when we are struggling with trade deficits, the United States should not be undermining the competitive standing of the very exporters that must bring these statistics more into balance.

Small and medium-sized businesses encounter an uneven playing field when CBP focuses on the needs of the 50 largest importers. There are hundreds of thousands of small business importers, a large percentage of which have limited experience and resources. It is they who need the availability of import specialists and client representatives most. In many circumstances, it takes only one inefficient shipment to back up the entire flow of goods.

Our answer, Mr. Chairman, is for Congress to insist that Customs develop separate and independent strategies for incorporating small and medium-sized businesses into its programs.

Finally, I must address the International Trade Data System. Customs has promised a reward for low-risk C-TPAT members to expedite processing, and this carrot for enhanced supply chain security is meaningless if Federal agencies other than CBP do not cooperate.

In other words, CBP can clear products quickly for C-TPAT members, but the entire shipment could be brought to a dramatic halt if it is not cleared by FDA or USDA.

One essential element is that all appropriate agencies agree to participate. One fundamental defect: CBP has no authority over agencies in other departments. How can this impasse be solved? NCBFAA believes that the Office of Management and Budget, which has previously had a significant role in Federal data management, has the capability to overcome this problem.

We believe that Congress should designate OMB as the chair of the multiagency board that directs the ITDS project, and, in consultation with other departments, OMB should evaluate what agencies are necessary to the success of ACE and direct, on a phased-in basis, the participation of those still uninvolved in ITDS.

This should be completed concurrent with the completion of ACE in the year 2010. Mr. Chairman, this concludes my remarks.

[The prepared statement of Mr. Powell appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Powell.

Mr. Monks?

**STATEMENT OF BRIAN MONKS, DIRECTOR OF ANTI-COUNTERFEITING OPERATIONS, UNDERWRITERS LABORATORIES AND BOARD OF DIRECTORS, INTERNATIONAL ANTI-COUNTERFEITING COALITION, WASHINGTON, DC**

Mr. MONKS. Thank you, Chairman Grassley, Ranking Member Baucus, and committee members. Thank you for this opportunity to appear before you to offer Underwriters Laboratories' perspective on the critical role of Customs and Border Protection and Im-

migration and Customs Enforcement in the fight against counterfeiting.

Electrical product counterfeiting poses a very real threat to health and safety, undermines the economy, and funds organized crime and terrorism. Ensuring that adequate resources are dedicated to both CBP and ICE is critical. These agencies are our first and best line of defense in stopping hazardous counterfeit products from reaching the United States marketplace.

UL is an independent, not-for-profit product safety testing and certification organization. For 112 years our mission has been to protect human life and property from product risks and hazards. Make no mistake, we are in a battle. Counterfeiting threatens health and safety, undermines the economy, and electrical products bearing counterfeit safety marks are particularly egregious because they lull consumers into a false sense of security.

One Canadian judge described the use of counterfeit safety certification marks as nothing less than despicable fraud on the public. We cannot let these criminals win.

We aggressively protect our mark against counterfeiters as part of our partnership with CBP and ICE. We have developed a zero-tolerance policy towards counterfeiting. We will never consent to importation or exportation of merchandise that has been seized by CBP that bears counterfeit UL marks.

The best way to put these crooks out of business is to build a strong partnership with CBP and ICE. CBP officers are our first and best line of defense in this fight. Left unchecked, counterfeiters can and will flood the U.S. market with poor quality, hazardous electrical products, endangering the lives and property of millions of consumers—products like this low-cost, high-volume extension cord.

This cord is sold at retail stores and discount stores across the country. This is a fire waiting to happen. The copper in there is very thin. You plug a product in here, and you are going to start a fire. These counterfeiters did not care. They made their money, and they are on their way.

CBP seized these products, intercepted them, and destroyed them. Just to give you an example of how bold these crooks can be, one individual traveling through the San Francisco International Airport thought he could clear customs with five suitcases and nothing to declare.

The CBP officer was curious to see what five suitcases of nothing to declare looked like. He inspected the bags and found 1,500 counterfeit circuit breakers just like this one. This circuit breaker will not protect your house wiring, and poses a serious fire hazard. Just one average shipping container can hold 186,000 circuit breakers. That is 186,000 potential fires.

UL's anti-counterfeit program is one of the most successful in the world. We could not have achieved this success without CBP. Over the last decade, they have seized more than 1,200 shipments of products bearing counterfeit UL marks. That is millions of extension cords, power strips, night lights, and other poor quality electrical merchandise that never made it to the marketplace.

In 1995, before UL approached CBP for assistance, seizures of consumer electrical products were minimal. By 2000, seizures of

consumer electronics had climbed to 3 percent of total seizures. 2005 statistics reveal that seizures of consumer electric products jumped to 9 percent, and are now the fifth most seized product category. These numbers do not surprise UL, as they reflect CBP's increased vigilance and recognition of the clear and present threat that counterfeit electric products pose.

This vigilance must be maintained and ideally increased. Why? Because counterfeiters believe they can flood the American market with shoddy counterfeits with impunity. More criminals are turning to counterfeiting as a crime of choice. Margins are high, and risk is low. Counterfeiters know the profit potential for supplying consumer electronics, and will exploit the potential until it is no longer lucrative.

Counterfeiters are becoming more and more savvy. They know our laws and procedures, and they know how to exploit loopholes. If we lower our guard, then counterfeiters stand ready to take advantage. They can make better-looking copies and can more successfully duplicate security features.

Investing in training will allow CBP officers to stay on top of new technologies and the ways that counterfeiters try to circumvent the system. We know that more training equals more seizures.

CBP works to prevent the entry of counterfeit goods. ICE leads the investigation to catch the counterfeiters red-handed and charge them criminally. These agencies are most effective against counterfeiters when they are able to work hand in hand. Seizure plus criminal prosecution and the threat of jail time and deportation make for a powerful one/two punch.

Shipment seizure alone is not enough to deter these criminals. To some, a seized shipment is simply the cost of doing business. They write off the loss and ship to a different port. However, additional staff and adequate training will result in additional seizures. Prosecution and jail time coupled with the increase in lost shipments will hopefully pose risks that they are not willing to take.

UL was recently involved in a case that highlights just how effective CBP and ICE can be when working in tandem. Following a 2003 CBP seizure, ICE conducted an investigation. The owner was convicted on six counts of trafficking in counterfeit goods and was put in jail for 63 months. This is what we have to do to counterfeiters.

Americans understand of course that the 9/11 world is a different place. UL is certainly cognizant of this fact, and we applaud the commitment of CBP and ICE to protect the American public against terrorists and the instruments of terror.

For 112 years, UL has been dedicated to promoting safe living and working environments. We believe that we all share a common goal, the safety of the American public. We hope that CBP and ICE will be granted the adequate staff and resources to remain vigilant in their protection against a terrorist threat, but also against the more subtle threats that ultimately jeopardize the same values and seek to undermine the American way of life.

Thank you again, Mr. Chairman, for giving UL an opportunity to share our perspectives on this important issue. We would be happy to serve as a resource to you and your committee colleagues

as you consider ways to strengthen anti-counterfeiting efforts of CBP and ICE. Thank you.

[The prepared statement of Mr. Monks appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Monks. Now Mr. Dinsmore.

**STATEMENT OF MIC DINSMORE, CEO,  
PORT OF SEATTLE, SEATTLE, WA**

Mr. DINSMORE. Thank you, Chairman Grassley, Senator Baucus, members of the Finance Committee. It is an honor to be here talking about one of my favorite topics, and that is, how do we make sure we move commerce and trade in and out of this wonderful Nation?

The CHAIRMAN. Mic, I do not know if your microphone is on. Maybe you can pull it close to you.

Mr. DINSMORE. Thank you. Is that better?

The CHAIRMAN. Yes.

Mr. DINSMORE. A little bit of background ever so briefly. I have had the good fortune of leading an institution that owns and operates both an airport and a seaport. It is the most trade-dependent State in our Nation where not one out of ten, but one out of three jobs relates to the movement of commerce and trade.

Last year, as an example, we moved 30 million people through our airport, 2 million containers through our seaport. So making sure that we pay attention to trade is something that the Port of Seattle is all about.

When I was back here a couple of weeks ago testifying in support of Senator Murray and Senator Cohen's green lane piece of legislation—after almost 5 years we are moving forward and helping to make this Nation safe and secure—it just seemed to me that we cannot separate safety and security and the movement of commerce in a cost effective, efficient way.

But when I think of our friends at U.S. Customs and Border Protection, I have not seen in my career a Federal regulator and a Federal agency respond more significantly, more profoundly positive than post-9/11 with U.S. Customs and Border Protection. Whether it is their activities, C-TPAT, their activities and operations to save commerce, or their container security initiative, they have indeed responded very well.

So I ask this committee, Mr. Chairman, as you look at where to go with appropriation or reappropriation of resources with Customs and Border Protection, look at where we can make the most profound impact, where we get the best bang for our dollar. I would suggest the best example is Hong Kong, where they are screening a lot more containers than any port in the world.

Now, we have technology, we have personnel, we have Customs offshore working with other governments. I would suggest therein lies a way to make sure our trade lanes are more safe and secure.

In closing, there is an irony. As I was back here 2 weeks ago testifying, that same day 22 illegal Chinese immigrants landed in Port of Seattle, obviously without paying a tariff to come across the Pacific Ocean.

The good news is, with Customs and Border Protection and our law enforcement officers, we caught them. The bad news is they were already on our shore. Had that been noxious cargo in that

container, then it may have been a very, very different outcome. Thanks again for the opportunity to be here.

[The prepared statement of Mr. Dinsmore appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Dinsmore. I will ask that we have 5-minute rounds. I will go first, and then Senator Baucus, and then the Senator from Kentucky, and if other people come, the order of their coming.

I am going to start with you, Ms. Duntley. Customs and Border Protection manages a significant amount of data through its trade partnership programs. What role does the trade community play in working with the agency to ensure that legitimate data needs are being met? And then your opinion on your satisfaction with that current dialogue?

Ms. DUNTLEY. Thank you, Chairman Grassley. CBP works very closely with the trade through the Trade Support Network, the TSN. It is a trade group that has been in existence since about 1993. I was one of the original members.

They meet several times a year solely for the purpose of exchanging information about what data are needed. It is a constant dialogue going back and forth between how much data are needed, and what the government really requires.

I think what the issue is here is not so much the data that are currently being required for customs purposes. There are data also being required by many of the other 79 Federal agencies that I mentioned, sometimes in different formats. Sometimes information that is not available at the time of shipment or at the time of entry, and multiple ways of reporting this information to Customs or to these other agencies are at the heart of at least part of our concern with the data.

The other concern that I mentioned is the data confidentiality and whether or not a single collection agency passing on this information to numerous Federal agencies will result in data going to agencies who are not accustomed to protecting the confidentiality or to pass that information on to the Federal Government.

The CHAIRMAN. Mr. Cook, your company was one of the first to participate in the Customs Trade Partnership Against Terrorism program.

Just not so much on its involvement, although you might want to comment on that, but if there is need for strengthening and improving the program, emphasis upon that.

Mr. COOK. Certainly. Well, one, our history comes from working with Customs in a lot of the drug wars from the Caribbean and Latin America. I think the biggest challenge going forward is how do you facilitate commerce while you are securing trade?

I think moving and recognizing that companies that have made that investment moving to the trusted account, the green lane concept, but also delivering a 24-hour, 7 day a week clearance process through all the ports is going to be extremely critical going forward.

The CHAIRMAN. So that is basically more resources, is that your point?

Mr. COOK. Yes, resources and priority.

The CHAIRMAN. All right. Mr. Powell, in your testimony you described some of the difficulties that small and medium-sized enterprises face with Customs and Border Protection, reducing the resources available for trade facilitation.

You suggest that Customs needs to develop separate and independent strategies for incorporating small and medium-sized enterprises into that program.

Do you have any strategies in mind of how you might suggest addressing the issue?

Mr. POWELL. Well, there has been a severe decrease in the number of import specialists at many, many ports, some by as much as 50 percent. Due to the globalization of trade, many smaller companies that were formerly merely domestic entities are now involved in the international trade cycle.

Therefore, as they enter into this marketplace, they need resources, assistance, and so forth to get there. Unfortunately, that is not available because a lot of the import specialists and the Customs reps have been tasked with other responsibilities.

Even in our small port in Boston, we have many major national importers who do not necessarily just use the Port of Boston for their products. However, those national importers do take up the time of the import specialists, therefore not permitting them to be accessible to the small and medium-sized firms.

So we could say that there could be limits established based upon the amount of trade. If you said the level should be pre-9/11, then I think it would be a big step forward to bring us back to where we were, and to answer these needs.

The CHAIRMAN. All right. Mr. Monks, then I will go to Senator Baucus. You note in your testimony that an investigation by Immigration and Customs Enforcement normally begins with a seizure of counterfeit goods by Customs and Border Protection.

Is your company satisfied with how this division of responsibility between the two agencies works in practice? In other words, do you have any concerns that we are not doing enough due to the lack of follow-through either by ICE or by Customs and Border Protection?

Mr. MONKS. What I have noticed with ICE being such a new agency, prior to 9/11 and homeland security, we worked with Customs agents and officers seamlessly.

We are starting now to develop a relationship with ICE, and I think they are working well with CBP. We have many seizures that have been conducted at the ports. Information is being passed onto the agents who have done criminal cases.

We just did one in Miami. In December, there were five individuals charged with criminal counterfeiting, and \$24 million worth of counterfeit goods were in that seizure.

We would like to see more emphasis put on IP, because what is happening is I know we are protecting our front doors, which we have to do, but we are leaving the back door open, and these criminals are coming in. They are making millions and millions of dollars, they are putting unsafe products in the marketplace.

Senator BAUCUS. The back door is what?

Mr. MONKS. Coming in, they can see that we are checking for weapons of mass destruction, terrorism, illegal aliens, but at the

same time I think IP has gotten lower on the scale. These criminals know that.

There is a \$600 billion industry in counterfeiting, \$200 billion in the United States alone. So it is a very lucrative business. These people know that.

I got up this morning, got dressed, came to work. They got up this morning to figure out how to beat the system. So, working with CBP and ICE has been a phenomenal relationship. They met all of our expectations. They are a great partner, and they have seized millions of products.

I think if they get more resources to be able to do more container checks—I understand you cannot check 2 million containers, every container. But checking more containers, talking to each other, and taking the bout to these counterfeiters, penalizing them, making it where they go to jail, or they lose money. This is all money. Counterfeiting is just money. The more they can make, the happier they are.

So Senator, I would say that if we can get more resources to CBP and have ICE and CBP talk to each other, we have a chance at beating these counterfeiters.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you. Well, that is interesting. Basically you are saying that in this very effort to protect us against terrorism, we are kind of letting down our guard on counterfeiting, intellectual property violations maybe more than ever before. Are you saying that?

Mr. MONKS. Yes, I am. Years ago—I have been doing this job for about 11 years, and I know the ports—there was a lot more emphasis on IP. After 9/11, that has reduced. A lot of the officers and resources have been distributed to homeland security and terrorism.

Yes, we are letting our guard down. Counterfeiting, I always tease people, I will come back in my next life as a counterfeiter because it is a nice business to be in. There is nothing punitive, there are no penalties, and you make lots of money.

Where there is lots of money involved, there is organized crime, et cetera. So I am just saying we have to be very diligent and keep our vigilance up and not let this go on.

Senator BAUCUS. I am sorry. I am also in agreement on this. But there is no criminal statute here? There are no criminal prosecutions?

Mr. MONKS. There is, and there are some States that have none, but there are States that have criminal prosecution. There was an H.R. 32 bill just signed by the President last month.

It is very hard to police. In Washington, children come off the buses and they have money to go to buy something at the museum, and there are people trying to sell them fake sunglasses.

Senator BAUCUS. So how should we address this problem? Is it more people? Is it CBP that is in charge here?

Mr. MONKS. Well, I think both CBP and ICE. I think they are doing an excellent job. Our program has been phenomenal based on their work. We just have to do more inspections. We have to look at these products that are coming in.

Senator BAUCUS. But I do not mean to be critical, they are doing a good job, but on the other hand, there are more violations of intellectual property, more counterfeited goods coming in.

Mr. MONKS. Well, yes. Trade has increased dramatically over the years. I believe that we need to put more people in place to do these inspections.

Senator BAUCUS. Is there a conscious effort not to put more people in place? Do they not recognize the problem, or not care? Is the focus on terrorism? I am just curious what is going on here.

Mr. MONKS. Oh, I do not know about that. I just think there are resources, only limited resources that can be put onto any one program, so—

Senator BAUCUS. Sure.

Mr. MONKS. We average several seizures a week with CBP.

Senator BAUCUS. Oh, I see. Mic, do you want to address this question? Maybe letting our guard down a little bit on IP and counterfeiting while we are raising our guard on security? Do you find that in Seattle or not?

Mr. DINSMORE. Well, we spend, Senator, a whole lot of time on the safety and security side.

Senator BAUCUS. Right.

Mr. DINSMORE. We care dearly about the IP rules and regulations, but our emphasis is clearly on making sure that no noxious cargo comes in and out of our ports.

So we would be unaware, I would be unaware of what—

Senator BAUCUS. You mentioned Hong Kong. Why did you mention Hong Kong? Do you think that is a model?

Mr. DINSMORE. Hong Kong, as you know, Senator, is one of the largest ports in the world: 16, 17 million containers a year. And about, at today's date, about 60 percent of those containers coming out of Hong Kong into the United States do go through a vetting system where there is both an x-ray, and there is also a—

Senator BAUCUS. Right. Do you think that we should have the same system set up for the other 40 percent? Is that what you are suggesting?

Mr. DINSMORE. If we are going to ensure in a more profoundly positive way that we reduce the potential of noxious cargo coming into this Nation, it has to be done offshore. By the time they hit our soil, it does not work.

Senator BAUCUS. Correct. Let me ask an ignorant question. Who is paying for all that in Hong Kong? The shippers? The Hong Kong government?

Mr. DINSMORE. Interestingly enough, U.S. Customs and Border Protection has some folks there, so we are paying, we, this Nation, some of the fees. The private sector is paying some of the fees, and I would imagine the Hong Kong/Chinese government is paying some of the fees.

Senator BAUCUS. Right. Mr. Powell, you were pretty strong in saying that you think CBP is not striking the right balance. Could you give us more examples, and also the effects, the adverse effects that you see because of the improper balance in the system?

Mr. POWELL. Well, I see the redeployment of assets, and I am referring more to personnel. I see the retirement of experienced peo-

ple with new inspectors coming on that perhaps do not have full experience.

I just see both of those factors impacting negatively the flow of trade. Number one, there is knowledge; number two, our security regime is based on data elements or provision thereof. However, it is very difficult to secure from CBP what data elements relative to security are absolutely necessary because that has not really been adequately defined.

So when you bring new importers and exporters into this environment and there is this confusion or lack of proper explanation, or resources are not available, it just is negatively impacting trade.

Senator BAUCUS. Especially medium and small business, in your view?

Mr. POWELL. Medium and small business particularly, that is correct.

Senator BAUCUS. Right.

Mr. POWELL. And I believe that there also has been a downside to compliance as far as the importing community is concerned. I think, again, security has taken some of that attitude away. No one is demeaning the importance of security.

Senator BAUCUS. Right. Right.

Mr. POWELL. But also the economy and the financial health of this country are also equally important, and trade deficits and exports, et cetera, create jobs, which is most important.

Senator BAUCUS. I appreciate that. I have gone beyond my time. Thank you very much.

The CHAIRMAN. Senator Bunning, and then Senator Thomas.

Senator BUNNING. Thank you, Mr. Chairman. I have a statement I would like to submit for the record.

[The prepared statement of Senator Bunning appears in the appendix.]

Senator BUNNING. I would like to follow up, Mr. Powell. We are focusing more on security than what is in the, well, for instance, the wiring and the other things that come through.

What is the solution, other than more money and more personnel?

Mr. POWELL. Well, I do think one of our major concerns is really security of the cargo and the container that brings it. What we are talking here is who is touching it, who has access to it, and how do we secure this package so that no one can infiltrate it or create a problem with it.

Now, that requires electronics or technology that today is not there. So we are focused on data to get an advanced profile of a transaction, because we do not have that security device that is going to prevent what we want to prevent.

Senator BUNNING. Well, we are supposed to be doing pre-inspections, and they mentioned in Hong Kong, offshore, that 60 percent of the stuff, the potential imports, are prescreened before shipping to the United States. Obviously we cannot possibly screen every package that comes in here. So prescreening in other ports besides Hong Kong, any other major ports, is one solution.

But that is not going to pick up, unless we screen 100 percent, if we have a potential terrorist threat within the cargo, or a terrorist threat in the personnel that are coming on the ship itself,

unless we have prescreened pretty well what is coming into this country.

Mr. POWELL. If you were to say prescreening 100 percent of cargo is going to give us the reliance that nothing bad is going to happen, I totally agree with that. But I ask at what cost.

Senator BUNNING. Yes. I mean, it is impossible.

Mr. POWELL. Therefore, we say then what is the middle road and how do we get to that middle road? We need technological advancement.

Senator BUNNING. How do we do the most we can do? Technological advancement and more dollars spent for that?

Mr. POWELL. Oh, yes.

Senator BUNNING. And more dollars spent for personnel?

Mr. POWELL. Absolutely.

Senator BUNNING. All right.

Mr. POWELL. And the data gathering that is so important, because new entities are entering into the international trade, both foreign and domestic. What do we know about them? They are new to government.

So the data issue is equally important, but the security of the container and the cargo therein is what we are ultimately looking at, and that requires 100-percent screening.

Senator BUNNING. You also, and some of the other panelists, spoke of small business. Kentucky is loaded with small businesses in the import and export business.

I mean, a company with 50 or 100 people is loaded with exports and imports coming in. I mean, what specific steps can be taken to better incorporate small business into the Customs Trade Partnership Against Terrorism programs?

Mr. DINSMORE. Senator, if I may, going back to your last question, and then answering that and this question. I think small and medium businesses as part of the heart of this Nation fit into any scenario that I am talking about.

In fact, we do have technology that could be used. It is not all going to be people. Take the Hong Kong model. They are looking at the image. The image goes into a black box, and does not go to this Nation where it ought to go, by satellite, and CBP ought to be looking at that data electronically and matching that data with electronic manifests, and we could eliminate a lot of the risk factor.

That would have profound impact, constructive impact on small businesses in Kentucky and around this Nation.

Senator BUNNING. Well, I hope our Chairman and ranking member are listening to that, because that is something that we as a committee can incorporate into upgrading the customs inspection of things coming into this country.

What do you see as the major issues importers are experiencing currently with CBP? Anyone.

Mr. COOK. I think, Senator, probably the largest challenge is the complexity of the trade in trying to manage each shipment versus manage the account.

Senator BUNNING. Individual shipments?

Mr. COOK. Yes, sir. If you manage the account, you can facilitate a tremendous amount of the government work and facilitate small companies, medium-sized companies and large companies. Allowing

and encouraging—facilitating—that trusted account program to move forward rapidly would greatly alleviate a lot of the congestion; and at the same time, to operate the ports 24 hours a day, 7 days a week so that your inventory is not sitting either as an export or as an import.

Senator BUNNING. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bunning.

Senator THOMAS. Thank you, Mr. Chairman. I am sorry I was not able to be here. We were talking about ethanol in another meeting. If we can import ethanol, that would be good.

Just broadly, these are the questions I have as Chairman of the Trade Subcommittee. Do we have a balance? In your view, is there a balance between national security and efficient trade in the way we are now? Just a short reaction.

Mr. COOK. I would say that the trade and Customs are seeking a balance every day. I think there are a lot of things that push that scale each day more and more towards security and less towards the commercial reality. There are a lot of ways to get there.

One of them would be to look at what are some of the commercial requirements today that are not really needed to help bring that balance back.

Senator THOMAS. Does anyone else want to react? Yes?

Mr. DINSMORE. I would answer it a little differently. I do not think we do have a balance. Here we are almost 5 years after 9/11, and we still do not have as a Nation a protocol to get seaports up and running if they go down. If you think about our airports, we were shut down for 4 days and got our airports up and running.

Senator Baucus alluded to the billion dollars a day. When and if there is an incident at our seaports, we are talking weeks, not days, to get our seaports up and running. So I would suggest we do not have that balance yet.

Senator THOMAS. The balance should be more focused on security?

Mr. DINSMORE. And on trade. I think they are inextricably aligned. If security brings down trade, then the system is down.

Senator THOMAS. All right. Anyone else?

Ms. DUNTLEY. Yes. I would just like to give one example of how, although I think CBP has done an excellent job of trying to balance between security and facilitation, in many cases because of the complexity of trade—and my example is free trade agreements, of which we have had quite a number recently—many times the regulations to implement those are slower to come out than perhaps those of us in the trade would like, because of the emphasis, and rightly so, on security.

So at times, the commercial side, the facilitation side related to free trade agreements and things of that nature, does suffer.

Senator THOMAS. One more very broad question. Do you believe we need to direct more resources to foreign ports, or should we use these resources domestically?

Mr. COOK. I think one of the programs Customs started, ATDI, allows for targeting, which is a domestic resource, but it is looking at all the shipping data coming from abroad. I think we have to be careful of how we then analyze that data.

Once you start targeting, you can then target exactly what you want abroad. To look carefully at it, I think examining for the sake of examining may not yield you any benefit, but examining things that are nominally high-risk targets is where you start getting the benefit.

Senator THOMAS. Anyone else?

Mr. POWELL. I just think the automated targeting system could use some enhancements and upgrades. Pretty much what Mr. Cook just said.

Senator THOMAS. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Baucus and I do not have a second round, because we want to get the next panel here.

Both for those of us who asked questions—and I did not get a chance to ask Mr. Dinsmore questions—we may submit some questions for answers in writing, please.

And also, more importantly than for us, for members who cannot be here, you are more apt to get questions in writing. So, thank you very much.

I will now—while they are coming, they are here in the back room, I think, the panel—thank you all very much. We appreciate your testimony.

While they are coming, I am going to introduce the Honorable Steven Koplan, Chairman of the U.S. International Trade Commission; the Honorable Julie Myers, Assistant Secretary of U.S. Immigration and Customs Enforcement, Department of Homeland Security; the Honorable Jay Ahern, Acting Commissioner of Customs, U.S. Customs and Border Protection, Department of Homeland Security; and the Honorable Timothy Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy at the Department of Treasury.

Now, you four are our second panel. If you have long statements, you will not have to ask for those to be placed in the record. They will be placed in the record. So, proceed according to the way I introduced you. Mr. Koplan?

**STATEMENT OF HON. STEPHEN KOPLAN, CHAIRMAN, U.S.  
INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC**

Mr. KOPLAN. Thank you very much, Mr. Chairman. I am going to summarize my statement.

The CHAIRMAN. Thank you.

Mr. KOPLAN. Mr. Chairman and members of the committee, I am pleased to have this opportunity to discuss our budget request for fiscal year 2007.

I thank you and Senator Baucus for enabling us to have advanced briefings for a significant number of committee staff. During my nearly 8 years at the Commission, this committee has always been most supportive of our agency.

Our '07 appropriation request is for \$64,200,000. This is a 3.6 percent increase over our '06 net appropriation of \$61,950,000. The '07 request is actually lower than our original '06 request. However, during '05, we revised our request for '06 by \$2,750,000 by a letter dated May 21, 2005.

I have a copy of that letter with me and ask that it be included in the record of this hearing, along with the full text of my prepared statement.

The CHAIRMAN. And it will be included.

[The letter appears in the appendix on p. 103.]

Mr. KOPLAN. Thank you, Mr. Chairman. The revised request was primarily the result of a developing surplus in '05, not a reduction in our '06 requirements.

Assuming stable staffing, nearly 93 percent of our budget is, for the most part, fixed for '07. It is comprised of salaries, 57 percent, benefits, 13.8 percent, rent set by GSA, 10 percent, and required contract support services, 12 percent, such as security services and network services.

Increased costs in '07 and beyond for these categories of expenses are the principal cause of increased budget requirements, and are driven by external factors over which we have no control.

In '07, we anticipate that personnel expenses will increase by \$1,385,000, or 3.1 percent. This assumes a Federal pay raise of about 2.2 percent, the lowest pay raise in at least 5 years. Benefits will go up by \$510,000, which represents an increase of 6.1 percent due to rising health care costs, and the shifts of employees from CRS into FERS.

Rent will go up by \$260,000 in '07, an increase of about 4.2 percent, but our lease must be renewed, and we are already on notice that the cost will increase significantly in August of '07.

Our '07 budget request is premised on fairly conservative caseload estimates. We are projecting increases in our caseload over the current level. While we are prepared to meet the challenge of increased caseload should it arise, the requested funding level does not allow for additional staff beyond our current staffing plan.

Over 80 percent of our annual costs are attributed directly or indirectly to investigative activity. Only when caseload exceeds our overall capacity and potential internal reassignments have been exhausted do we hire additional staff.

In those instances, we normally hire 2-year term employees rather than permanent staff. As of today, we have 363 permanent positions occupied. As a result of the second round of transition sunset reviews of antidumping countervailing duty investigations, the average number of active import injury investigations per month has increased from the low teens during '04 to the low 20s for '05.

The monthly average is expected to remain at that elevated level through mid-year '07. While the '07 request assumes a gradual increase in new filings in the direction of historical average, it does not provide for increased 2-year term appointments.

Intellectual property-based import investigations and activity levels were already at historically high levels, and new filings surged in the latter half of '04. Prior to '01, we averaged about 15 active intellectual property import investigations per month for years.

As of the end of March '06, there were 34 active proceedings pending. Additional staff has been hired in the affected offices during the last few years. These positions were added without increasing our overall staffing levels.

Requests for industry and economic analysis investigations, especially expedited resource-intensive studies related to bilateral free trade agreements, have increased steadily in the last few years.

Many of these investigations result in the production of national security information classified materials that are more costly to process and make timely collaboration more difficult.

Our expenditure plan for '06 totals \$64,145,200. This includes a net '06 appropriation of \$61,950,000 and an '05 carryover of \$2,194,000. Our '07 budget request of \$64,200,000 is virtually unchanged from the current level.

Mr. Chairman, I greatly appreciate the opportunity to appear before the committee today to summarize the details of our '07 budget request, and I will do my best to respond to your questions.

I note that attached to my testimony is a list of what I identified as risk items that are not covered in our request. Thank you very much.

[The prepared statement of Mr. Koplan appears in the appendix.]

The CHAIRMAN. Thank you. Ms. Myers? You did well in a news conference on C-SPAN last week. I do not often get a chance to watch news conferences, and usually I shut them off, but you made this arrest of these illegal aliens, and particularly more importantly, the CEOs of that company. I want to congratulate you.

It is really quite morale-building among the people who think that this is a country based on the rule of law, and they want people who come here to respect the rule of law.

**STATEMENT OF HON. JULIE MYERS, ASSISTANT SECRETARY,  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Ms. MYERS. Thank you so much, Chairman Grassley. Our agents are doing a tremendous job out in the field, really building some great cases. I think you will see some more great results in the months and weeks to come.

I also want to thank you for the opportunity to come here today to discuss with you ICE's continuing role in investigating violations of our Nation's customs and trade laws.

ICE, of course, is the principal investigative agency within the Department of Homeland Security. Working overseas, along the physical borders and throughout the Nation's interior, ICE special agents investigate violations of the law with a nexus to our borders, including violations of the laws governing trade and commerce.

The lawful movement of goods across our border is a foundational prerequisite for the continuing strength and integrity of our economy. At the same time, the growth of international trade and open border policies increase the risk of border security vulnerabilities and transnational economic crime.

ICE continues to aggressively apply its complete set of investigative authorities and capabilities to identify and defeat an array of threats to the U.S. homeland, and to our economy.

ICE and CBP also work very closely together in a number of areas. But I must say that nowhere is that cooperation greater than in our joint cooperation to combat commercial fraud.

We are also very grateful to the Congress for the recent passage and reauthorization of the USA PATRIOT Act. In particular, a new and needed statute was added criminalizing smuggling from the United States. In addition, the potential sentence for smuggling into the United States was increased from 5 years to 20 years.

By providing ICE with these additional tools necessary to more effectively investigate and combat smuggling and other commercial fraud violations, Congress has simultaneously strengthened our ability to combat violent criminal and terrorist organizations.

ICE commercial fraud and IPR investigative priorities are aimed at stopping predatory and unfair trade practices that threaten our economic stability, restrict the competitiveness of U.S. industry in world markets, and place the public health and safety of the American people at risk.

These priorities include intellectual property rights, public health and safety, textiles enforcement, in-bond diversion, tobacco smuggling, international trade agreements such as NAFTA, anti-dumping, and general revenue fraud violations.

Together, ICE and CBP work to ensure that inadmissible goods are denied entry into the United States, the proper duties are paid, and that the trade complies with free trade agreements and legislative initiatives.

ICE also vigorously investigates violations of our Nation's intellectual property rights laws. Our investigations focus on dismantling the criminal organizations that initiate, support, and sustain the illegal production and cross-border movement of counterfeit products.

It is estimated that American businesses lose as much as \$250 billion annually to counterfeiting and piracy. I am pleased to report that we are having some great successes in this area. ICE's Operation Spring, for example, represents the first joint undercover IPR investigation conducted in the People's Republic of China with their ministry of public safety.

Operation Spring resulted in the arrest in China of Randolph Guthrie, who industry considered to be one of the most prolific distributors of pirated DVDs in the entire world. In September, 2005, he was arrested in the United States after being expelled from China, and just last month he was sentenced to 60 months incarceration.

The illegal cross-border movement of trade and commerce is also increasingly ripe for exploitation by those seeking to launder illegal proceeds. This includes the illegal smuggling of currency outside of the U.S., the preferred method of moving proceeds across our borders.

ICE works closely with CBP, the Department of State, and our Mexican law enforcement counterparts to stem this cash-smuggling tide and to tie these seizures to larger investigations in the United States and Mexico, and throughout Latin America.

Because of ICE's expertise in customs matters, our special agents remain highly effective in combating trade fraud and trade-based money laundering. Trade of course can be used to transfer proceeds in a variety of ways, including over-valuing the cost of imported goods to disguise illegal proceeds as legitimate payment for those

goods, or by converting proceeds into merchandise that is then shipped abroad and sold for local currency.

To detect and combat trade-based money laundering, ICE has established a trade transparency unit, or TTU. The ICE TTU analyzes trade and Bank Secrecy Act data to identify anomalies related to cross-border trade that are indicative of money laundering or trade fraud.

ICE's commitment to safeguarding the integrity of our Nation's commercial trade infrastructure continues. Our special agents are utilizing the powerful advantages that flow from our unified customs and immigration authorities to secure our economic integrity and to protect our border, homeland, and national security.

On behalf of the men and women of ICE, I thank the Finance Committee and its distinguished members for your continued support of our work. Thank you.

[The prepared statement of Ms. Myers appears in the appendix.]

The CHAIRMAN. Thank you, Ms. Myers. Now Mr. Ahern?

**STATEMENT OF HON. JAY AHERN, ACTING COMMISSIONER OF CUSTOMS, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Mr. AHERN. Thank you very much, Chairman Grassley. I am pleased to be here with colleagues today to talk about U.S. Customs and Border Protection security and trade enforcement efforts.

I also come before you this morning mindful that the President's nominee for CBP Commissioner, Director Ralph Basham, appeared before this same committee 3 weeks ago. We are looking forward to the confirmation of Mr. Basham, and we are hopeful that he will assume his duties rather shortly.

I also want to thank the committee for your interest and continued support to ensure that CBP has the necessary funding and tools to carry out our important mission, a mission that both protects our borders and ensures the free flow of travel and trade that are so important to our country's economy.

These dual missions are not mutually exclusive. They are in fact very complementary, and our traditional trade mission of compliance and revenue collection remains very vital in this post-9/11 environment. This committee has been instrumental in formulating and supporting many of the concepts that have become the basis of CBP security programs.

You have recognized the necessity of defense and strategy that pushes our borders out. You have also recognized that security and trade depend upon commercial data, and you have demonstrated a continued commitment to developing and refining programs that secure and facilitate our trade lanes.

Since 9/11, we have developed a layered defense strategy to secure the movement of cargo without stifling legitimate movement of trade into this country. That strategy, as you know, is built on five inter-related initiatives, including obtaining advanced information on all cargo shipped to the United States. This is required by the 24 Trade Act rules.

We assess the risk for terrorism on every cargo shipment headed to the United States, and we do so through our automated tar-

geting system housed at our Nationally centralized national targeting center.

We also just recently provided our import specialists access to the automated targeting system so that we can use what we have currently been using for security purposes, and also use it today for high-risk trade transactions. This is proving to be very successful in supporting our trade enforcement mission.

CBP also uses cutting-edge technology, large-scale x-ray systems, as well as radiation detection devices to screen cargo containers prior to entering into the commerce of this country.

We have also partnered with other countries through the Container Security Initiative to screen high-risk containers before they are loaded on vessels destined to the United States. Today we have 44 of the largest foreign ports that are actually partnering with us and account for 75 percent of the cargo containers coming into the United States.

We also partnered with the private sector in one of the largest private/public sector partnerships in a post-9/11 environment through the Customs Trade Partnership Against Terrorism. Today we have nearly 5,800 certified partners from the private sector working to increase the supply chain security.

It is important to note that none of these initiatives existed before 9/11.

Now, turning to our trade priorities, we certainly recognize the changing face of trade and the landscape that it is within with the enactment of free trade agreements and other trade preference programs that allow access to U.S. markets.

Duty rates continue to decrease, and inventory critical to manufacturing, and the uninhibited flow of legitimate trade across our borders, is a vital part of this country's economic growth.

Last year, CBP processed 29.6 million entry summaries, which is a record high for us. Of this record amount, 96 percent were compliant with trade laws. However, in the last year, the value of imports exceeded \$1.7 trillion. With the expansion of this trade growth also comes concerns about violation of trade laws.

As a result, CBP has identified key areas for trade law enforcement and develops an annual strategy focused on areas of highest risk, which includes, first, the protecting of American business from theft of intellectual property.

We devote substantial resources to targeting, intercepting, detaining, seizing, and forfeiting merchandise that violates IPR laws. Last year, CBP made more than 8,000 trade seizures of merchandise valuing more than \$92 million.

Second, we protect American business from unfair trade practices and enforce trade laws as they relate to admissibility. This includes enforcing anti-dumping and countervailing duty requirements to ensure that accurate collection of revenues linked to these trade actions are completed.

Third, we enforce trade laws related to admissibility, including enforcing anti-circumvention laws, trade agreements, and trade legislation pertaining to imported textiles. Just since October of 2005, we have seized more than \$23 million in textile products that have been smuggled, misdescribed, or incorrectly claimed as to country of origin, many of which circumvented the China quotas.

It is also important to note that 43 percent of all duties we collect involve textile and wearing apparel goods.

Fourth, we regulate trade practice to ensure strong controls over the revenue process in collecting the appropriate revenues due to the United States Treasury. Last year we collected over \$28 billion in revenue; that is up 10 percent from the previous year. Even though the duty rates are declining for this year, we are expecting to collect over \$31 billion in duties, taxes, and fees.

Lastly, we protect the American public from the intentional or unintentional introduction of contaminated food products or agricultural products that could cause harm to Americans, to American agriculture, and to the Nation's economy.

I think it is also important for me to comment on our trade staffing at this point, Mr. Chairman, and particularly our import specialists. I recognize that there have been many concerns about our trade staffing levels, and many have been mentioned. At this time I would tell you that we do not have the numbers that we had in March of 2003, and we are working towards raising those numbers up to an appropriate level.

Just for an example, we have personnel actions for 111 import specialists we are currently undertaking at this point in time, but our workforce is not static.

We have had retirements, we have natural attrition, but also it is important for us to continue to assess and align our workforce to our trade risks and our trade priorities.

This year, though, it is important to note that we will spend \$36 million more in salary and benefits cost than we did in 2003. That is \$212 million we spent, up by another \$36 million. So we are still putting financial assets into the program.

Also, we would like to turn to the important issue of data as it relates to cargo security, but also the trade enforcement initiatives. It depends very heavily on the collection of commercial data.

We have been working and continue to work very closely with the private sector to determine the best way to approach the vast amount of data associated with international trade and how that data can be used to improve the supply chain security and trade concerns.

Although it is inherently a government responsibility, we continue to work very closely with the trade to determine where the data now reside, and what is the most efficient and cost-effective way to access that data.

Our goal is to define a single set of data requirements that reports trade to the United States government one time to satisfy all the government needs.

Our primary platform for that data collection is the Automated Commercial Environment. It is through ACE that we have now also established a monthly payment system. CBP is now able through accounts to collect fees on a monthly basis.

Since the inception of that part of the program, we have been able to collect \$3.6 billion of duties and fees through the ACE portal. Just last month alone, we were collecting \$500 million through that process.

As we move into the future, ACE will be the only funded, Congressionally approved information management system through

which CBP will collect, process, analyze, and report trade data for both security and compliance purposes.

As I conclude, it is important to state that our country has made great strides in securing America's borders, protecting trade, as well as travel, ensuring the vitality of our economy, and we are grateful to this committee for your support for this very difficult but yet very essential dual mission that we have within our organization.

We certainly assure you that, while we work to secure our country against terrorist attacks, we will not and have not forgotten our trade and revenue responsibilities. Thank you very much for the opportunity to come before you today. I will be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Ahern appears in the appendix.]

The CHAIRMAN. Thank you, Secretary Ahern. Now Secretary Skud.

**STATEMENT OF HON. TIMOTHY SKUD, DEPUTY ASSISTANT SECRETARY OF TAX, TRADE, AND TARIFF POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. SKUD. Mr. Chairman, on behalf of the Treasury Department, and also on behalf of the many Federal agencies working together to create an international trade data system, I want to thank you and the other members of the committee for giving me the opportunity to be here today.

As the committee is well-aware, the Homeland Security Act transferred the former Customs Service to the Department of Homeland Security but left the Secretary of the Treasury with the authority for customs revenue functions.

For necessary operational reasons, that authority has been delegated to DHS, but with the following exceptions: Treasury has retained sole authority to approve regulations on quotas, trade bans, user fees, marking, labeling, copyright, trademark, entry, entry summary, duty assessment and collection, classification, valuation, application of the tariff, preferential trade programs, and record-keeping requirements.

Treasury also reviews all rulings involving the topics I just mentioned that result in a change in practice or stem from a petition process.

Finally, Treasury also shares the chairmanship of COAC, the Advisory Committee on Commercial Operations of Customs and Border Protection.

Involvement in customs policy is important to Treasury not only because revenue collection is a core Treasury function, but also because taxing and regulating international trade has an important impact on our economy.

We work with DHS and CBP on other areas of mutual concern, as well as on the International Trade Data System, or ITDS, a topic which I understand the committee would like me to address.

ITDS is the name given to the process for interagency participation in ACE, the new computer system that CBP is building. The goal of ITDS is to have commercial reporting on international trade done through a single electronic filing rather than through separate filings with multiple agencies.

Let me describe the current situation. Today many agencies have reporting and data systems involved in the international trade process. Exporters and importers deal with numerous paper and electronic systems, and with redundant and non-uniform requirements, which are a burden on traders and on our economy.

This burden is not imposed as a matter of conscious policy. Rather, laws have been enacted with different goals such as implementing trade agreements, preventing unfair trade, protecting the environment, ensuring highway safety, and imposing economic sanctions.

These multiple reporting systems are costly and burdensome, and they limit the effectiveness of agencies in carrying out their enforcement and regulatory responsibilities. Agencies do not necessarily know what information other agencies collect or know what actions other agencies have taken. They act in isolation rather than together.

Under the ITDS concept, agencies harmonize their data requirements and eliminate redundancies. Traders submit standardized electronic import and export data to a single collection point. The data is then distributed to agencies depending on what information they need to perform their missions.

Contrary to what the name may suggest, ITDS is not a separate computer system. The ITDS concept will be implemented as a feature of Customs and Border Protection's ACE project. Implementation of ITDS is funded and managed by CBP with the collaboration of 28 other government agencies working through the ITDS board of directors.

Agencies on the board include Treasury, CBP, FDA, Transportation, Agriculture, Commerce, and ITC.

ITDS will not only reduce the burden of processing trade and improve compliance with laws and regulations that apply at the border, it will also improve risk assessment. By centralizing and integrating the collection and analysis of information, ACE will enhance CBP's ability to target cargo, persons, and conveyances. ACE/ITDS will also provide Federal agencies with data that are more accurate, complete, and timely. It will serve as a common payment point of taxes and will function as a custodian of records.

One aspect of ITDS is already operational. Sixteen of the participating agencies already have access to data on import transactions through the web-based ACE portal. All the involved agencies are harmonizing trade data requirements. These data requirements are also being aligned with the World Customs Organization Data Model so that we can harmonize internationally as well as nationally.

That concludes my remarks, Mr. Chairman. I am more than happy to answer any questions you may have.

[The prepared statement of Mr. Skud appears in the appendix.]

The CHAIRMAN. We will have a few questions. Again, since not very many members were able to come because of conflicts with other committee meetings and the floor, you may get questions in writing. So I would ask you to respond quickly to those.

I am going to start with Mr. Koplan. Obviously this committee knows that your agency is a valuable asset to Congress and to the Executive Branch. Describe the steps the Commission has taken to

increase flexibility of its workforce in order to better respond to the demands of probably what we would consider limited resources and how your agency is generally very efficient to get the job done.

Mr. KOPLAN. Thank you for that question, Senator.

As I indicated in the full text of my statement, which is in the record, we cross-pollinate. In other words, when we have a sudden increase in the antidumping area, or because of sunset reviews, we will detail people from our Office of Industries to assist in those investigations rather than go outside of the agency.

At such times as our workload has increased to levels beyond that, at most what we will do is hire a 2-year term employee to be of assistance. But this way we do involve people who would not normally be assisting in those investigations on a temporary basis from inside. We always look inside first.

We cannot do that, however, with regard to our intellectual property investigations. Those involve very specialized people, people with a patent law background, et cetera. And so we have, as indicated, increased some of our staffing there but without increasing our overall staffing plan.

The CHAIRMAN. Thank you very much.

I am now going to Ms. Myers.

You heard me say in my opening statement that the time spent by your agency on commercial investigations is projected to decline by 15 percent between fiscal year 2004 and this fiscal year. I raise the concern that our trade enforcement needs are not being fully met, or I should say other people as well have raised that concern.

So you may not agree with the concern, but either way you need to respond to it. How do you respond to it, and do you expect the trend to continue?

Ms. MYERS. Thank you, Chairman Grassley.

ICE is committed to its trade enforcement mission. We are monitoring the amount of hours that agents spend on the investigations, but hours alone, I believe, do not tell the full story.

It is my understanding that the decline that you indicate reflects an estimate based in part on fiscal year 2006 and the half-year data.

If we took the same estimate for fiscal year 2006 for arrests and convictions, we would be on track for a record number of arrests and convictions. So I think that our agents are delivering results in terms of arrests and convictions even if some of the hours are declining, which we will be able to monitor more at the end of the fiscal year.

I can assure you this is something that I am going to keep my eye on. If we see over a longer period of time that this is a trend, this is something that we will evaluate to ensure that we are giving trade enforcement the best resources that we can.

The CHAIRMAN. Thank you. Now Secretary Ahern. I spoke, again, in my opening statement about staffing levels, in this case, declining in key job categories by as much as 16 percent. The years I used for that were between the years 2003 and 2006, as opposed to what I told Ms. Myers for her section.

This raises concern about our trade facilitation needs not being fully met. Again, how do you respond to that concern? Do you expect it to continue? Let me further ask how these declines in staff-

ing then would comport with the requirement that I thought was pretty firmly stated—and Congressional intent made very clear—that there be no reduction in customs revenue functions in the new department.

Mr. AHERN. Thank you very much. As I may have mentioned in my opening statement also, I did not want to not mention the fact that we are down on our import specialist category specifically, and that is one of our largest categories of trade positions.

We are right now in the process of processing actions for 111 personnel actions in the import specialist ranks. We are down in that category specifically. I am not sure if it equates to 16 percent, but we are not where we were supposed to be under the Homeland Security Act.

I would also submit that there are many other categories within our employ that actually provide direct support and assets and time towards our revenue and our trade function. That is a lot of our front-line officers.

Through our management inspection systems that we have calculating the hours that they spend, about 5,800 of our front-line officers actually are involved in our trade mission as well, out of our 18,000 uniformed personnel.

The revenue collection is up over the last 2 years; we continue to see that go up as well. Our trade enforcement is up.

What I believe also would be an important discussion for us to have with staff perhaps, sir, would be is, if we have an opportunity to come and talk about it, as we evolve the ACE system and show how that is going to enhance collection for our entry specialist positions, that there may be a better way for us to utilize our resources in the most prudent way that we possibly can.

But specifically to your direct question to me, we have taken action to initiate personnel actions for 111 personnel actions within our import specialist ranks.

The CHAIRMAN. Senator Baucus, could I ask one more question, and then I will go to you?

Senator BAUCUS. Yes.

The CHAIRMAN. All right. Secretary Skud, in Mr. Cook's testimony—you remember he was from Sara Lee Branded Apparel—he stated that few of the agencies involved in the International Trade Data System have directed the necessary funding or made the commitment to process a program.

In fact, some agencies have proceeded with their own data programs. Why is there not a 100-percent buy-in from government agencies, and what can we do to make sure we get that buy-in?

Mr. SKUD. Well, Mr. Chairman, I think there is a natural reluctance on the part of agencies to commit to a project that puts part of their mission in the hands of another agency, particularly when the technical aspects of the operation and the associated costs remain unspecified.

One of the tasks that the ITDS board of directors has identified as a priority is identifying the IT costs, responsibilities, and functionality for each agency, the functionality that is required for each agency to participate.

Frankly, I do not think we are far enough down the design path now to be able to specify those costs exactly. Partly because the

project is not that far down the project design path, and then partly because of the lack of in-depth agency participation in some cases that Mr. Cook mentions.

So to address those two things, we are working closely with the CBP team to accelerate the effort to identify cost and functionality requirements. At the same time, the ITDS board and the CBP staff have been approaching agencies about deepening their participation in the project.

One step we are going to take is expanding participation in the board to include all agencies, to give ITDS a higher profile within each agency.

The CHAIRMAN. Thank you all very much.

Mr. KOPLAN. Mr. Chairman? Could I make one very brief comment?

The CHAIRMAN. To add to this?

Mr. KOPLAN. Yes.

The CHAIRMAN. Yes.

Mr. KOPLAN. If I could. I appreciate the fact that Mr. Skud acknowledged our role with ITDS. We consider it extremely important. I would just point out that even at this early stage, selected security-cleared ITC staff have been given access to business confidential trade data via ACE, and this allows our office's investigations to have on-line access to much more current and detailed materials for anti-dumping and countervailing duty cases than has otherwise been available.

The CHAIRMAN. Thank you.

Senator BAUCUS. Mr. Ahern, by what date will you have staff levels up to pre-9/11 levels as required by the law?

Mr. AHERN. As I stated, we have 111 actions in place. A lot of those are in the early announcement process. We have a hurdle process involved with interview selections.

It is my goal to have those on by the end of the calendar year.

Senator BAUCUS. By the end of this year?

Mr. AHERN. Yes, sir.

Senator BAUCUS. Good. Very good.

Mr. AHERN. And if I also might add for your benefit, sir, in my opening statement one of the statements I did make, too, was that in March of 2003, we were spending \$212 million for salaries and expenses in our trade positions.

Last year we spent \$36 million more than that, so we were actually up by \$36 million.

Senator BAUCUS. When are you going to adhere to the law? The law says pre-9/11, you said by the end of this year.

Mr. AHERN. Yes, sir.

Senator BAUCUS. Great. It has been suggested that a lot of information over in Hong Kong goes in a black box, and we do not get it over here. It sounds like that is a problem.

Mr. AHERN. Well, I would be happy to address what is going on in Hong Kong directly, because I think that certainly for the last several weeks—

Senator BAUCUS. There are tons of data. They all scan in, so on and so forth. It is incredible.

Mr. AHERN. I would be very happy to—

Senator BAUCUS. On a real-time basis. So why isn't the capability put in place so that we in the United States, the appropriate people, could see it right there real-time what that scan shows?

Mr. AHERN. I would be happy to answer that. I have had an opportunity to go and look at it personally myself, so I am very familiar with what is going on in Hong Kong. I am also very familiar with what is not going on.

Senator BAUCUS. No you are not. When are we going to get this done?

Mr. AHERN. Well, one of the things we have to work out is whether it is actually an effective use of technology. There is the footprint of technology that is currently there on one lane in one of the terminals, and an additional lane in another terminal.

So it is not 100 percent of the containers going through there.

Senator BAUCUS. No, but still it is pretty comprehensive.

Mr. AHERN. It is the same technology we use here to scan for radiography of the container, basically x-raying the box, and also with the capabilities for looking at the radiation emitting from the box.

We are concerned with what the threshold settings are. Those are a classified level to make sure that we actually have something that is a meaningful threshold setting. The alarm itself that is there is turned off. But what we do see is very great potential as far as how we could tie that into our CSI team so that if we have our CSI targeters overseas looking at the manifest information, scoring those containers for risk, be able to have that information provided to our CSI officers to make a complete, informed decision on what is in that box, that could be meaningful.

We have been partnering with the Hong Kong Terminal Operators Association for the last 3 months, as well as the vendor who actually supplied this technology as a footprint test in that location to look at over 21,000 data files to see what is the viability of taking that information and integrating it into our system.

We are proceeding in a very prudent way looking forward as far as whether that is the effective next step.

Senator BAUCUS. Right. Mr. Dinsmore, could you take that chair right there, please, and just tell us what you think of that response. I mean, you are the one who suggested the problem. What do you think about all of that? Does that sound good, not good?

Mr. DINSMORE. Well, it actually does sound good. I would ask the Secretary, sort of, when? I also have seen the process there, and I am not familiar with the degrees of accuracy, but I would suggest with some modification, technology already exists to take that information, give it to CBP either there or here, and make it an integral part of a more safe and secure system.

Mr. AHERN. We have a whole program management time line we would be happy to share with your staff as far as to show what steps—

Senator BAUCUS. I would like you to do that, please.

Mr. AHERN. Fine.

Senator BAUCUS. I am concerned that, let us say for example, low and behold, a container contains a very explosive, a very dangerous device, and blows up in Tucson, AZ, and maybe another one in some other location about the same time.

Do we have the information, the manifest system today to know where that came from? Is there a way to sort of triage the whole world transportation system? I am concerned if something blows up there, low and behold the whole world shuts down because we do not know where it came from.

It could have come from the east coast, it could have come from the west coast, it could have come from Hong Kong, it could have come from Mumbai. Who knows where. Do we have a system that can figure all that out?

Mr. AHERN. If it is a maritime shipping container, yes. As long as we have that container number, we can actually track it through our systems, as well as with the carriers that actually own and operate them.

Senator BAUCUS. You are telling me that any container, or let us take something that is offloaded from a container. It is a mini-container, some small part of a container in Tucson.

Mr. AHERN. In that scenario, if there is not the shipping container that we used for the tracking purposes at the point of origin overseas through the transportation process and into the commerce of the United States, once it gets broken down out of that container, we would not have the visibility of where it was unless there were specific markings that were made.

Senator BAUCUS. Every container that comes into the United States is accounted for, as to where it came from?

Mr. AHERN. Yes. Because today, as part of our information, we have the ability to get every transaction being shipped through the maritime model 24 hours prior to going overseas, we then run through the automated manifest system which has the container number.

Senator BAUCUS. Let me put it this way. I am curious. So does your agency know, or somebody in the United States know, where every container is? Does somebody triage this stuff?

Say it came from Mumbai. Then what do you do?

Mr. AHERN. We would have the ability for tracking that container if it came through the maritime model.

Senator BAUCUS. My question is would it be shut down?

Mr. AHERN. Your question was whether we would shut down as a result of that?

Senator BAUCUS. Yes.

Mr. AHERN. I think we would have to look at the set of facts at that particular time. One of the things that we don't want to do is be overreacting and shutting down the global maritime trading model.

Senator BAUCUS. That is my concern, too.

Mr. AHERN. Right.

Senator BAUCUS. But I have been told by people who think they know about this that there is not a real system in place here. So if a couple things go off, the world would be shut down. Airplanes, ships, you name it. That has absolutely devastating consequences.

Mr. AHERN. What I would think is it would be very prudent for CBP as well as the members of the department to provide a full briefing on what is out there for consequence management, and also for contingency planning through national presidential security directives.

Senator BAUCUS. Thank you very much. Thank you.

The CHAIRMAN. I am not going to ask any more questions. Thank you very much. Good testimony. You know Senator Baucus and I are working on legislation in this area.

This is kind of a notice that we would like to have members of the committee submit their questions for the record by tomorrow at 6 p.m., and then if you could have your responses back by Friday, May 5th, we would appreciate it. Thank you all very much.

[Whereupon, at 11:53 a.m., the hearing was concluded.]

## **A P P E N D I X**

### **ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD**

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**Statement of Jayson P. Ahern  
Assistant Commissioner, Office of Field Operations  
U.S. Customs and Border Protection**

Chairman Grassley, Ranking Member Baucus, and Members of the Subcommittee, it is a privilege and an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) trade functions and enforcement efforts.

I want to begin by expressing my gratitude to the Committee for the interest and support you continue to provide as CBP performs our important security and trade enforcement work without stifling the flow of legitimate trade and travel that is so important to our nation's economy. These are our "twin goals:" building more secure and more efficient borders.

Your support has enabled CBP to make significant progress in securing our borders and protecting our country against the terrorist threat. CBP looks forward to working with you to build on these successes.

On March 1, CBP marked its third anniversary, and in those three years we have made great strides toward securing America's borders, protecting trade and travel, and ensuring the vitality of our economy. With the creation of CBP, for the first time in our nation's history, responsibility for securing, controlling and managing the physical U.S. border is consolidated within a single agency. As America's frontline border agency, CBP employs our highly trained and professional personnel, resources, expertise and law enforcement authorities to discharge our mission of preventing terrorists and terrorist weapons from entering the United States, apprehending individuals attempting to enter the United States illegally, stemming the flow of illegal drugs and other contraband, protecting our agricultural and economic interests from harmful pests and diseases, protecting American businesses from theft of their intellectual property, regulating and facilitating international trade, collecting import duties, and enforcing United States trade laws. In FY 2005, CBP processed almost 29 million trade entries, collected revenue exceeding \$28 billion, seized 2 million pounds of narcotics, processed 431 million pedestrians and passengers, 121 million privately owned vehicles, and processed and cleared 25.3 million sea, rail, and truck containers.

Carrying out our extraordinarily important missions entails not only improving security at and between our ports of entry along the entire length of our land and maritime borders, but also extending our zone of security beyond our physical borders.

CBP's efforts to achieve these goals and protect the physical and economic security of the United States would not be possible without our partnerships with the trade community, other government agencies and our foreign government counterparts.

Since the terrorist attacks of September 11, 2001 we have worked with hundreds of businesses and many state, local, and government partners to obtain advance information, secure the global supply chain, and share best practices in the customs and immigration arenas.

#### **One Face at the Border**

The establishment of CBP within the Department of Homeland Security (DHS) signaled the commencement of an historic transformation of the components of the three agencies responsible for United States border functions into a unified border agency charged with protecting America and its economic infrastructure from terrorists and implements of terror.

The training of the front line CBP Officers in the traditional customs, agriculture and immigration job functions has been completed. Cross training for CBP Officers has effectively created a force-multiplier. Currently there are an additional **2106** CBP Officers working passenger primary lanes, processing all travelers and making mission related referrals to secondary. At land borders, there are an additional **1372** CBP Officers with the new skills and abilities to process immigration secondary referrals.

When arriving at a Port of Entry, the single uniform, badge, professionalism and personal appearance standards for all inspectional personnel means that a unified corps of officers greets the American public with a unified mission. CBP Officers are gaining an expertise in eliciting information from people potentially associated with terrorism. This is an expertise the agency had not possessed before.

Every day CBP Officers contribute to the antiterrorism, trade enforcement and antinarcotics mission. Their cross training has led to significant seizures of narcotics, fraudulent documents, prohibited agricultural items and non-compliant merchandise. These enforcement actions recognize CBP's ability to address risk and non-compliance across our mission using a highly trained and professional workforce.

A team of CBP Officers from the port of Highgate Springs, Vermont that is responsible for cargo and trade issues was recently awarded a Commissioner's Award for Best Practices/Unification. The team consisting of new and veteran officers with customs and agriculture backgrounds combined their knowledge and expertise to form an effective and aggressive trade enforcement operation. The team intercepted 12 excludable drivers, assisted in U.S. Immigration and Customs Enforcement (ICE) fraud investigations, intercepted over a million dollars worth of FDA violations, and issued more than 400 warnings, penalties, seizures, or denials of entry.

CBP Officers are addressing the need to facilitate the flow of legitimate trade and travel. We are adding more manpower to the front line, one of the first lines of defense in the war on terrorism.

As the single, unified border agency of the United States, CBP's missions are extraordinarily important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11<sup>th</sup>, CBP has developed initiatives to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel. Our homeland strategy to secure and facilitate cargo moving to the United States is a layered defense approach built upon interrelated initiatives. They are: the 24-Hour and Trade Act rules; the Automated Targeting System (ATS), housed in CBP's National Targeting Center; the use of Non-Intrusive Inspection equipment and Radiation Portal Monitors; the Container Security Initiative (CSI); and the Customs-Trade Partnership Against Terrorism (C-TPAT) initiative. These complementary layers enhance seaport security, and protect the nation.

Advance Electronic Information:

As a result of the 24-Hour rule and the Trade Act, CBP requires advance electronic information on all cargo shipments coming to the United States by land, air, and sea, so that we know who and what is coming before it arrives in the United States. The 24-Hour Advanced Cargo Rule requires all sea carriers, with the exception of bulk carriers and approved break-bulk cargo, to provide proper cargo descriptions and valid consignee addresses 24 hours before cargo is loaded at the foreign port for shipment to the United States. Failure to meet the 24-Hour Advanced Cargo Rule results in a "do not load" message and other penalties. This program gives CBP greater awareness of what is being loaded onto ships bound for the United States and the advance information enables CBP to evaluate the terrorist risk from sea containers on 100% of shipments.

Automated Targeting System:

The Automated Targeting System, which is used by the National Targeting Center and field targeting units in the United States and overseas, is essential to our ability to target high-risk cargo and passengers entering the United States. ATS is the system through which we process advance manifest and passenger information to detect anomalies and "red flags," and determine which passengers and cargo are "high risk," and should be scrutinized at the port of entry, or in some cases, overseas.

ATS is a flexible, constantly evolving system that integrates enforcement and commercial databases. ATS analyzes electronic data related to individual shipments prior to arrival and ranks them in order of risk based on the application of algorithms and rules. The scores are divided into thresholds associated with further action by CBP, such as document review and inspection.

The National Targeting Center, working closely with the Coast Guard, also vets and risk scores all cargo and cruise-ship passengers and crew prior to arrival. This ensures that DHS has full port security awareness for international maritime activity.

Container Security Initiative (CSI) and Customs-Trade Partnership Against Terrorism (C-TPAT) - Extending our Zone of Security Outward & Partnering with Other Countries:

In fiscal year 2005, over 11.3 million seagoing containers arrived at our nation's seaports. Another 11.3 million cargo conveyances arrived by land. About 90% of the world's manufactured goods move by container, much of it stacked many stories high on huge transport ships. Each year, two hundred million cargo containers are transported between the world's seaports, constituting the most critical component of global trade. The greatest threat to global maritime security is the potential for terrorists to use the international maritime system to smuggle terrorist weapons – or even terrorist operatives – into a targeted country.

Clearly, the risk to international maritime cargo demands a robust security strategy that can identify, prevent, and deter threats, at the earliest point in the international supply chain, before arrival at the seaports of the targeted country. We must have a cohesive national cargo security strategy that better protects us against the threat posed by global terrorism without choking off the flow of legitimate trade, so important to our economic security, to our economy, and, to the global economy.

We developed a layered enforcement approach that addresses cargo moving from areas outside of the United States to our ports of entry. Our approach focuses on stopping any shipment by terrorists before it reaches the United States, and only as a last resort, when it arrives at a port of entry.

The Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT) initiatives bolster port security. Through CSI, CBP works with host government Customs agencies to examine high-risk maritime containerized cargo at foreign seaports, before they are loaded on-board vessels destined for the United States. In addition to the current 44 foreign ports participating in CSI covering 75% of maritime containerized cargo shipped to the U.S., many more ports are in the planning stages. By the end of 2006, we expect that 50 ports, covering 82% of maritime containerized cargo shipped to the U.S., will participate in CSI. CBP's CSI program is also supported by ICE, which provides ICE Special Agents who are assigned to both the CSI headquarters staff and to CSI teams overseas. The mission of the agents overseas assigned to the CSI teams is to develop additional investigative leads related to the terrorist threat to cargo destined to the United States and to combat the threat posed by criminal organizations using containers to smuggle weapons, components and or people. ICE Attaché offices also provide support to the oversight of the CSI teams and coordinate the international negotiation of the CSI program.

Through C-TPAT, CBP establishes voluntary security practices for all parts of the supply chain, making it more difficult for a terrorist or terrorist sympathizer to introduce a weapon into a container being sent by a legitimate party to the United States. C-TPAT covers a wide variety of security practices, from fences and lighting to requirements that

member companies conduct background checks on their employees, maintain current employee lists, and require that employees display proper identification.

C-TPAT's criteria also address physical access controls, facility security, information technology security, container security, security awareness and training, personnel screening, and important business partner requirements. These business partner requirements encourage C-TPAT members to conduct business with other C-TPAT members who have committed to the same enhanced security requirements established by the C-TPAT program.

The C-TPAT program has created a public-private and international partnership with approximately 6,000 businesses (certified members), including most of the largest U.S. importers. Forty-five percent of all merchandise imported into the United States is done so by C-TPAT member importers. C-TPAT, CBP, and partner companies are working together to improve baseline security standards for supply chain and container security. CBP reviews the security practices of not only the company shipping the goods, but also the companies that provided them with any services.

The validation process employed by CBP demonstrates and confirms the effectiveness, efficiency and accuracy of a C-TPAT certified member's supply chain security. At present, the C-TPAT program has completed validations on 30 percent (1,802 validations completed) of the certified membership, up from 8 percent (403 validations) completed a year ago. Additionally, validations are in progress on another 35 percent (2,002 in progress) of certified members, and these validations will be completed throughout 2006, bringing the total percentage of validated certified members to 65 percent by year-end. In 2007, the C-TPAT program validations will continue. We will have validated 100 percent by the end of CY 2007.

Additionally, CBP has moved to tighten minimum-security criteria for membership in this voluntary program. Working closely with the trade community and key stakeholders, CBP has developed and implemented baseline security standards for member importers, sea carriers, and highway carriers. CBP will complete this process by the end of CY 2006, defining the minimum-security criteria for the remaining enrollment sectors – air carriers, rail carriers, brokers, freight forwarders, and foreign manufacturers.

In order to promulgate advanced security practices, C-TPAT recently compiled and published a catalog of such applications which was distributed to all members and made available at its recent training seminar. Each year C-TPAT conducts an annual seminar providing additional security training and presentations from the trade community on how implementation of C-TPAT has improved their security and provided a measurable return on investment. C-TPAT will also be implementing a discussion board available on their secure web portal whereby members can exchange ideas and discussions on security practices and benefits.

### **Free and Secure Trade (FAST) Program**

Canada, Mexico, and the U.S. have developed similar programs to move shipments expeditiously across the border. FAST is an acronym that stands for Free and Secure Trade Program. FAST is a key component of the CBP strategy to use risk-management principles, supply chain security, industry partnership, and advanced technology to improve the efficiency of screening and clearing commercial traffic at our border with Canada and Mexico. Under the program, FAST participants receive expedited processing for qualifying merchandise in designated traffic lanes at select border sites. Participants approved for the FAST program may receive priority during border business resumption protocols after a significant event/disaster. FAST is a CBP program that both enhances our security and increases facilitation of legitimate cargo across the borders.

FAST began on Monday December 16, 2002, at the Port of Detroit, Michigan and has since enrolled 60,786 commercial drivers and expanded to eleven additional sites along the northern border and to seven locations along the U.S./Mexico border. The FAST Program will expand in calendar year 2006 to six sites along the northern border and seven locations along the US/Mexico border.

FAST is a Border Accord Initiative implemented with our Canada and Mexico government partners and is an important part of the Security and Prosperity Partnership. Mexico's equivalent of FAST is called Expres. Mexico Customs and CBP continue to work together to further harmonize and refine the two programs.

### **Trade Law Enforcement**

The face of trade has changed over the last three years. The negotiation and enactment of new Free Trade Agreements, the changes in the textile industry with the elimination of quotas on all WTO countries and then establishment of new quotas on China, the new laws enacted involving bioterrorism and wood packing material, as well as the concerns about a avian flu pandemic have caused us to look at the way we deploy our resources. It has caused us to look at the way we equip our Import Specialists and other trade personnel to address such complex and challenging issues. The deployment of our resources to ensure that we focus on those issues that have the greatest impact on the economy and the welfare of the American people has been at the forefront of our trade mission.

CBP addresses national trade risks and priority issues through multi-disciplinary trade strategies that provide solutions to both enforcement and facilitation challenges. The strategy directs 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 trade 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, regulating trade practices to collect the appropriate revenue, and shielding the American public from harmful pests in agricultural products and other health and public safety threats.

The fundamental principles of the Trade Strategy are to:

- **Sharpen the Focus on Risk** - Focus actions and resources around trade issues that pose a significant risk to our physical security, economic stability or the organization's ability to enforce trade laws and regulations.
- **Leverage Facilitation** - Optimize use of facilitation programs and processes, reduce unnecessary delays on legitimate shipments and ensure other customs compliance and enforcement activities are not having an unintended impact on lawful importers.
- **Ensure Revenue Collection** - Ensure effective controls for revenue collection, continue to calculate the "revenue gap" through statistical sampling, and address revenue risks through analysis, appropriate action and monitoring.
- **Ensure Strong National Oversight and Multi-Office Cooperation** - Provide direction at the national level to ensure strategic goals are addressed, appropriate actions are taken, results are measured, and contributions from all relevant offices are primarily directed to priority trade issues.
- **Continue Modernization** – Continue to consolidate technologies and systems, and ensure for a broad organizational transformation.

Priority Trade Issues:

The Priority Trade Issues (PTIs) integrate the key trade risks from political, economic and resource concerns while balancing the goals of trade facilitation and trade enforcement. The PTIs include:

- **Intellectual Property Rights (IPR)** - improve the effectiveness of IPR enforcement by ensuring a single, uniform approach and focusing on known or alleged violators with high aggregate values or whose infringing products threaten health and safety, economic security or have possible ties to terrorist activity.
- **Antidumping and Countervailing Duty** – enforce antidumping and countervailing duty requirements and ensure timely and accurate collection of duties for full and proper disbursement to domestic claimants.
- **Textiles and Wearing Apparel** - ensure the effective enforcement of the anti-circumvention laws, trade agreements, and trade legislation regarding the importation of textile and wearing apparel.
- **Revenue** - maximize collection efforts by ensuring strong controls over the revenue process and by focusing on material revenue risks.

- **Agriculture** - detect and prevent the intentional or unintentional contamination of agricultural product or food that could cause harm to the American public, American agriculture, or the nation's economy.

The Trade Strategy is also structured to address emerging issues that threaten the economic health or physical security of the nation. Pharmaceutical imports have been identified as an emerging issue that requires action due to the rise in imports of counterfeit or unapproved drugs.

Since 2003, CBP field management has been directed to configure their Import Specialist teams around these priority trade issues. Currently, over 64% of the field Import Specialist workforce is assigned commodities with PTI implications. For example, 317 Import Specialists are dedicated to the enforcement of textile laws and 220 handle agriculture commodities. The remaining personnel handle a wide variety of commodities with anti-dumping and countervailing duty implications (softwood lumber, bearings, steel, and bedroom furniture, among many others), revenue, and IPR issues.

CBP continually assesses the needs of our Import Specialists in addressing the challenges of a global trade environment. To that end we have initiated various training opportunities to expand the skill sets and make these functions more effective and efficient. Recently, we have provided antidumping and countervailing duty training, FTA enforcement training for textile and non-textile commodities and we are partnering with industry to provide steel training to our ports. The basic Import Specialist training curriculum has undergone a major review and updated accordingly. In addition, we have partnered with ICE to provide textile production verification training to more than 50 volunteer personnel. We have an expanded internal website that is refreshed regularly to ensure that new materials and information to assist our personnel in performing their work is readily available.

CBP may choose to seize, penalize, fine, or issue liquidated damages depending upon the violation of law and/or statute.

**Seizures:** Seizures are made against property and are intended to keep inadmissible property out of the commerce or to deprive violators of the fruits of a crime. CBP enforces the laws of many Federal Agencies but the majority of our seizure actions are focused in areas of controlled substance interception, commercial trade enforcement, alien smuggling, and agriculture. In Fiscal Year 2005 CBP had over 114,301 seizures, which included the seizure of 2,076,043 pounds of controlled substances. CBP also collected and deposited \$31,037,417 in seized currency and proceeds of sale of seized and forfeited merchandise.

**Penalties:** CBP's authority to assess penalties is established by statute. The language of each statute dictates the amount to be assessed and the party or parties against whom the penalty is assessed. Where the statute does not specify a certain penalty amount, it describes how penalties are to be calculated. In FY05, CBP initiated 33,393 penalty cases, and collected \$33,097,808 related to the penalty actions.

**Liquidated Damages:** A claim for liquidated damages arises as a result of a breach of the terms and conditions of a bond. An approved customs bond must support all claims for liquidated damages. In FY05, CBP issued 53,576 liquidated damages cases and collected a total of \$21,146,942 in liquidated damage payments.

**Fines:** A fine is issued against a carrier (sea or air) for a violation of the Immigration Nationality Act (INA). In FY05, CBP issued 3,385 fines and collected a total of \$666,450.

#### **Intellectual Property Rights (IPR) Protection**

CBP devotes substantial resources to target, intercept, detain, seize and forfeit shipments of IPR-violative goods. Our enforcement goals can only be accomplished through the cooperative efforts of our trained enforcement officers, other government agencies, and the trade community. In FY 2005, CBP had more than 8,000 seizures of merchandise valued at more than \$92 million that was found to be in violation of IPR laws.

#### **Textile Law Enforcement**

The textile industry represents a triple focus for trade enforcement. It is a key component to the FTAs, the China quota and 43% of all revenues collected by CBP are in the textile and wearing apparel industries. Over the last three years we have visited over 2,000 foreign factory operations to ensure the correct country of origin. More than \$25 million in seizures have been made for goods that were misdescribed to evade quota and duty requirements. Last year 47 audits were performed on textile importers and an additional \$4.97 million in lost revenues was recovered. Approximately, \$1.3 million of textiles were seized in FY 05. In FY 06 the amount of seizures has exceeded \$23 million. The commitments made to hire the additional personnel, as outlined in the FY 2002 Appropriations Bill, have been fulfilled by CBP.

#### **The Automated Commercial Environment (ACE)**

The goal of ACE is to migrate CBP's trade entry procedures into a modern electronic processing system to assist in the facilitation of cargo moving across U.S. borders. Key milestones in the development and implementation of ACE processing have been realized over the last year.

#### **Electronic Manifests**

The number of e-Manifests received in March 2006 grew 75 percent to 849 e-Manifests representing 146,712 shipments. CBP received 484 e-Manifests representing 96,299 shipments in February. ACE processed an average of 14,245 trucks, 21,682 shipments, and 27 e-Manifests per day in March 2006. There are now 197 Electronic Data Interchange (EDI) certified companies, including 181 carriers and 16 service

bureaus. Four companies are in the testing stage. CBP has received 301 letters of intent to achieve EDI certification.

Truck processing capabilities are currently operating in the El Paso, Texas, cluster of ports, including Columbus and Santa Teresa, New Mexico, Presidio Texas, and El Paso, Texas, including the El Paso Bridge of the Americas and Ysleta. Truck processing through ACE is currently deployed in 40 ports across the Northern and Southern Border. The next deployment will be to Laredo, Texas, in mid-April.

#### **Periodic Payment**

As of April 5, 2006, 481 portal accounts and 958 non-portal accounts have been approved to pay duties and fees monthly. CBP collected \$378.8 million in duties and fees, representing 17.6 percent of adjusted total statement collections, through the March 21, 2006, Periodic Monthly Statement. By comparison, CBP collected \$383.5 million, representing 19.2 percent of adjusted total statement collections, via the February 22, 2006, Periodic Monthly Statement. Total receipts of duties and fees collected since the inception of the monthly statement capability in June 2004 now total \$3.6 billion.

#### **Account Creation**

As of April 10, 2006, 1,736 ACE portal accounts have been created, including 486 importer, 314 brokers, and 936 carrier accounts.

#### **International Trade Data System (ITDS)**

The Concept of Operations (CONOPS) has been briefed to Four Participating Government Agency (PGA). These discussions are part of the process leading to the new PGA Memoranda of Understanding for ACE. Each CONOPS document outlines how the PGA intends to use ACE in the future and includes details on applicable interactions with CBP at the border. A series of follow-up meetings with some of the agencies to explore the specifics of the operational scenarios and explore common interests between agencies for the same commodity areas are planned. Coordination with the Federal Motor Carrier Safety Administration (FMCSA) continues. An agreement on the FMCSA data elements in the ITDS Standard Data set has been reached.

ITDS has been part of the CBP team that examined the information needs of the CBP Agriculture Specialists in support of the "one face at the border" goal. The ITDS team determined that it would be possible to use existing data in the CBP Automated Commercial System, augmented with our other targeting and recordation systems, to provide an automated process for the specialists to record the results of their work and provide the necessary data to the U.S. Department of Agriculture. It is the goal of the ITDS team to implement this new capability before the end of calendar year 2006.

**Conclusion**

Mr. Chairman, Members of the Subcommittee, we have briefly addressed CBP's critical initiatives today that will help us protect America against terrorists and the instruments of terror, while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. We realize there is more to do, and with the continued support of the President, and the Congress, CBP will succeed in meeting the challenges posed by the ongoing terrorist threat and the need to facilitate ever-increasing numbers of legitimate shipments and travelers. Thank you again for this opportunity to testify. I will be happy to answer any of your questions.

**Statement for Senator Bunning**

**Finance Committee Authorization of Customs and Trade Function Hearing  
April 26, 2006**

Mr. Chairman, I am pleased we are having this hearing today.

Since 9/11, we have had to deal with the rise of global terrorism.

The move of the Customs Agency to the Homeland Security Department was an effort to get Customs more involved in security for the entry points for our Nation—our borders. And Customs has increased its security role since this move in 2002.

But, there are still not enough personnel in Customs to search through the thousands of pieces of cargo that come to the United States or to patrol our borders to ensure our Nation's security. We must do more to strengthen Customs to lessen the threat of future terrorist attacks.

Customs must keep in mind, however, that it also must deal with the trade functions it had before it moved to Homeland Security in addition to its security functions. This function is vitally important to our economy, especially since the world is becoming more and more global. So we must ensure also that enough import customs personnel exist for the agency to carry out its trade regulatory function.

Since this committee is looking at new legislation for the Customs Agency, I hope we keep in mind the balance that is necessary between Customs as a trade regulator and as a security enforcer. Both are important for the future of our country.

I thank the witnesses for appearing before us today. I look forward to hearing their testimony.

Thank you, Mr. Chairman.

**Hearing on Authorizations of Customs and Trade Functions  
Senate Finance Committee**

**Testimony of Jerry Cook  
Vice-President  
Sara Lee Branded Apparel**

**April 26, 2006**

Mr. Chairman and Honored members of the Finance Committee, my name is Jerry Cook and I am Vice President, Sara Lee Branded Apparel.

I am an active member in various trade groups, including AAEL, JIG, AAFA and BACM. I am currently the chair of the Customs Committee of the US Council for International Business, the US affiliate of the International Chamber of Commerce, serve as an appointed advisor to Commerce and USTR on trade negotiations as a member of ITAC-XX, and I served two terms as a member of the Advisory Committee on the Commercial Operations of U.S. Customs.

Sara Lee Branded Apparel is one of the largest U.S. apparel companies in the world. Our Brands include Bali, Playtex, Wonderbra, Hanes, Barely There, Champion, Just My Size and Loveable and span across all segments of intimate wear, underwear, sleepwear, casual wear and athletic wear for consumers in more than 80 nations. However, of particular importance to this panel, is the fact that Sara Lee has been a dedicated leader in the trade community's efforts to work with the federal government to provide security to the nation while continuing to facilitate international trade. Sara Lee is one of the seven founding member-companies of the Customs-Trade Partnership against Terrorism (C-TPAT), and is among the first wave of companies to be validated under that program.

My remarks today will address commercial processing and security measures as interrelated disciplines which require immediate and continuing attention from an active partnership of the government and trade communities. Congressional support is needed:

- To deliver an enhanced system of commercial processing which builds upon the evolving concepts of "Trusted Accounts", "Greenlanes", monthly rather than transactional processing, allowance for post-entry compliance and pre-entry security processes and total automation of all processes.
- To assure that security measures continue to build upon the realities of government resources, trade volume, private sector investment in security,

the inherent differences in trade by land, sea and air, as well as in types of cargo and points of shipment.

Customs and Border Protection has done an extraordinary job in the post 9/11 environment. The demands of the nation for secure borders has required CBP to address the high priority security issues raised annually (FY 2004 statistics) by cargo totaling 28 million entry summaries with 78.9 million line items, imported by over 754,000 consignees; and by arriving passengers totaling 78 million by air, 18 million by sea and over 326 by land. At the same time, CBP must address traditional compliance issues (customs valuation, classification, country-of-origin marking ...) for the same volume of entries, and to a large extent, the passengers as well.

CBP deserves great credit for attacking its security and compliance priorities in partnership with the trade community and based upon systems designed to gather information on all transactions coupled with systems to realistically target entities, transactions and passengers for more intensive reviews. The five cornerstones of this process are advance manifest information, the container security initiative, the Customs-Trade Partnership Against Terrorism, risk management (targeting) and new technology. These initiatives have allowed CBP to use its resources effectively and to take into account the needs for US trade to remain efficient and competitive, while building the enhanced security systems demanded in the national interest and continuing its role in assuring compliance with the trade agreements as well as others federal laws enforced at our borders.

Having recognized the achievements of CBP, it is also important to recognize the continuing need for understanding, oversight and commitment of the resources and sound policy directions necessary for CBP and its partners in the trade community to meet the ever-changing needs to compete in the global economy and to achieve a safe and secure nation.

#### **Trusted Accounts**

CBP has moved in the right direction by embracing the emerging concept of "Trusted Accounts". The overwhelming burden of coping with 28 million entries and 754,000 consignees is rationally addressed by a "Trusted Account" program which assures that CBP knows the importer, has validated its credentials, has internalized its expected and repetitive patterns of trade, range of commodities and internal compliance programs, validated its security measures and identified its logistic partners. "Trusted Accounts" would provide CBP with the base-line pre-entry (or pre-shipment) information necessary for CBP to apply its targeting criteria for security purposes, while allowing flexibility for monthly post-entry submissions on traditional compliance and revenue issues (e.g., value, quantity, tariff rate).

"Trusted Accounts" are companies that have made the commitment to invest in personnel and procedures to assure that its goods are not only properly documented and declared to CBP, but are produced and transported under circumstances that assure that the goods and their shipping conveyance has not been converted into a terrorist threat.

Deviations from the norm could trigger an order by CBP to examine at a CSI port, to prevent lading on a vessel, or to intensively examine in the states. Shipments matching the known criteria would be handled in a true “Green Lane” environment. They should be given priority at the port of arrival for immediate release and transport from the port of arrival to its intended destination.

### **Streamlined Entry Processing**

Streamlining of the entry process is an important companion to the efforts to focus CBP and trade resources on the immediate security issues raised by cargo movement. Traditional CBP processing of non-security concerns on a shipment-by-shipment basis creates a damaging diversion of CBP resources from the anti-terrorist initiatives, and imposes totally unnecessary, commercially damaging delays and costs on the companies that have demonstrated their investments in both security and compliance initiatives.

A truly streamlined entry process will allow importers to be treated by CBP as “accounts” and to accumulate and file information and pay duties and fees, on a monthly basis. Verification on an audit basis, or through a voluntary annual submission such as the Importer Self Assessment (ISA) program, provides sufficient tools for CBP to confirm or enforce compliance in a streamlined, efficient, environment.

CBP is moving in this direction, and Sara Lee has supported that effort by signing on in the first group of “accounts” (41 companies). As the “account” and monthly processes evolve, CBP should continue to assure that advance information filings are limited to the security information, that entry information filings be limited to admissibility information and that all other information be provided on a monthly basis and in formats (e.g., rolled-up) in a manner consistent with business practices.

The streamlined entry process should also ease the process for importers to correct and update the compliance information filed with CBP. Today’s systems of reconciliation and post entry correction are improvements on the past, but still have not achieved the desired level of efficiency and automation. Post entry corrections remained tied to individual shipments; adjustments to monthly statements should be the norm for CBP, as they are for the financial systems within the companies it regulates. The existing statutory reconciliation process is limited to the types of corrections which could not have been known at the time of entry, and is limited as to the scope of correctible information. Congress improved the reconciliation process by extending the time period for filing to twenty-one months, but further improvements are needed. Preparation and filing of a “reconciliation” entry is expensive and labor intensive, yet there is no diminimis standard allowing importers to avoid this burden where there is no legitimate need to reconcile.

We need to assess the underlying requirements for commercial operations that provide the greatest benefit to strong security support and strong economic health. By reducing and eliminating some of the potentially less critical commercial requirements, those resources can be better diverted to advanced data transmission and targeting of inbound cargo. The move to a “Trusted Account” should simplify both the requirement of

account data as well as the means necessary to provide data for only what is mission critical. A shift in the administration of issue resolution should be readily embraced to keep the focus on advance security targeting.

#### **Automation**

The streamlined entry process is dependent upon accelerated implementation of new automated programs (ACE and ITDS) as well as continued updates of the legacy system which still drives most customs transactions (Automated Customs System or ACS).

The need to update ACS is most recently demonstrated by the implementation of the DR-CAFTA. As with virtually all previous free trade agreements, ACS was not modified by the effective date of the agreement (February 1, 2006 for El Salvador and April 1 for Honduras and Nicaragua) and therefore, the "beneficiaries" of the new free trade agreement were required to incur the additional costs of manual filing of entries to obtain the benefits of the agreement. Some importers have elected to continue filing automated "paperless" but dutiable entries, electing to pay the duties now and obtain refunds at a later date by filing protests or other information allowing CBP to liquidate the entries with benefit of DR-CAFTA. The lack of automation imposes an even greater burden on CBP. CBP is required to divert personnel from their assigned responsibilities in order to take on the task of key-punching entry data into the computer from the manual entries filed with claims under DR-CAFTA. This problem will become greater as more bilateral and regional agreements are negotiated and enter into force (Peru, Ecuador ...)

The Automated Commercial Environment (ACE) is the automated system which is the hope of the future. CBP has made excellent choices in moving this program forward with support from the trade through the Trade Support Network, and now through its Trade Ambassador program. The potential is great for designing and implementing a program which is NOT reflective of the realities of trade, or which does not embrace or provide for imaginative new approaches to efficiency of the trade and compliance processes. CBP has clearly and consistently followed a policy of consultation with the trade to avoid the mistakes that a dialogue should be able to anticipate.

The Automated Commercial Environment (ACE) also is the program which we hope will generate the integrated information systems for all federal agencies involved in the import and export process. CBP has done the major work in building this program and bringing other agencies to the table, but the other government agencies have not delivered their portion of the needed product. The streamlining of the entry process is of very little value if it is limited to the concerns of CBP. A release by CBP is of no value if there is still a hold on goods, or request for additional information from the Food & Drug Administration, Fish & Wildlife, Department of Agriculture or the Environmental Protection Agency.

The single window concept is embodied in the International Trade Data System (ITDS) initiative. ITDS has been under development for nearly a decade, but continues to require strong oversight and encouragement if it is to become a reality. Few of the involved departments and agencies have secured or directed the funding or made the commitment to the process and program. FDA has built a stand alone automated program and developed some level of communication with CBP; Fish & Wildlife withdrew from ACS to build its own standalone system and has only recently initiated its involvement in the ITDS process.

#### **Security Measures**

CBP has adopted the right approach to security by working with the trade community on advanced information systems and the Customs-Trade Partnership Against Terrorism. CBP resources could not possibly be sufficient to address security issues without the information about shippers, carriers, importers and their transactions gained through these new programs.

We have worked with CBP since the inception of a new pilot program ATDI (Advance Trade Data Initiative) and helping understand the value, cost and implications for obtaining advanced data elements for shipments. The program targets to identify the right data elements to effectively “Push the Trade” back from the US borders and have the dexterity to identify where an “at risk” container is prior to arriving at a US port.

We encourage the refinement of advanced information systems to eliminate the need to transmit “compliance” information. Errors or questions regarding tariff classification and valuation need not be addressed in the pre-entry or entry process, but can be addressed in the post-entry environment. Requirements to include information unnecessary to the security effort at that early stage of transaction creates unwarranted opportunities for CBP to ask questions or delay transactions, and for the trade suffer delays or the burden of filing corrections and amendments

We recognize that the security initiatives are not temporary measures imposed on the global trade process. We believe that security measures are now a fixture in global trade, although they are not fixed rules. They must be flexible to embrace the realities of trade as it exists today – air, ocean, truck and rail each raise different concerns --and to anticipate the changes that no doubt will occur in the future – as rapidly as technology becomes out-of-date, the logistics of global trade can be expected to change just as rapidly.. It is paramount that these rules be crafted to match the real world environment in which trade takes place, and that they be capable of evolving to match the changes in trading systems. We believe this can only be achieved through a growing partnership with the trade community, allowing the government to understand and take into account and capitalize on the needs and systems of the commercial interests operating in and through our ports of entry.

#### **Timing**

We need to move now and not later to build upon the existing security and compliance initiatives underway at CBP. Neither terrorists nor commercial competitors

are waiting in the corner for the bell to ring. We are already in the ring and we need to make adjustments to meet the challengers.

Our basic strategies are in place and well-thought out. The need today is to assure that we have focused on security in a way that does not allow traditional compliance issues to burden the security effort; that we have streamlined the entry and compliance process so that it does not drain resources away from the security effort, and that we have provided the clarity, predictability and efficiencies needed by both the government and the trade.

The efforts to date by CBP, with support of the trade, demonstrate that the programs in place have achieved success and will continue to do so with proper oversight and flexibility. CBP has built strong cooperative programs to address the security issues, taking advantage of the information, commitment, investment and systems available through partnership with industry. At the same time, CBP has achieved its highest levels of revenue collection (\$26 billion in FY 2004) while the "overall duty rate" has dropped to 1.6% and two-thirds of all import value was duty-free. CBP compliance measurement also demonstrates that compliance rates for non-security issues are at an all-time high. The record demonstrates that CBP can move on to enhanced programs for security coupled with streamlined entry processing

Our goals are in common. Our efforts should be mutually aligned and not at cross-purposes. CBP has been a leader for over 200 years in policing our borders while fostering our role in the global environment. Our history of partnership is a proven approach to building model programs that serve our goals. Now is the time for CBP to move ahead with industry to new models and enhanced programs needed to address our changing security, compliance and commercial needs.

The release of business confidential data and manifest confidentiality needs to be revisited. The release of company confidential information either for an export or an import exposes both the company to risk as well as CBP to unwarranted risk. The current requirement for such data to be provided only facilitates individuals, groups and others to seek detail understanding of confidential supply chain information and makes it easier for the foes to target legitimate shipments (in-bound & out-bound) for their purposes.

In closing, we have a very challenging environment that we all must work together to succeed. We value the partnership that CBP provides and look forward to continuing that partnership and working closely with CBP. We appreciate your time and the committee's time today to assess the success and to make incremental progress in the future. We see the value of stream-lining the commercial operational process requirements and proceeding with the full implementation of "Trusted Account". The net impact we hope to yield is an improved, secure and efficient supply chain and stronger partnership with CBP that can focus on the advance data profiles/transmissions/account based activities in an account based commercial environment.

Jerry Cook  
 Testimony-April 26, 2006  
 Senate Finance Hearing--"Authorizations of Customs and Trade Functions"

**Response to Written Question Dated May 1, 2006:**

**Question:**

I have heard concerns that the effectiveness of the Advisory Committee on the Commercial Operations of US Customs (COAC) has diminished, making it less useful in developing policies and programs for trade facilitation. Based on your experience with COAC, what suggestions do you have for strengthening COAC's role?

**Answer:**

Based on the role of DHS and the reporting relationship of CBP into DHS, I recommend COAC's reporting relationship in DHS/CBP be altered based on the incorporation of CBP into DHS and the changes that have occurred in securing, managing and directing commercial movements into and out of the United States.

COAC needs to provide critical business insight and strategic understanding to the senior government policy makers affecting the daily operational movements and management of commerce. COAC needs to have a reporting relationship to Assistant Sec of DHS directly. The subject matter needs to include identification of changes in policy, process, opportunities and threats that are restricting, reducing or not providing key support to advance US business success. COAC should be providing high level and meaningful suggestions and feedback regarding business plans and business models affecting budget, resource allocation and industry perspective of effectiveness of programs and solutions.

Left in the current reporting structure, the valued insight and recommendations of COAC simply do not have the ability to provide timely and strategic advice to facilitate the operations performance and direction of CBP into the DHS structure. To insure there to be effective dialogue, I believe it is also critical for the Assistant Sec. to be the "owner" of the COAC relationship, reporting, formal connection and critical liaison to the COAC committee and not be delegated downward within the structure of DHS.

Additionally, I believe it is equally important that the Commissioner of CBP be a part of the COAC process to have direct linkage, advice, interactive strategic connectivity with COAC to provide the direct connection to the business, trade facilitation and business partnership that has been so crucial in the development of volunteer based programs like CTPAT, BASC and other industry partnerships. Like the importance of direct involvement by the Assistant Sec.of DHS, the role of COAC with the Commissioner of CBP should not be delegated either to insure close alignment.

In scope of recommendations for COAC, COAC should be incorporated in its advisory role to comment on budget, allocation of resource, establishing key commercial targets and advice on impacts to the commercial operations as well as impacts that could improve the trade facilitation. Essential in the role of COAC is the need by the Senior Policy makers to seek advice from COAC on both strategic changes/implications affecting the competitiveness of the ultimate exporter/importer and understanding that all related industries will only succeed when the exporter and importer remains health and competitive. Likewise, it is essential to hear how those policies are being implemented and managed and their associated impact, good or bad, on US business competitiveness. Based on that common understanding, can better solutions be crafted and implemented to improve and achieve those goals.

**Senate Finance Committee  
Hearing on Authorizations of Customs and Trade Functions  
Wednesday, April 26, 2006**

**Testimony of Mic Dinsmore  
Chief Executive Officer  
Port of Seattle**

Mr. Chairman and Senator Baucus. Let me start by thanking the Committee for its continued focus on international trade and competitiveness issues. As you well know, the United States is the largest trading nation in the world for both imports and exports. Every sector of the economy – from agriculture to manufacturing to retail – relies on international trade, particularly cost-effective and efficient waterborne trade.

More than 95% of our U.S. foreign trade with a value exceeding \$1 trillion dollars comes through America's seaports. Every year, foreign ships make roughly 50,000 visits to one of our more than 360 ports. Every day, more than 11,000 containers pass through the ports of Seattle and Tacoma alone. The port of New York/New Jersey sees more than 13,000 containers while LA/Long Beach handles more than 38,000. That gives you a snapshot, but keep in mind that these numbers are rising fast. This year alone, we expect a ten percent increase in container shipments.

Facilitating the movement of these goods and increasing the efficiency of the trading system is a never-ending goal for shippers, ports, and logistics companies. I thank each member of this Committee for their hard work and commitment to focus on these important issues that are critical to the economic success of our nation.

I want to use my remarks today to focus on three areas. First, I want to give the Committee a sense of the complexity of the logistics involved in the movement of cargo. Second, I want to discuss the important role that Customs plays in that process and the need for adequate resources. And finally, I want to stress the importance of addressing these issues in a multilateral way.

To give the Committee a better sense of the logistics involved, let me begin by quickly walking through the movement of a product from manufacturing to final sale. Take the example of a manufacturer in central China who wants to ship products to the United States. The company would first order an empty container from a carrier equipment yard. The empty container would be trucked to the manufacturer for loading. The loaded container would then be trucked to the Port of Shanghai. Once in Shanghai, it might be temporarily stored at the terminal. The container is then loaded aboard a ship, and spends up to 20 days in transport before arriving at a U.S. port. As the ship makes its way to the U.S., it might very well stop at several other ports. Throughout this process, at least 7 different handlers may have had access to the container before it even arrives in the U.S. Every stage in the supply chain creates additional hurdles for monitoring cargo.

So what does this mean? It means that Customs faces huge challenges in collecting data and monitoring shipments. As this Committee well knows, Customs' mission since its inception has been the collection of revenue related to tariffs, duties, and user fees, as well as strict monitoring of cargo to ensure compliance with U.S. trade laws and customs regulations. Since 9/11, that data collection and monitoring is now critical to Customs' dual mission of not only speeding commerce, but also working to keep our international trading system free from a terrorist attack.

Beyond the security implications of an attack, there would be a worldwide economic impact. A weapon of mass destruction hidden in one of the thousands of containers arriving daily could have devastating consequences for international commerce. Every U.S. port would be affected as authorities worked to determine the extent and source of the threat. Governments around the world would experience an unresolvable angst as to whether additional containers within the greater global supply chain might also contain secondary explosive devices. U.S. retailers and manufacturers could face supply shortages and shutdowns. Both U.S. ports and companies could face long-term consequences. For comparison, one need only look at the labor shutdown of America's West Coast ports in 2002, which cost the U.S. economy an estimated \$1 billion per day.

While this Committee will certainly look at prevention measures, it is also critical to have adequate planning in place to manage a maritime security incident, as well as to have a recovery and harbor restart plan established to minimize the inevitable economic impact of such an attack. The U.S. economy can simply not afford to have its ports shut down – even for a short amount of time.

Finally, let me emphasize the importance of looking at this from a global perspective. Increasingly, Customs should continue to look at “expanding our borders” – that is, data collection and monitoring before cargo leaves foreign ports. While the security benefits are obvious, expanding our resources and monitoring abroad also means a faster transition for cargo once it arrives in the United States. To make this a reality, U.S. Customs needs to continue to lead the way in advancing efficient and transparent customs policies around the world, through the venues of the World Trade Organization (WTO), the Asia Pacific Economic Cooperation (APEC) organization, and the World Customs Organization (WCO).

This Committee's work on Customs reauthorization comes at an important time. The Congress has an opportunity – and an obligation – to facilitate trade and ensure the nation's economic security. Electronic data collection and validation of commercial records and business practices throughout the supply chain is a key part of speeding up legitimate cargo, while also ensuring that cargo arrives in our ports without incident.

There is now a strategic opportunity for the Senate to address this issue in a comprehensive fashion, by dedicating the adequate and appropriate resources to Customs and Border Patrol based on their significant responsibilities in facilitating trade and protecting our Homeland from acts of terrorism.

In closing, I want to express both my personal and sincere appreciation for this Committee's leadership and commitment to being a part of this all important solution.

WRITTEN QUESTIONS AND ANSWERS FOR THE RECORD

United States Senate  
Committee on Finance

Hearing on  
“Authorizations of Customs and Trade Functions”  
April 26, 2006

QUESTIONS FOR MR. DINSMORE FROM SENATOR BAUCUS

1. **SENATOR BAUCUS:** Please elaborate on how strategies to screen, scan or inspect U.S.-bound cargo affect the flow of trade. Is it advisable to inspect 100% of containers arriving in the United States?

**MR. DINSMORE:** Today U.S. Customs and Border Protection mandates that ocean carriers must electronically file cargo manifests outlining the contents of containers in foreign terminals at least 24 hours before their shipment can be loaded aboard U.S. bound vessels. Upon receipt, these manifests are analyzed at the National Targeting Center to determine if the container poses a risk. If the container is at a Container Security Initiative (CSI) designated port, the suspect containers will likely be inspected overseas before being loaded into a U.S. bound vessel. Additional or other required inspections are then conducted upon arrival at the U.S. destination port.

Container risks were also evaluated before 9/11 by virtue of the “known shippers” program where participants developed a history and track record of legitimate commerce and trade activity. Following 9/11 the Customs and Trade Partnership Against Terrorism (C-TPAT) program was put in place to provide incentives for voluntary adherence to improved security protocols.

This was the basis for former Customs Commissioner Robert Bonner’s statement that his agents were “inspecting 100% of the right 5% of containers.”

Absent effective and efficient non-intrusive inspection (100% X-Ray Screening) of all U.S.-bound cargo, it is my strong belief that we are needlessly exposing the global supply chain to terrorists who are very capable of manipulating the cargo manifest and compromising C-TPAT designated cargo for their own purposes.

Without an effective “trust, but verify” approach, we are left with significant vulnerabilities in our global supply chain. Perhaps more importantly, we limit our ability to forensically understand what happened, and what other secondary risks might still be present in the supply chain immediately following an incident. Paralysis, undue time delays and monumental economic impact will certainly accompany any incident without a proven system to ensure that it is safe to restart the global supply chain.

2. **SENATOR BAUCUS:** You have expressed interest in 100% scanning technology being tested in two Hong Kong port terminals. Please elaborate on the potential and the limitations of this technology. Is this technology ready yet? How does it compare to the non-intrusive inspection and radiation scanning technology already deployed in U.S. ports? Is it reasonable to expect that a majority of ports worldwide could support this technology?

**MR. DINSMORE:** The proposal of 100% Non-Intrusive Inspection (NII) Screening of Ocean Container Cargo in foreign ports of origin is conceptually sound, but still needs a great deal of refinement and additional capability to meet our domestic security needs. One of the most significant risks to the global supply chain is the potential of this system to slow down or needlessly delay the current velocity of legitimate cargo due to false alarms. This is why we must proceed very cautiously (without unrealistic deadlines) to ensure that this system is both feasible and capable of producing the desired results without delaying the high volume of cargo moving into the global supply chain.

Achieving 100% NII Screening will require the negotiation of additional agreements within host countries to expand the CBP - Container Security Initiative (CSI). CSI places U.S. Customs and Border Protection (CBP) personnel in host countries to review the manifest data under the 24-Hour Advance Vessel Manifest Rule. Under this rule, all shipping companies carrying cargo to the United States must provide advance information on every container on their ships before loading or leaving a foreign port. This system utilizes the customs agents of the host country to inspect containers prior to loading on a U.S. bound vessel. In order to reach agreement with Host countries, it is anticipated that they will also request or require reciprocal screening at U.S. seaports prior to moving our exports to their country. (This will likely be based not on a fear of terrorism, but by the desire to collect appropriate customs duties and to discourage smuggling of illegal goods. The requirement to provide this physical space and technology could be very problematic due to limited additional land at most U.S. Seaport Container Terminals. The number of country customs officials to occupy a reciprocal screening center on U.S. soil would also be problematic for foreign countries and may suggest a (likely controversial) third party contracted customs function.

Although existing testing of the Integrated Container Inspection System (ICIS) at Hong Kong is very encouraging, it is still a manual system that takes single images and provides them in a common electronic image format (i.e. jpeg). Manual systems are unfortunately prone to error and accuracy problems, and human operators fundamentally are limited to two hours or less of reliable monitoring. The high volume of containers moving through these foreign entry portals will demand and require a computer based automated solution. The solution needs to create a baseline database of legitimate cargo reference. In other words, it needs to have stock images of say, a container full of boxed tennis shoes or DVDs to compare images against. Similar to existing carry-on baggage screening equipment at our passenger airports today, the system needs to be capable of capturing the image and identifying anomalies in the shipment automatically. These

suspect containers can then be routed out of the standard flow and examined more closely to reconcile the anomaly on foreign shores.

Scrutiny of the manifest and other transaction data could then continue during the ocean voyage, and identical comparison system equipment at U.S. Seaports could then function as the next layer of defense, or identify containers that were illegally introduced into the global supply chain through other means. Ideally, this would be a real-time system that would allow any U.S. Customs or U.S. Coast Guard agent with internet access to view the full array of available transaction and manifest data, as well as a full x-ray image of the contents of every container anywhere in the global supply chain, at any time.

Container Terminals in any country have very complex operations and typically very finite land resources to accommodate all the movements of trade and commerce. However, they all share common truck and often rail movement components. The recent requirement to install Radiation Portal Monitors (RPMs) at Container Terminal exit gates has shown us how disruptive and difficult installations such as this can be. As future technologies are developed, we need to today define a "Security or Customs Portal" at each Seaport Terminal where Non-Intrusive forms of inspection (NII) equipment can be readily installed. Although difficult to anticipate future space needs, terminal disruption could be decreased by the existence of an agreed location within the standard truck exit or entry gates and/or prior to intermodal railroad connections. This could also facilitate an agreed location for electrical, data and structural equipment, which would speed the installation of newer and more reliable NII type equipment as it is developed.

There is a wealth of data that surrounds each and every ocean container shipment that is currently not required for submission under the CBP 24-Hour Advance Vessel Manifest Rule. Current CBP initiatives moving forward as "SecureFreight" and the "Advance Trade Data Initiative" will improve the availability of all pertinent information for consideration in the National Targeting Center. However, we need to find a better way to integrate all of these data points together from disparate sources to improve the Automatic Targeting System (ATS) with real time dynamic data, while protecting proprietary information. It is recommended that steps be taken to improve the effectiveness of the Automatic Targeting System as another important layer of our defense.

3. **SENATOR BAUCUS:** How effective is CBP's Container Security Initiative? What are its strengths and what are its weaknesses?

**MR. DINSMORE:** From my perspective, the Container Security Initiative (CSI) is a sound program for detecting and intercepting potentially dangerous cargo before it is loaded on a ocean carrier vessel bound for a U.S. port. It has demonstrated that there is wide support for an international solution to terrorism.

In addition, Customs and Border Protection has made great progress within the World Customs Organization to gain agreement through the new framework of for security and

trade facilitation. Additional efforts should also be undertaken through the Asia Pacific Economic Region (APEC), and other multilateral organizations.

The challenges, as I understand them, include negotiating bi-lateral agreements to expand the Container Security Initiative at the remaining major foreign container ports, and the appropriate Customs deployment of necessary staff and equipment. In addition, there is inconsistency in the quality of equipment at foreign ports, as ports use different equipment with different capabilities and accuracy.

Another major problem is staffing imbalances. The May 2005 GAO Report noted that, as a result, only 72% of containers referred to host governments for inspection were actually inspected overseas, while 28% of referred containers were not inspected.

**4. SENATOR BAUCUS: In the event of an incident, how difficult would it be to track the origin and whereabouts of containers of interest, and how quickly could we do it?**

**MR. DINSMORE:** The terrorists responsible for the New York World Trade Center tragedy missed their potentially greatest target on September 11, 2001 when they flew over the New York/New Jersey Harbor and the 2nd largest Container Load Center in the nation. A much simpler and cost effective attack could have been made by combining waste nuclear materials with a conventional explosive in an ocean shipping container and detonating it remotely upon arrival at a major seaport or upon entering an adjoining large highly populated area like metropolitan New York.

Such an attack could cause a stoppage of the entire global supply chain —just as we grounded our civilian airline fleet following 9/11. Initial loss of life would not be as great as the World Trade Center tragedy, but New York City could have major areas deemed uninhabitable and restricted from radiation contamination for many years to come.

The economic impact from stopping the global supply chain would be enormous. For a comparison, costs from the west coast docks labor problem in 2002 were estimated at \$1B per day in the first week and grew to \$2B in the second week. Costs for a global shutdown would be exponentially higher.

Unlike our Airport System, the Seaport does not have a central place to return all cargo after a “full ground stop” order to re-screen and validate cargo. Today we have no mechanism to validate the contents of Ocean Containers other than relying on the information provided by shippers, logistic providers and customers. Unlike the airports after 9/11, we can’t land at the nearest airport, take our customers around to the front curb and clear them again through security checkpoints, while checking the aircraft with explosive trained canine units.

In the Seaports, it would be very difficult for the nation to have full confidence to start up the global supply chain again, especially if there were a multi-port attack. We would be fundamentally paralyzed and the economic cost would be staggering.

For this reason, the 100% Non-Intrusive Inspection system would have another major benefit, in that it would allow us to forensically investigate any suspect containers in the global supply chain after an incident. It would allow us to sideline for further inspection any container that shared similar transaction or manifest data, or that had similar noted anomalies when x-rayed. With this real time information, we could quickly determine which containers were suspect and exactly where they were in the global supply system. We cannot guarantee that we could successfully disrupt an attack, but we would be much better prepared to focus our resources on the correct suspect containers and more quickly resume commerce moving through the global supply chain.

Today, obtaining information regarding the origin of a container and its current location could be very difficult and time-consuming. Demonstration Projects such as Operation Safe Commerce that we have participated in for the Department of Homeland Security (DHS) are studying and testing equipment that will detect the unscheduled opening or violation of an ocean container and determine its geographic location as it moves through the global supply chain. We are hopeful that these tests will help DHS as it moves to establish standards for container security door seals and intrusion detection equipment in the future.

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

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Statement of Marian Duntley  
Chair, American Association of Exporters and Importers;  
Corporate Customs Manager, Toyota Motor Sales USA

Testimony before the Senate Finance Committee

April 26, 2006

A. Introduction and Overview:

Chairman Grassley, Ranking Member Baucus and Members of the Committee, my name is Marian Duntley and I am Corporate Customs Manager for Toyota Motor Sales USA. I am here today representing the American Association of Exporters and Importers (AAEI) as Chair of its Board of Governors. AAEI appreciates the opportunity to offer its comments on budget authorizations for the U.S. Customs and Border Protection (CBP) and Trade Functions.

AAEI is a trade association comprised of U.S. and multinational manufacturers, distributors, retailers, and service providers engaged in the import and export of merchandise to and from the United States. It has represented the broad scope of America's trade community in regulatory, legislative, and public policy arenas since 1921. AAEI's primary focus is the promotion of fair and open trade policies and practices through education, outreach and advocacy. It has long been a strong supporter of supply chain integrity and security as well as the full-range of trade community issues affecting customs and international commerce.

It is a privilege to appear before you today at this hearing. We know that the Committee is keenly aware that when the Department of Homeland Security (DHS) was created almost four years ago, this Committee in particular thoroughly examined and considered the implications of

transferring all of those functions that were the domain of the U.S. Customs Service (Customs) to this new Department.

The long-held bipartisan view of Customs, strongly enunciated in the Customs Modernization Act of 1993, has been as an agency charged with the dual missions of facilitating trade and the national economy in addition to law enforcement and security responsibilities. With this knowledge in hand, the transfer of vital national economic matters to an agency whose primary mission was to be national security concerned a number of Members of Congress and multiple organizations within the private sector.

To be frank, during the transition of legacy agencies, like Customs to DHS, AAEI and the U.S. business community recognized that many important trade facilitation functions would be initially relegated to secondary status following the trade security imperatives of a post-September 11 environment. We believe, however, that the time has come to revisit this approach. AAEI recognizes and strongly supports the trade security efforts and initiatives of CBP. Nevertheless, AAEI believes that CBP must now re-establish balance between its trade security and trade facilitation functions and responsibilities.

AAEI's member companies appreciate that the Senate Finance Committee retained oversight over the revenue, commercial and trade facilitation functions of CBP. The Committee has consistently been responsive to the concerns of the U.S. trade community. Furthermore, we deeply appreciate that this Committee has consistently been advocating the leadership of CBP to recognize and fully appreciate the importance of balancing the interests between trade security and trade facilitation, which was evidenced most recently during the hearing to consider the nomination of Mr. Basham to be CBP's next Commissioner. Frankly, more needs to be done to achieve a productive balance. Achieving this productive balance between these roles is

a vital national interest and it is critically important for the United States to remain competitive in the global marketplace.

Although balancing the interests of trade security and trade facilitation is unquestionably a difficult task, we believe that CBP has worked very hard to do so thus far. AAEI greatly appreciates the Committee's invitation to provide our observations, comments, and suggestions about CBP's trade security related matters, as well as its trade facilitation and operational issues. We are confident that our testimony can assist the Committee in its endeavor to reauthorize CBP and re-establish a productive balance between trade security and trade facilitation.

B. Trade Security Related Matters

AAEI's testimony on Trade Security Related Matters touches upon the following six topics: 1. C-TPAT Development and Evolution; 2. Importance of Progress in the World Customs Organization; 3. U.S. Business Data Confidentiality; 4. Consensus for Regulating U.S. Exports; 5. U.S. Security Preparedness and Trade Continuity Plans; and 6. CBP & DHS Communication with U.S. Trade Community Regarding Data Anomalies.

1. C-TPAT Development and Evolution

The Customs and Trade Partnership Against Terrorism (C-TPAT) is a voluntary government-business initiative to strengthen and improve overall international supply chain and U.S. border security. Businesses are not required to participate in C-TPAT. However, those businesses that choose to apply are making a commitment to work toward the goal of creating a more secure and efficient supply chain in partnership with CBP. However, for most U.S. companies with global supply chains, C-TPAT membership is a requirement in today's business environment.

Upon satisfactory completion of the C-TPAT application and supply chain security profile, CBP assigns U.S. businesses a Supply Chain Security Specialist (SCSS), who initiates an intensive validation process. There are approximately 11,000 participants in C-TPAT and over 5,700 have been certified. Approximately, 1,545 validations have been completed as of March 2006 and another 2,262 are underway. CBP currently employs 88 Supply Chain Security Specialists, but expects to have 156 hired by summer 2006. AAEI has significant concerns regarding the use of third parties to validate supply chain security practices of C-TPAT participants because we believe that the validation of appropriate security protocols is a federal responsibility.

To ensure the success of C-TPAT, CBP has established no single security criteria or standards that members must meet or exceed. In today's evolving environment, CBP has concluded that security criteria or standards "must remain robust, dynamic and within a flexible security framework." AAEI agrees with this conclusion and we have submitted several letters to CBP commenting on C-TPAT security criteria and standards, as well as the C-TPAT validation process. We have been outspoken in our appreciation of the CBP's extraordinary sense of commitment in attempting to incorporate a multiplicity of commercial realities, retaining the program's voluntary nature, and avoiding the fundamental error of imposing a "one size fits all" mandate.

AAEI greatly appreciates the improvements that have been made to the C-TPAT program, such as the move to a three-tiered benefit structure. Furthermore, we want to acknowledge and express our appreciation to CBP's Office of Field Operations, which undertook a tremendous effort to prepare and produce the Supply Chain Security Best Practices Catalog. However, to encourage companies to join or continue their membership in C-TPAT, CBP must clarify and expand upon the benefits, especially for Tier 3 participants. C-TPAT membership must provide U.S. businesses with a measurable return on investment (ROI). Otherwise U.S. businesses will be reluctant to

undertake additional expenses to exceed CBP's minimum security criteria and standards.

It may also be useful for the Committee to further review the enormous investment in security made to date in regulatory and mandated programs by the trade community. The passage of the Trade Act and the Bioterrorism Act alone imposed significant capital costs on the trade which our members have largely assumed as part of their responsibilities as good corporate citizens in homeland security protections. These often substantive costs borne by individual corporations as well as entire industries appear likely to continue and expand if efforts to provide supply chain security and end-to-end transparency are not managed with extensive consultation and coordination among all the principles.

While C-TPAT is an important initiative, AAEI believes CBP must be actively engaged in a dialogue with other countries about ways to improve the global supply chain as well as to champion the goal of improving global trade facilitation.

## 2. Importance of Progress in the World Customs Organization

Although this matter may not be entirely within the context of today's hearing, we would be remiss not to focus attention on the vital efforts underway at the World Customs Organization regarding implementation of its Security and Facilitation Framework. We encourage you to monitor these efforts closely for promotion of the free flow of trade and internationalization of what we regard to be basic commercial and international trade concepts.

Multiple international and multinational efforts impacting trade flows continue in both the private sector, through the ISO among others, and public sector forums. These public sector efforts include the ratification of the Kyoto Convention, the Doha Round of WTO deliberations, and bilateral Free Trade

Agreement (FTA) negotiations as well as others involving maritime and transportation related matters of vital national trade policy import. We urge the Committee to continue monitoring progress and coordination of efforts devoted to achieving the central missions of trade and security policy.

### 3. U.S. Business Data Confidentiality

Among the emotionally charged issues that the U.S. trade community and AAEI's member companies have confronted in today's evolving environment are extensive and substantial concerns regarding the confidentiality of proprietary business data. These concerns are driven both by private sector competitiveness issues and international business ownership and management. We would ask that the Committee carefully examine the concerns we convey today and support further study of this area. As you would imagine, private sector data collection in this regard is "challenging".

One primary concern of AAEI's member companies regarding the expanded use of proprietary cost data, among others, is that it does not provide CBP with enhanced "situational awareness" for targeting shipments with certain anomalies and characteristics. In short, the collection and storage of increasingly detailed trade data may become alarming to the U.S. trade community when such data is exchanged without adequate protections with other federal agencies as well as foreign governments. The concern is that this may well occur in ways which are not designed to guarantee the confidentiality that U.S. businesses expect to be provided and have come to rely upon from federal agencies in this increasingly competitive global marketplace.

The immediate issues which we ask you to consider exploring are driven by several "real world" competitiveness concerns. Among business community concerns are: 1) the increasing range, depth and amount of data that is being requested by multiple DHS units; 2) the sharing of such information

with a wider range of domestic and international trade bodies and individuals within these organizations where a tradition/record of confidentiality and or advanced training programs are not apparent to the private sector; and 3) the federal government's increasing reliance on electronic systems to manage information.

We are equally concerned with development of policies within international bodies where multiple data streams could merge and commingle. Sharing of data regarding "risk analysis" must be done in such a fashion so as to avoid commercial implication as far as is humanly possible. We particularly encourage the Committee to explore development of policies to address the sharing of sensitive information with other governments, in particular foreign Customs agencies.

Notably, it is the practice of some foreign governments that are U.S. trade partners to subsidize certain industries which compete directly with U.S. counterparts. As the Committee is well aware, many foreign governments have substantially invested finances and "perception" in business enterprises that compete directly with the U.S. private sector. However, the apparent lack of controls or restrictions upon these foreign governments, which may have a financial interest in such a competitor to a U.S. company or which lack important legal safeguards restricting the use and dissemination of trade data belonging to U.S. companies necessitate AAEI's concern. To be candid, U.S. businesses must have better assurances that information supplied to foreign governments for security purposes would not be used against them in a competitive business context. At present, AAEI member companies are not sufficiently convinced that their proprietary trade data is secure.

#### 4. Consensus for Regulating U.S. Exports

AAEI represents many global companies that both import and export goods. CBP enforces the laws of over 40 other federal agencies that affect the

importation of merchandise. We believe that CBP continues to streamline the import process by working with other federal agencies and the U.S. trade community to realize greater efficiencies in this process.

As a result of the Trade Act of 2002, CBP is now more involved in the regulation of export shipments through implementation of the advance cargo manifest rules requiring submission of trade data before shipments are loaded and cleared for export. Unlike the imports cleared primarily through CBP, exports are regulated by several different federal departments and agencies: the Department of Commerce's Bureau of Industry and Security, the Treasury Department's Office of Foreign Assets Control, the Department of State, and the Department of Defense.

AAEI is concerned that the current export process is a patchwork of regulatory regimes, which are not coordinated by one single federal department or agency. Moreover, as the U.S. trade community is asked to provide more detailed trade data to multiple federal agencies to fulfill various regulatory requirements, we are distressed that the lack of coordination results in U.S. companies supplying ever increasing amounts of trade data multiple times, which affects the competitiveness of U.S. exporters who must satisfy all compulsory federal export regulations and requirements, while getting goods to market quickly in an increasingly competitive global marketplace. AAEI recommends that the Committee study how it can make the export process as efficient as the import process.

##### 5. U.S. Security Preparedness and Trade Continuity Plans

As the Committee knows, significant amounts of resources have been allocated for security prevention purposes, which are intended to keep terrorists and terrorist action from ever reaching U.S. soil again. AAEI strongly supports these efforts to prevent terrorists from using a U.S. maritime port or land border crossing for a terrorist incident. Nevertheless,

we believe that the Committee would be remiss in its oversight responsibility if it did not also study the Nation's security preparedness and trade continuity plans. Is the U.S. adequately prepared to quickly respond to the challenges to our Nation's security and are we sufficiently able to ensure our Nation's trade continuity so as not to inflict far greater damage to the economic vitality of the U.S. in the aftermath of either a terrorist incident or a catastrophic natural disaster? Furthermore, AAEI recommends that the Committee allocate an appropriate amount of resources for the dual purposes of national security preparedness and national trade continuity.

Last year 11 million containers came into the United States and this year that figure is expected to grow by ten percent. It took nearly 100 days to clear the backlog of containers caused by an eleven day strike at the Port of Long Beach a few years ago. Since trade now accounts for one quarter of our economic growth, the Committee must be satisfied with CBP's security preparedness and trade continuity plans.

Finally, AAEI was pleased to have recently been appointed as importer/exporter representative to develop a roster for the National Maritime Security Advisory Committee for incident communication. AAEI believes centralized national coordination of this initiative is essential. Regional or localized control would greatly diminish CPB's effectiveness to maintain trade continuity and ensure the economic resilience of the U.S.

#### 6. CBP & DHS Communication with U.S. Trade Community Regarding Data Anomalies

AAEI supports ongoing dialogue and partnership with CBP and DHS to achieve a productive balance between trade security and trade facilitation. However, many AAEI members are concerned that in some areas, such as data anomalies, we do not have a dialogue with the agency. The U.S. trade community provides CBP with large amounts of trade data, either required through the advance cargo manifest regulations or on a voluntary basis

through C-TPAT. Although C-TPAT membership reduces the number of examinations, it does not eliminate them. As a result, when a C-TPAT member's shipment is subject to an examination, the company does not know whether it is the result of a random sample or whether an anomaly in the company's trade data was captured in the Automated Targeting System (ATS) because CBP generally does not communicate with companies if it is the latter. Data anomalies can take on a variety of forms, such as substitute shipments from a different supplier, using a different mode of transportation to ship a particular product more quickly, etc.

To be clear, AAEI supports CBP's screening of all high-risk cargo through ATS. However, CBP's limited resources for examinations should be devoted to those companies which truly pose a high risk to the Nation. We propose that CBP develop a protocol to communicate with U.S. companies that are C-TPAT members with strong records of compliance in order to discern between those shipments that actually pose a high risk versus those which exhibit a data anomaly, so that the company can provide CBP with a satisfactory explanation concerning the anomaly instead of CBP devoting resources to an examination. AAEI is confident that such a protocol would increase dialogue between CBP and the U.S. trade community, as well as foster awareness that U.S. trade data is truly being used appropriately to ensure the security of the Nation.

#### C. Trade Facilitation and Operations Issues

AAEI's testimony on Trade Facilitation and Operations Issues touches upon the following eight topics: 1. Automated Commercial Environment (ACE)/Trade Support Network (TSN)/International Trade Data System (ITDS); 2. Improving Coordination between Federal Agencies and a recommendation to Study 24/7 Operation of U.S. Ports; 3. Additional Allocation for CBP's Trade Facilitation and Operations; 4. Revision of the Drawback Statute; 5. Paying for Trade Security and Trade Facilitation - A

Study of Customs Fees, as well as AAEI's Tax Policy Initiative; 6. Implementation of Bilateral Free Trade Agreements; 7. Importer Self-Assessment (ISA) Program and Quick Response Audits (QRA); and 8. Commercial Operations Advisory Committee (COAC): A Key Forum for Public and Private Sector Interaction.

1. Automated Commercial Environment (ACE)/Trade Support Network (TSN)/International Trade Data System (ITDS)

A high priority for AAEI members is the design and staged implementation of the Automated Commercial Environment (ACE) as CBP enters into the critical stage of its operational design and implementation. The new system will be the cornerstone of secure, efficient and effective operations of government and business at our Nation's borders and points of entry.

In keeping with the spirit of the Customs Modernization Act of 1993, AAEI and industry leadership have been extremely supportive of ACE and overall modernization. Since adoption of the Modernization Act in 1994, Customs and CBP have engaged in a constructive and productive dialogue with the trade community on the design and implementation of that Act and its automated system (ACE). AAEI members have been invited to participate in a variety of public and private sector initiatives, including Modernization Act workshops, the Entry Revision Project ("ERP"), the Trade Support Network ("TSN") and the Trade Ambassador process. In many regards, these outreach efforts have succeeded. The trade communities' needs and requirements have surfaced, been made compatible with government processes and priorities and published as specific User Requirements; the timing of the actual programming and implementation of those requirements has been established, reviewed, modified and monitored as CBP and its contractors begin the actual programming, testing and implementation of ACE. The year 2004 was the first in which ACE designs were implemented;

2005 was the first full year of making certain the lessons learned in early implementation are timely, recognized and addressed.

We desire to continue to work with CBP to ensure that the necessities of the implementation process do not create a gap in the timely and effective communication of importer and exporter concerns to CBP. Changes are likely to come faster and have more concrete programming consequences at this stage.

To date, the Trade Ambassadors Program and the TSN have been the primary methods for offering input into ACE development. Participants are required to balance the demands of their company obligations and TSN work. Moreover, since September 2001, a large number of importers/exporters have been more focused on the high-priority CBP supply chain security initiatives rather than the TSN process.

AAEI strongly supports the creation of the International Trade Data System (ITDS). The goal of this initiative is to implement an integrated government-wide system for the electronic collection, use, and dissemination of international trade data. Unfortunately, while many federal agencies have indicated their intent to participate in the ITDS project, too many have not. Participation is necessary by all of the approximately 79 federal agencies that depend on electronic data for international commerce.

Within the ITDS concept, traders will submit standard electronic data for imports or exports only once via the ACE. ACE/ITDS will distribute this standard data to the pertinent federal agencies that have an interest in the transaction for their review, analysis and risk assessment. ACE/ITDS will provide each federal agency only that information which is directly relevant to that federal agency's mission. Thus, the ACE/ITDS system will serve as the federal government data collection and distribution portal; a "single

window" system through which information necessary for trade transactions can flow efficiently from traders to federal agencies and back to traders.

Since ITDS affords AAEI's member companies with appropriate protections and confidentiality of business data which it needs, it will enable and encourage interagency information sharing, thus providing for more effective enforcement, security targeting, and risk analysis of trade flows. The ACE/ITDS window promotes information sharing within a single system between all levels of government. This streamlined sharing of information will accelerate border clearance times, reduce costs, and cut down on inefficient paper-based systems. By eliminating redundancies and increasing efficiency, ACE/ITDS is taxpayer friendly, to be sure. However, it also helps all the federal agencies involved to perform risk assessment and thereby to advance national security, as each participating federal agency will develop its own internal risk management plan. Federal agencies will have a much easier time spotting anomalies and trends in the electronic context than is ever possible in a paper-based approach. Similarly, it will allow federal agencies to spend money more wisely and improved targeting of high-risk shipments as well as travelers, thereby facilitating the flow of legitimate cargo and people.

ACE/ITDS will also ensure that the U.S. remains a leader in the increasingly competitive world of global trade. As our trade partners make the move to developing all-electronic trade data systems, it is important that the U.S. does the same.

## 2. Improving Coordination Between Federal Agencies

The Committee should be aware of the enormous complexities, as well as the difficulties that AAEI members have encountered in dealing with other federal agencies whose regulatory jurisdiction and oversight for certain imported goods overlap with other federal agencies. Our member companies have

been at the forefront of cooperating with CBP by joining its trade security and trade facilitation partnership initiatives, such as C-TPAT and the Importer Self-Assessment (ISA) Program. We believe that these programs hold the promise of realizing a productive balance between trade security and trade facilitation, which AAEI believes will be achieved on regulatory issues only when federal agencies work in close partnership with one another and the U.S. trade community.

Yet many AAEI member companies tell us that they do not receive the full benefit of these partnership programs because they are regulated by federal agencies that neither recognize nor accept the risk-based methodologies of CBP's partnership programs. Such reluctance affects nearly 36% of the entries for imported goods that are subject to the "release and hold" authority of the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the U.S. Fish and Wildlife Service (FWS), which are the primary federal agencies that impact most of our members.

As a result, AAEI has spearheaded efforts to initiate and develop a dialogue and working relationship with these other federal agencies. AAEI is particularly pleased that our dialogue with FDA has resulted in some recent successes. Most notably, AAEI has provided comments to FDA on its Secure Distribution Chain Pilot Program which builds upon the investment U.S. companies have made in C-TPAT since FDA's program requires applicants to be C-TPAT certified at Tier 2 or higher.

We are also working with FDA concerning possible adoption of a risk-based methodology, such as ISA. The foundation of ISA program is CBP's finding that U.S. companies which have good internal controls are highly compliant with U.S. customs laws. AAEI believes that ISA member companies are proactive in meeting their compliance responsibilities for all federal regulatory agencies, not just customs. AAEI believes that its work with FDA and CBP is

the first step toward encouraging coordination and integration of other federal regulatory agencies in an efficient import process that enhances compliance while focusing limited agency resources on those companies that present the greatest risk to the health, safety, and commerce of the United States.

a. Study on 24/7 Operation of U.S. Ports

In today's global economy spanning every continent and time zone, companies that import and export goods are truly "24/7" operations. With the increased volume and velocity of goods crossing borders, AAEI recommends that the Senate Finance Committee study the impact of U.S. ports operating 7 days a week instead of the current 5 days per week. In addition to studying how many days a week the ports should operate, AAEI believes that the study should examine the feasibility of ports operating 24 hours per day. Our country's ability to process and clear both imports and exports quickly on a continuous basis is a vital issue that cuts to the very core of the United States' competitiveness in comparison to our trading partners.

AAEI has been concerned about the increased congestion at our Nation's ports and many local communities have sought to reduce the impact of port operations on the environment and their community. Ports are national assets benefiting the entire country. Therefore, we believe this issue requires a coordinated and well-considered national response starting with a study on extending port operations and very carefully taking into account both the positive and negative impact to local communities.

3. Additional Allocation for CBP's Trade Facilitation and Operations

We frequently hear a mantra of "guns, gates, and guards" when the focus needs to be equally attuned to overall national interest, risk management, and operations facilitation. AAEI is concerned with the lack of resources,

both dollars and manpower, devoted to the facilitation and operations aspects of CPB's functions. Here we acknowledge the huge "brain drain" that is occurring throughout federal agencies as senior government employees retire in record numbers, but the situation that the U.S. trade community confronts goes well beyond that. The experienced customs professionals at all levels who long have made the system work are leaving or have left or, as we so often hear, are so discouraged that they are resigned to frustration. The solution to these and related problems will require long-term dedication on the part of DHS and clear oversight by this Committee. AAEI believes that additional training funds and private sector coordination funding would be helpful and we strongly encourage the Committee to further explore both.

#### 4. Revision of the Drawback Statute

This Committee is aware that AAEI is helping to lead efforts to revise the Drawback Statute, which was originally established by the Continental Congress in 1789. As the Committee knows, drawback is the refund of certain customs duties, taxes and fees, which are collected during importation after the exportation or destruction of imported product or article. Drawback was initiated for the purpose of creating jobs, encouraging manufacturing, and encouraging exports. Drawback is recognized as the most complex commercial program administered by Customs and now CBP.

AAEI's members have worked in partnership with CBP to draft new statutory language that would simplify the process of applying for drawback, which in turn could expand U.S. businesses use of drawback. CBP has three goals that are paramount to its drawback simplification efforts:

- 1) Must be easy to administer;
- 2) Must protect the revenue of the United States; and
- 3) Must support complete automation.

AAEI recognizes that CBP cannot maintain the drawback program as it is today. Furthermore, AAEI knows that drawback without revision and simplification will not be the status quo. Without simplification, CBP will be required to change their drawback processing procedures. CBP will complete more drawback claim reviews and these reviews will be more comprehensive. As a result, drawback claim processing will become more stringent. And as deemed liquidation compresses the time for CBP to complete such reviews, CBP will be forced to issue more 1593a penalties after liquidation.

The revised drawback statute seeks to alleviate this pressure on CBP while preserving an important benefit for the U.S. trade community. Recognizing our members' cooperative efforts with CBP in this endeavor, AAEI strongly endorses this much needed revision of the Drawback Statute. If enacted, we know it will benefit U.S. exports, as well as U.S. competitiveness in the global marketplace. We are fully prepared to assist this Committee's legislative efforts to revise the Drawback Statute.

#### 5. Paying for Trade Security and Trade Facilitation – A Study of Customs Fees

As the owners and operators of roughly 85% of the Nation's trade infrastructure and employing an even higher percentage of the people and trade services therein: the private sector has made enormous security process and program investments since 9/11. We know that each of the distinguished Committee members have heard from your constituencies of the type and value of security related expenditures made voluntarily through C-TPAT participation or the multiple other cooperative efforts underway. You have heard of the exemplary work many of our fellow trade associations have done within their industries to support member company efforts and successful program development. In short, much has been done by both the federal government and private sector industry to benefit the Nation's economic and security interests.

We would suggest to the Committee that fair and equitable collection of revenues for that which has been and will be done is an area of great concern to us and, as you have long demonstrated, to this Committee. We believe that a lot of smoke has been generated in regard to two primary questions and some visibility would be helpful. These questions focus on the collection and distribution of customs user fees and methods of incentivizing important private sector security and related process expenditures.

We, like you, are very aware of the multiple proposals for utilization of some form of additional customs fees which are currently promoted to support a great variety of proposed programs. We do not reject the possibility that a well-conceived and designed plan, developed with a thorough understanding of commercial and diplomatic realities in our global economy, could provide a valuable new source of revenue to accomplish important national trade and security policy goals. In fact, as we have testified previously, we would and do support and encourage you to launch a high priority study of this matter. Such a study should include multiple aspects of collection and utilization, while specifically including the issues generated by the collection and use of Merchandise Processing Fees imposed under the Consolidated Omnibus Resolution Act of 1985.

In formulating such a study, we encourage you to help future Congress' better understand and avoid the multiple problems generated by earlier efforts to levy such fees upon the U.S. trade community. Prominent among these have been both the nature of the assessment (tax on value) and constitutional limitations (tax on exports). However, from our preliminary review, it appears that each of the methods commonly discussed does appear to require extensive review so as to avoid unanticipated economic and trade repercussions.

We would also encourage exploring ways to ensure that the proposed solution, i.e. method of revenue collection, is directly related to the problems or opportunities which required such a solution. Frankly, determining the relationship, for example, between current Merchandise Processing Fees and monies allocated for CBP services is currently very difficult. However one thing is safe to say, these fees have clearly generated substantial surpluses utilized in general revenue expenditures. Allocation of the revenue actually collected to general revenue expenditures simply rolls along without relation to the use of such funds for the Agency's commercial operations. We suggest that current evidence seems to demonstrate that such general revenue allocation has not and perhaps cannot provide equitable return either between sectors of the trade community nor to U.S. trade interests overall.

We would welcome the opportunity to assist the Committee's efforts and among other items, would encourage careful review of tying user fee collections directly to customs and related operations expenditures.

a) AAEI's Tax Policy Initiative

We have long observed the efforts of this Committee to assist in the achievement of important societal goals through a variety of the methods available to you. A traditional federal method of encouraging business/economic behavior beneficial to the society has been the provision of financial rewards for that behavior. As you are well aware, the scope of such ongoing efforts ranges from environmental and energy conservation to achievement of "social policy" like compliance with the Americans with Disabilities Act. We would like to suggest that the time has come for a serious examination and study of such initiatives in this vital sector of the economy.

Since 9/11 and the advent of the Department of Homeland Security, expenditures made by the private sector to enhance homeland security have

escalated dramatically and show no sign of lessening. These expenditures have been undertaken by U.S. companies engaged in all aspects of the global supply chain. Substantial expenditures have been documented from manufacturing to retail to the ports and well beyond. Many of these expenditures, while potentially beneficial to the conduct of business, have had little direct or demonstrable ROI and would not otherwise have been prudent in the normal course of business. Many of these expenditures while valuable in pursuing societal interests have been, perhaps unfairly, classified as a particularly unacknowledged and unfunded federal mandate.

We would encourage the Committee to examine the variety of methods of providing such encouragement for the private sector to improve its own properties, processes and training. Among those principal methods we would include tax credits, deductions and exemptions with potential focus upon accelerated cost recovery and depreciation schedules. Each of these deserves thorough exploration. However, in light of the urgency of the task and particular complexions of the industries investing, two particularly interesting approaches might be: 1) development of an offset for certifiable C-TPAT and related program expenditures by U.S. corporations voluntarily participating in this important effort; and 2) exploration of Chapter 99 "Temporary" amendments to the Harmonized Tariff Schedules, which could have a wider impact. However, AAEI would welcome the opportunity to support the Committee's efforts in framing this effort and we are agreeable to multiple approaches.

#### 6. Implementation of Bilateral Free Trade Agreements

As a matter of philosophy, AAEI believes in the promotion of fair and open trade policies, and supports the negotiation and adoption of free trade agreements. Over the past five years, we have witnessed a proliferation of free trade agreements with dozens of other nations, who are now our special trading partners. We are concerned, however, that as these free trade agreements come into force, CBP may have neither the time nor the

resources to fully implement them administratively and as part of its regulatory regime. Among the difficulties encountered by the trade community is the slow pace of CBP issuing regulations implementing free trade agreements. Additionally, CBP has not done the necessary programming for its online systems to accept entries with claims for preferential duty treatment made under recent free trade agreements. We would suggest that the Committee mentor CBP and USTR and monitor the progress, which is needed to resolve this situation.

#### 7. Importer Self-Assessment (ISAs) Program and Quick Response Audits (QRAs)

AAEI is pleased to note that it is continuing to work with CBP and other trade associations on developing industry coalitions to negotiate enhanced benefits for the ISA program. Currently, AAEI has two industry ISA coalitions – the chemicals industry, and the pharmaceutical/biotechnology industry. AAEI commends CBP's willingness to work with the trade to use the ISA program to enhance trade compliance and provide benefits to importers reducing regulatory burdens imposed by current requirements.

Many AAEI members are concerned about CBP's use of Quick Response Audits (QRAs), which are single-issue audits with a narrow focus. We understand that CBP intends to use QRAs on specific risk areas, such as transshipments or intellectual property rights. However, CBP has stated that companies who have applied for or are current members of the ISA program are not exempt from QRAs.

As noted previously, CBP has found a correlation between companies with good internal controls as being highly compliant with U.S. customs laws. It is this correlation which forms the foundation of ISA. Companies join ISA in order to be removed from the annual Focused Assessment audit pool so that they can devote the resources necessary (e.g., compliance personnel) to

conduct the periodic self-audits required by ISA. ISA requires companies to document these periodic audits. As a result, many AAEI members are now asking "Why did our company spend the time and resources to join ISA if we are still subject to audits?" AAEI supports ISA's risk-based analysis of companies' business processes, and is concerned that CBP's use of QRAs will undermine the risk management principles that are the foundation of the ISA partnership forged between the agency and trade in continuing to develop the program.

#### 8. Commercial Operations Advisory Committee (COAC): A Key Mechanism to Foster and Encourage Public and Private Sector Interaction

During our 85 year history, AAEI has a long record of working together with those federal departments and agencies, which have had jurisdiction over customs, trade policy, ports, transportation, tax, security, and immigration regarding the variety of other issues that impact the import and export of goods and services to and from the United States. We actively participate in multiple forums and functions in support of excellence in this arena. We believe and hope that AAEI has been a good partner and unfailingly objective in our evaluations of federal policies and programs.

During the past two decades, a key mechanism to foster and encourage public and private sector interaction on matters affecting importing and exporting has been the Commercial Operations Advisory Committee (COAC). Although significant aspects have evolved, COAC remains useful and its mission is vital.

As the Committee will recall, your legislative efforts resulted in Public Law 100-203 of 12/22/87 which established the Advisory Committee on Commercial Operations of the U.S. Customs Service. COAC had two principal duties: 1) to provide advice to the Secretary [Treasury] on matters relating to the commercial operations of Customs; and 2) to submit an annual report

to the Senate Committee on Finance and the House Committee on Ways and Means concerning Advisory Committee operations and recommendations regarding Customs commercial operations. Thus, Congress created the means for those who deal directly with Customs, now CBP, to provide direct input both to the Congress and to the Secretary having oversight and direct responsibility for the commercial operations.

The COAC's operations began in 1988 and have continued at a rate of a minimum of four meetings a year. Twenty members, representing a broad cross section of the U.S. trade industry, rotate in two year terms. With a clear initial focus on the free flow of trade, important contributions have been made in both Customs management and Congressional participation in the processes.

Following 9/11 COAC embraced the dual role of trade facilitation and security issues. It was very active in the development of many of the post 9/11 programs including C-TPAT, the 24-hour rule and MTSA requirements. As you would imagine, when DHS was formed, COAC focused on multiple issues to help ensure that the issues and perspectives of the U.S. trade community were taken into consideration and, very importantly, that the expertise residing in the U.S. trade community was appropriately utilized when new trade security and trade facilitation programs and initiatives were being considered and developed. Furthermore, COAC continued its work reporting to both the Department of Treasury, and to DHS.

Over the last several years, many have believed that COAC's focus has been diluted and its effectiveness diminished. There are multiple theories as to what has taken place and how it might be repaired. We do not have the final answer. However, most recently DHS delegated the full responsibility for management of COAC and its mission to CBP. Frankly, as a surprise move, this did not appear to us to have been well thought out. Among several other concerns, one stands out and it is that that this vital authority and

responsibility should not have been delegated in clear conflict with the primary reporting purposes envisioned at the time that it was legislated: Reporting to the managing agencies (now DHS and Treasury) to ensure that trade input continued to flow to the highest levels of government and providing input to Congress regarding activities and concerns generated there.

AAEI is a long time supporter of the customs function and has a strong working relationship with both CBP and DHS yet, in terms of the transfer of responsibility, we would suggest to you that 1) while working with CBP is critical to the roll of COAC, it is much different than reporting to them and 2) the proper Congressional access and role has not been given priority. In sum many describe this as one more loss of the fabric of checks and balances so fundamental to our way of government.

We do not claim to have all the answers and are sympathetic with those who suggest that, at minimum, COAC needs resources and direction. Yet we can assure you that, to our knowledge, the entire trade community is unified behind the call to both: 1) reinstate the reporting role of COAC to both the Secretary of Treasury for the economic impact of CBP's commercial operations as well as DHS's security needs that are so apparent lately; and 2) significantly enhance communications with Congress.

AAEI suggests that, among the multiple channels of communications between the public and private sector regarding vital trade security and trade facilitation issues for both U.S. importer and exporters, COAC is unique in its scope and badly needed. We would ask the Committee to examine options and act to reinforce utilization of all available resources, including COAC, in the development of vital import export and security policies and programs.

D. Conclusion

In conclusion, we wish to thank the Senate Finance Committee for its invitation to provide our observations, comments, and suggestions about CBP's trade security related matters, as well as its trade facilitation and operational issues. We greatly appreciate the Committee's efforts to ensure that trade facilitation is a balanced partner to trade security. We strongly believe that the Committee's continued oversight and active promotion of conjoined trade security and trade facilitation programs and initiatives can make an enormous difference. We hope that our testimony will prove useful as the Committee endeavors to reauthorize CBP and re-establish a productive balance between trade security and trade facilitation. AAEI looks forward to both supporting this Committee's active involvement and to continuing our partnership with CBP in pursuit of these goals.

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Supplemental Response for Insertion into the Printed Record

United States Senate  
Committee on Finance

Hearing on  
"Authorization of Customs and Trade Functions"  
April 26, 2006

In response to the opening question that Chairman Grassley posed to Ms. Duntley, she would like to supplement her response in the printed record to include the important work on trade data that CBP and the trade are engaged in through the auspices of the World Customs Organization (WCO).

CBP, through its participation in the High Level Strategic Group, and the trade, through its input through the Private Sector Consultative Group, are working to implement the "Framework of Standards to Secure and Facilitate Global Trade" that the WCO unanimously adopted in June 2005, while recognizing current business realities which confront global supply chain security. AAEI notes that these global efforts are very complimentary to the work that CBP and the trade are engaged in at home, especially with respect to the protection of trade data.

In developing global standards that provide supply chain security and facilitation, as well as promote certainty and predictability, the WCO's Framework of Standards recognizes that trade data plays an important role in establishing these global standards. The Framework acknowledges the importance of data privacy and data protection.

For those national governments with insufficient trade data protections, the Framework recommends that national legislation should be enacted to

protect the right to privacy, recognize trade confidentiality, and permit access to verify the accuracy of data prior to any exchange of trade data either through Customs-to-Customs networks or Customs-to-Business partnerships. Additionally, the Framework states that any trade data collected and or transmitted by Customs authorities must be treated confidentially and securely and must be sufficiently protected.

AAEI strongly urges the Committee to monitor and review the ongoing developments in the WCO and to consider having CBP regularly report to the Committee about efforts to ensure that the trade data of U.S. businesses is sufficiently protected.

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Written Responses to Questions for the Record

United States Senate  
Committee on Finance

Hearing on  
"Authorization of Customs and Trade Functions"  
April 26, 2006

A. Introduction

On behalf of the American Association of Exporters and Importers (AAEI), I am pleased to provide the Senate Finance Committee with our written responses to Questions for the Record, which were forwarded to us at the request of Senator Baucus, regarding AAEI's testimony before the Committee at its hearing on "Authorization of Customs and Trade Functions" that was held on April 26, 2006.

B. AAEI responses

1. *In your testimony, you raised concerns about the amount of information that U.S. businesses are being asked to provide to CBP and other units of DHS. In your view, will the Automated Commercial Environment (ACE)/International Trade Data System (ITDS), when fully implemented, reduce or increase this burden? What recommendations can you provide to speed the implementation of ACE/ITDS?*

AAEI strongly supports the creation of the International Trade Data System (ITDS). Although the operational procedures regarding ITDS and a timeline for its implementation are not yet available, AAEI is extraordinarily hopeful that when ITDS becomes fully operational it will provided U.S. businesses with a "single window" system through which information necessary for trade

transactions can flow efficiently from U.S. businesses to federal agencies and back to U.S. businesses. Such a system, we would argue, has the greatest potential to effectively reduce the regulatory burden imposed upon U.S. businesses because it eliminates redundancies in data that must be provided numerous times to multiple federal departments and agencies, which in turn promotes greater efficiency for both. This, in turn, will enhance the competitiveness of U.S. businesses in the global marketplace.

AAEI members are firmly convinced that the full participation of other government agencies (OGAs) is our best recommendation to speed the implementation of ACE/ITDS. As we stated in our written testimony, AAEI remains concerned because while many federal agencies have indicated their intent to participate in the ITDS project, too many have not.

AAEI strongly recommends that the Committee, through its oversight of CBP, issue a clarion call to the Administration, who should in turn direct OMB to mandate participation in ITDS from all of the approximately 79 federal agencies that depend on electronic data for international commerce, as well as set a deadline when the ITDS portal will be fully implemented. Otherwise, redundancies and inefficiencies will persist and our Nation's competitive edge in the global marketplace will diminish.

2. *The AAEI is interested in expanding port operations, possibly to operate 24 hours per day and/or 7 days a week. What does AAEI consider to be the pros and cons of such an expansion? Have you or your members conducted any analysis on the subject?*

Neither AAEI nor any of our members, to the best of our knowledge, have conducted analysis on the current status of U.S. port operations or the possible expansion of such operations. Additionally, neither AAEI nor any of our members have studied the operations at our Nation's northern or southern land border crossings. We acknowledge that such an expansion of port operations would involve a multitude of issues and impacts, both pro and con, which affect local communities adjacent to U.S. maritime ports, as

well as northern and southern land border crossings. This Committee has consistently emphasized the tremendous importance that U.S. port operations and land border crossings have to the Nation's economic strength and global competitiveness. The increased volume and velocity of goods entering U.S. ports and crossing this Nation's northern and southern borders necessitates that the Committee undertake a thorough examination and a carefully considered study regarding the current status of U.S. maritime ports and land border crossing operations. Such a study, we argue, should consider the impact of expanding U.S. ports operating 7 days a week instead of the current 5 days per week. AAEI also believes that such a study should examine the feasibility of U.S. ports operating 24 hours per day.

Furthermore, we suggest that the Committee strongly consider utilizing pilot programs to study the impact to important U.S. industries. AAEI purposes that the Committee develops three pilot programs. One pilot would examine issues at a U.S. maritime port. The remaining two pilots programs would study issues at land border crossings, specifically along the northern border, such as the Peace Bridge, and along the southern border that impact an important American industry like consumer electronics.

3. *Canada and Mexico are our number one and number 3 sources of imports, and most of that trade enters the United States over land. What do you hear from your members about the challenges of moving cargo across our land borders, as compared to sea ports? Are programs such as the Pre-Approval Processing System and the Free and Secure Trade Program effective in expediting clearance? Do smaller companies face special challenges in participating in them?*

AAEI's members are very active in monitoring CBP's progress in developing partnership programs with both Canada and Mexico, particularly through the Security and Prosperity Partnership. Our members believe that the processes utilized for land border crossings are not as advanced as those developed for ocean cargo movements. AAEI recommends that the Committee encourage all three governments to provide the trade with

regular briefings on their progress toward implementing the goals of a comprehensive North American cargo security strategy.

The public-private partnerships (e.g., C-TPAT, FAST, PIP) are vital to both securing and facilitating trade within North America. However, we are concerned that participation in these programs continues to lag because the requirements for each of these security and facilitation programs are patchwork rather than harmonized. While CBP has reached out to the trade through COAC to review those issues (e.g., lack of harmonization between C-TPAT and PIP, status of Mexican cargo security program, consignee reporting issue, etc.) that impede trade, more work is necessary to resolve them.

AAEI members are concerned about the mounting challenges that smaller businesses are facing, particularly along the northern and southern land border crossings. The lack of balance between trade facilitation and trade security is acutely apparent to smaller businesses, which is increasingly putting them at a competitive disadvantage, especially regarding participation in trade facilitation programs such as FAST and the recently mandated ACE e-Manifest. Many of these small businesses are not members of C-TPAT and, thus, are not eligible to participate in FAST. Furthermore, small businesses are encountering significant financial hurdles which prohibit them from becoming FAST approved or eligible to participate in the ACE e-Manifest program. The more complicated it becomes to cross our northern and southern borders, the more apparent it becomes that the number of smaller businesses fully taking advantage of cross border trade is dwindling. AAEI members are concerned that the elimination of competition will continue to negatively impact transportation costs for cross border shipments, which they observe have risen because of the absence of these smaller businesses.

AAEI would also like to bring to the Committee's attention our members' concern about the proposed rulemaking issued jointly by Department of Homeland Security (CBP) and Department of State (Bureau of Consular

Affairs) on *Documents Required for Travel within the Western Hemisphere*, 70 Fed. Reg. 52037 dated September 1, 2005. AAEI submitted comments expressing concern that the rulemaking would have a devastating impact on cross border trade, including border communities, by increasing delays and the notice did not adequately explain how the agencies planned to integrate registered traveler programs (SENTRI, NEXUS, and FAST) with the requirements of the proposed rule. AAEI recommends that the Committee monitor the impact of new security legislation, and subsequent implementation, on existing cross border security and facilitation programs.

4. *Do you believe that CBP's participation in the work of the World Customs Organization is effective? Should more resources be dedicated to participating in the WCO? Is there sufficient consultation with the U.S. trade community on WCO issues and positions?*

As global trade has expanded and become more interconnected, we are convinced that the United States is just one piece, albeit a very substantial piece, of the 166 puzzle pieces that are needed to fit into the right place to complete a picture of an effective global supply chain security system. CBP, under the direction and leadership of Commissioner Bonner, recognized that the only effective means of assembling this puzzle correctly was by working with other countries. In June 2005, CBP provided the initiative as well as the framework policies that resulted in the World Customs Organization's (WCO) adoption of the "Framework of Standards to Secure and Facilitate Global Trade" (the Framework of Standards) – a strategy to secure the movement of global trade in a manner that does not impede it but, instead, facilitates the movement of global trade. The WCO also established a Private Sector Consultative Group, for the purposes of informing and advising the WCO with "real world" experiences and perspectives regarding the implementation of the Framework of Standards. AAEI members, however, are concerned about the sustainability of CBP's effort and its commitment to a multilateral approach.

AAEI recognizes and understands that among the countries whose Customs authorities participate in the WCO, none matches CBP's level of sophistication of operations or its level of collaboration with private industry. Therefore, we hope that CBP continues to demonstrate leadership and a willingness to work tirelessly and diligently at bringing together diverse viewpoints. Most importantly, CBP needs to foster consensus and focus on policies that promote global harmonization or mutual recognition, while maintaining CBP's own high level of standards.

AAEI believes that CBP should meet with the trade at regular intervals, beyond COACs consideration, to report on the progress being made on implementation of the WCO's Framework of Standards and to consult with U.S. businesses about what its priority global needs are and how the trade can facilitate CBP's work within the WCO. We strongly urge the Committee to monitor and review the ongoing developments in the WCO and to consider having CBP regularly report to the Committee about its continued engagement in WCO activities and processes to create a global supply chain security system.

C. Conclusion

Once again, we want to thank the Senate Finance Committee for extending an invitation to AAEI to testify before the Committee at its recent hearing. We greatly appreciated the opportunity to share with the Committee our observations, comments, and suggestions about CBP's trade security related matters, as well as its trade facilitation and operational issues. AAEI is fully prepared to provide any additional assistance that the Committee may request of us while it endeavors to reauthorize CBP and reestablish a productive balance between trade facilitation and trade security.

**STATEMENT OF THE HONORABLE STEPHEN KOPLAN, CHAIRMAN  
UNITED STATES INTERNATIONAL TRADE COMMISSION  
BEFORE THE SENATE COMMITTEE ON FINANCE**

April 26, 2006

**Introduction**

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to discuss the budget request of the United States International Trade Commission for fiscal year (FY) 2007. I am accompanied today by Stephen McLaughlin, who serves in the dual capacity of Director of Administration and Chief Information Officer, and Nancy Carman, our Congressional Relations Officer.

At the outset, I will take this opportunity to thank you and Senator Baucus for enabling me, Vice Chairman Okun, and Commissioners Lane and Pearson to brief a significant number of Committee staff with respect to our budgetary needs. During my nearly eight years at the Commission, this Committee has always been most supportive of our agency.

**Mission and Function**

The U.S. International Trade Commission is an independent, nonpartisan agency, with a wide range of trade-related mandates. The trade laws we administer include investigating the effects on the domestic industry of dumped and/or subsidized imports. We also conduct global safeguards investigations. In addition we conduct intellectual property-based import investigations involving imported goods that allegedly infringe intellectual property rights that include patents, trademarks and copyrights. We also administer what is commonly known as the China safeguards statute. Through such proceedings, the Commission works to facilitate a rules-based international trading system.

The Commission also serves as a Federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis is provided to the President, the Office of the United States Trade Representative (USTR), and the Congress who shoulder the responsibility for formulating and implementing trade policy. The Commission is authorized to make most of this information and analysis available to the public to promote better understanding of international trade issues.

The mission of the Commission is to (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, USTR, and the Congress with independent, quality analysis, information, and support on matters of tariffs and international trade and competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States (HTS). In so doing, the Commission serves the public by implementing U.S. law and contributing to the development of sound and informed U.S. trade policy.

### **Budget Request for FY 2007**

Our FY 2007 appropriation request is for \$64,200,000. This is a 3.6 percent increase over our FY 2006 net appropriation of \$61,950,000. The FY 2007 request is actually lower than our original FY 2006 request. However during FY 2005 the Commission revised its request downward for FY 2006 by \$2,750,000 by letter dated May 21, 2005. I have brought a copy of that letter with me and ask that it be included in the record of this hearing along with the full text of my prepared statement. We have previously provided that letter to Committee staff during our briefing sessions. That revision was primarily the result of a developing surplus in FY 2005, not a reduction in our FY 2006 requirements.

The FY 2006 appropriation was further reduced by two across-the-board rescissions at the end of the appropriation process (one in our appropriation bill and the other in the Department of Defense omnibus bill). As I just stated, our FY 2006 net appropriation was \$61,950,000.

### **Cost Increases Beyond the Control of the Commission**

Assuming stable staffing, nearly 93 percent of the Commission's budget is for the most part fixed for FY 2007. It is comprised of salaries (57 percent), benefits (13.8 percent), rent set by GSA (10 percent), and required contract support services (12 percent), such as security services and network services.

Increased costs in FY 2007 and beyond for these categories of expenses are the principal cause of increased budget requirements and are driven by external factors over which the Commission has no control. I refer to the fact that salaries increase based on the Federal pay raise coupled with earned step increases. Benefits increase with salaries, but also because of increased health insurance costs and the shift in our mature workforce from Civil Service Retirement System (CSRS) to Federal Employees Retirement Systems (FERS). CSRS employees cost us 8.45 percent of salary while FERS employees, who ultimately replace them, cost 23.35 percent. Rent increases are driven by GSA's cost of leasing our building. I note that we will have a new 10 year lease beginning in August of 2007 and we have been told to expect an increase of about 12 percent above the FY 2007 rate. Labor rates on recurring service contracts increase as a result of required increases in broad categories of labor charges as determined by the Department of Labor.

In FY 2007, we anticipate that personnel expenses will increase by \$1,385,000, or 3.1 percent. This assumes a Federal pay raise of about 2.2 percent, the lowest pay raise in at least 5 years. Benefits will go up by \$510,000 which represents an increase of 6.1 percent due to rising health care costs and the shift of employees from CSRS into FERS as previously mentioned. Rent will go up by \$260,000 in FY 2007 an increase of about 4.2 percent, but as noted, our lease must be renewed, and we are already on notice that our costs will increase significantly in August 2007.

Our overall expenditure plan level remains virtually unchanged. The reason is that cost increases will be offset by reductions elsewhere in our budget. For example, expenses for two-year term employees have been eliminated corresponding to a decline in five-year sunset investigative activity in FY 2007. This adjustment saved \$250,000. Non-personnel expenses will decrease by \$1,330,000, or 6.6 percent. Services costs are declining by 16.4 percent or \$1,510,000 as a number of information technology and human resource projects have been completed. As a result, costs dropped to maintenance levels. Further, equipment purchases will decline by 22.4 percent, or \$314,000, as we complete major cyclical infrastructure replacement projects.

#### **Commission Caseload Estimates are Reasonable**

Our FY 2007 budget request is premised on fairly conservative caseload estimates. We are not projecting increases in our caseload over the current level. Current caseload levels, however, are relatively high compared to historical averages, for each of the three categories of investigation (Import Injury, Intellectual Property, and Industry and Economic Analysis).

We estimate that Import Injury caseload will decline when the second cyclical set of sunset reviews is completed in FY 2007. Also, we anticipate that the substantial increase in Intellectual Property caseload that has persisted for several years will stabilize. Similarly, we estimate that the Industry and Economic Analysis workload will remain fairly stable. While we are prepared to meet the challenge of increased caseload, should it arise, the requested funding level does not allow for additional staff beyond our current staffing plan. Any significant increase in caseload over the current levels, if it persists for more than a couple of months, would put a serious strain on our resources.

#### **Flexible Staffing in Response to Variations in Caseload**

The Commission's staffing needs are driven by the demands of its investigative workload. Over 80 percent of the Commission's annual costs are attributed directly or indirectly to investigative activity. The Commission has met changes in caseload by shifting resources to areas of need, rather than increasing overall staffing levels. Only when caseload exceeds our overall capacity and potential internal reassignments have been exhausted, do we hire additional staff. In those instances, we normally hire two-year term employees, rather than permanent staff. As of today, we have 363 permanent positions occupied.

**The Effect of the Sunset Cycle**

Overall activity levels throughout the Commission are influenced by a five-year cycle with a variable caseload tied to transition sunset reviews. The sunset provisions require a review of every outstanding antidumping (AD) and countervailing duty (CVD) order every five years as long as the order remains in effect. When the requirement for sunset review was first established in 1995, more than 300 orders in effect were reviewed by the Commission during the transition period from 1999 to 2001. This resulted in 108 consolidated investigations that were completed in 2001.

The transition sunset orders that remained in effect as a result of the first round of reviews returned for a second round beginning in late FY 2004. They reached sustained high levels in FY 2005 and will remain at those levels through midyear FY 2007. Increased activity due to transition sunset reviews requires increased resource allocations, including the transfer of resources from other areas within the agency, on a cyclical basis.

As a result of the second round of transition sunset reviews, the average number of active import injury investigations per month has increased from the low teens during FY 2004 to the low 20s for FY 2005. The monthly average is expected to remain at that elevated level through midyear FY 2007.

The import injury caseload peaked as expected, and will continue through midyear FY 2007. A 50 percent decline in new petitions for import injury investigations in FY 2005 alleviated the staffing pressure somewhat. That allowed the Commission to meet the overall increase in caseload with temporary internal reassignments. The need to hire two-year term employees to meet the demands of the peak sunset cycle proved unnecessary.

The decline in new import injury filings and the decision not to hire two-year term employees contributed to the Commission's higher than normal surplus in FY 2005 and the subsequent downward adjustment in its FY 2006 appropriation request. As a result, while the FY 2007 request assumes a gradual increase in new filings in the direction of the historical average, it does not provide for increased two-year term appointments.

**IPR Cases Spiked and Continue at High Level**

For intellectual property-based import investigations, activity levels were already at historically high levels when new filings surged during the latter half of FY 2004. Prior to FY 2001, the Commission averaged about 15 active intellectual property-based import investigations per month for years.

A surge in new filings began during FY 2001, when the caseload exceeded 30 active cases and ancillary proceedings per month. From FY 2002 through FY 2004, the number of active cases per month stabilized in the low 20s, but new filings surged again in FY 2005. The number of active cases and ancillary proceedings per month was above 30 for almost that entire year. As of the end of March, 2006 there were 34 active proceedings pending.

Given the specialized nature of these investigations, internal reassignments could not meet this demand. Additional staff has been hired in the affected offices during the last few years. The additional positions consisted of a fourth Administrative Law Judge, several intellectual property attorneys, and office support staff. These positions were added without increasing the overall staffing levels at the Commission.

#### **Ramp-Up in FTAs Increases Commission Workload**

Requests for Industry and Economic Analysis investigations, especially expedited resource-intensive studies related to bilateral free trade agreements, have increased steadily in the last few years. Many of these investigations result in the production of National Security Information (NSI) classified materials that are more costly to process and make timely collaboration more difficult.

While the workload remains high in this area, discretionary activity has been curtailed in order to facilitate reassignments to the import injury area to assist with transition sunset reviews. Caseload for this activity has increased significantly in recent months, commensurate with the increase in bilateral free trade negotiations.

#### **Maintenance of the HTS and Production of Bill Reports**

While the investigative caseload consumes over 80 percent of Commission resources, the Commission also is responsible for maintaining the Harmonized Tariff Schedules and providing advice to Congress regarding the impact of miscellaneous tariff bills. In FY 2006, the Commission expects to provide advice to Congress on over 700 tariff bills. The Commission also provides direct technical assistance at the staff level to both Congress and USTR on a wide variety of trade-related matters.

**Details of the Increase in Salaries**

All of the requested budget increase in FY 2007 is tied to salaries and benefits of Commission employees. While the Commission's staffing plan will not increase in FY 2007, salary costs are expected to increase by 3.1 percent. This increase is due to three factors: (1) the expected Federal pay raise of 2.2 percent, (2) a marginal increase in on-board staffing levels (lower vacancy rate) compared to FY 2006, and (3) within-grade increases and promotions.

The FY 2006 expenditure plan assumes an average 9 percent vacancy rate. The vacancy rate was above 10 percent through the end of January, but the current vacancy rate is just over 8 percent. The FY 2007 expenditure plan assumes an 8 percent average vacancy rate.

**Details of Benefits Costs Increases**

Benefits costs are expected to increase by more than 6 percent in FY 2007. Most benefit costs consist of retirement programs. The cost of retirement programs is increasing due to increased salaries and changes in the composition of the workforce. Increasing numbers of employees are retiring and the Commission's cost of retirement programs for new employees is significantly higher than for certain older employees.

Employees hired before 1984 are part of the CSRS. The Office of Personnel Management provides about two-thirds of the retirement costs of the CSRS employees; the Commission only pays 8.45 percent of salary. Employees hired after 1984 are covered by the FERS. The Commission pays the full cost of FERS retirement benefits, which currently is 23.35 percent of salary.

As the Commission loses CSRS staff to retirement and replaces them with new FERS employees, the retirement benefits cost for each employee increases from 8.45 to 23.35 percent of their salary. The cumulative effect of the increasing proportion of FERS staff by itself is an increase in benefits costs of between \$200,000 and \$300,000 per year.

In addition to the increase in retirement benefits costs, health insurance costs, which constitute about 22 percent of total benefits costs, have increased by more than 10 percent in each of the last two years. They are projected to increase at that rate through FY 2007.

### **Expenditure Plan Levels Are Unchanged in FY 2007**

The Commission's Expenditure Plan for FY 2006 totals \$64,145,200. This includes the Commission's net FY 2006 appropriation and an FY 2005 carryover of \$2,194,000. Our FY 2007 budget request of \$64,200,000 is virtually unchanged from the current level. The FY 2005 carryover was unusually high due to lower than projected personnel costs in FY 2005. Personnel costs were lower due to a decline in new import injury filings and an unusually high vacancy rate (above 10 percent). We do not expect a significant carryover at the end of the current fiscal year.

### **ITC Retroactively Cut FY 2006 Request**

The Commission notified the House and Senate Appropriations Committees on May 21, 2005 (with copies to both authorizing committees) that its FY 2006 request should be lowered by \$2,750,000. This was due to a projected larger than normal FY 2005 end-of-year balance because of a higher vacancy rate coupled with lower two-year term costs than anticipated. The Commission normally has a carryover of \$500,000 or less. Also, vacancy rates that averaged between 5 and 7 percent have increased in the last few years.

### **FY 2005 Surplus and the Vacancy Rate Increases in Recent Years**

The decline in new import injury cases allowed the Commission to meet the transition sunset workload without hiring additional two-year terms. The high vacancy rate during FY 2005 was attributable to several events:

- (1) increased retirements due to the demographic phenomenon of over one-third of the Commission workforce reaching retirement age, and subsequent actual retirements in significantly increased numbers;
- (2) delays in filling vacancies pending final approval of the Commission's Human Capital Staffing Plan, and the organizational changes incident to the approval of that plan (that plan was approved in the spring of 2005 and recruitment efforts are underway to fill most positions that are currently vacant); and
- (3) the hesitancy of the Commission to fill permanent vacancies during periods of extended Continuing Resolutions (CRs). During the last several years, CRs have run from 3-6 months, effectively causing us to stop recruitment activity during that time. Commission staff are ever mindful of the reduction-in-force that occurred here in 1995.

While the Commission's long term staffing plan calls for fewer permanent staff positions, a declining vacancy rate in FY 2007 should result in more occupied positions than in either FY 2005 or FY 2006. The FY 2007 appropriation request assumes that the Commission will marginally reduce its vacancy rate to 8 percent, but that rate will still be above the historical norms.

**Closing**

Mr. Chairman, I greatly appreciate the opportunity to appear before the Committee today to summarize the details of our FY 2007 budget request and I will do my best to respond to questions. I note that attached to my testimony is a list of what I identify as risk items that are not covered in our \$64,200,000 request.

### **Risks not Covered**

The Commission's appropriation request is fiscally prudent, but there is no contingency fund. The Commission's expenditure plans fully allocate available resources to meet real needs. In doing so, the Commission accepts the risk that certain events may occur that adversely impact our financial condition. The risks not covered in the FY 2007 budget request are:

- A significant rescission at the end of the FY 2007 budget process
- Increased workload that requires additional staff, particularly in Intellectual Property investigations
  - Unanticipated Salary increases
    - If the vacancy rate drops below 8 percent
    - If there is a salary increase greater than 3.2 percent (either base increase, locality adjustment or both)
- Larger than normal increase in Benefits
  - A faster shift to FERS due to increased attrition/retirements
  - Larger than anticipated increases in health insurance costs
- Larger than expected increase in Space Rental
  - If the new lease with GSA results in increased monthly costs in August and September of 2007
  - If real estate tax increases are higher than normal
  - If there are significant unplanned costs associated with new lease
  - If there are space costs associated with our Continuity of Operations (COOP) Plan or the four Administrative Law Judges need additional courtroom space due to increased caseload
- If there are significant unplanned Information Technology (IT) expenses
  - If new IT service requirements arise
  - If there is any major hardware or system failure
  - If there are increased requirements for IT to change methods for processing National Security Information (NSI)
  - If there are additional unforeseen costs to comply with Federal Information Security Management Act (FISMA) audit findings
- If there are unexpected security cost increases
  - If more guard hours are required outside of normal working hours or additional guards during normal working hours
  - If there are higher than expected costs of implementing new government personal identity verification (PIV) requirements
- Any other unanticipated major equipment costs

CHAIRMAN




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 UNITED STATES INTERNATIONAL TRADE COMMISSION
 

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WASHINGTON, D.C. 20436

May 24, 2005

The Honorable Richard C. Shelby  
 Chairman  
 Subcommittee on Commerce, Justice, and Science  
 Committee on Appropriations  
 S-146A, the Capitol  
 United States Senate  
 Washington, DC 20510

Dear Mr. Chairman:

The U.S. International Trade Commission requests that you reduce our FY 2006 Appropriation Request from \$65,278,000 to \$62,528,000. This reduction is manageable due to a projected \$2.0 million personnel surplus on the current FY 2005 Expenditure Plan and a lower estimate, by \$750,000, of our personnel requirements for FY 2006.

We are generating a \$2.0 million surplus in this year's budget due to the decline in new filings of antidumping and countervailing duty (AD/CVD) investigations; and a substantially higher than normal vacancy rate in authorized positions. We plan to carry this surplus forward to FY 2006 to lower the need for additional appropriated funds.

In our FY 2006 Budget Justification, we noted the decline in new AD/CVD filings and observed that it "will probably lead to a higher than normal surplus." Budget Justification at 6. The Commission anticipated a normal level of new AD/CVD investigations, in addition to a scheduled peak load of transition sunset reviews. We planned to add a limited number of term employees to meet the peak sunset workload. While the sunset workload has increased as predicted, the decline in new filings has persisted. This has allowed the Commission to shift permanent staff resources to meet the sunset increase and has limited the need for term employees.

We also noted in our FY 2006 Budget Justification that we have had a substantially higher than normal vacancy rate, but anticipated hiring additional employees during FY 2005 to meet critical personnel gaps and to prepare for the sunset increase. While we have been filling positions and our vacancy rate has declined substantially during FY 2005, the vacancy rate remains comparatively high due to increased retirements and some difficulties in filling key positions. Thus, we are generating a current surplus in the permanent staff account as well.

The Honorable Richard C. Shelby

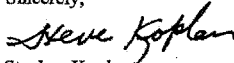
Page 2

For FY 2006, we expect we will be close to our normal vacancy rate, but we do not believe we will need the requested level of term employees. Rather than the \$1,000,000 in term employees that we originally requested, we believe that \$250,000 will be sufficient. Thus, our FY 2006 requirements will be \$750,000 less than we requested.

The net effect of these two factors is a reduction in our FY 2006 appropriation request of \$2,750,000. As we stated in our FY 2006 Budget Justification: "the Commission will keep the appropriations committees fully apprised of any projected FY 2005 surplus and any revisions to the expected FY 2006 caseload estimates so that appropriate adjustments to the budget request can be made in a timely fashion."

Please contact Nancy Carman, Congressional Relations Officer, on 205-3151 or Stephen McLaughlin, Director of Administration, on 205-3131, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Steve Koplan". The signature is written in a cursive, slightly slanted style.

Stephen Koplan  
Chairman

cc: House Ways and Means Committee  
Senate Finance Committee

**RESPONSES OF USITC CHAIRMAN STEPHEN KOPLAN TO  
QUESTIONS FOR THE RECORD**

**United States Senate  
Committee on Finance**

**Hearing on  
“Authorizations of Customs and Trade Functions”  
April 26, 2006**

**QUESTION FOR CHAIRMAN KOPLAN FROM SENATOR GRASSLEY**

1. You note in your testimony that the Commission revised its fiscal year 2006 budget request downward by \$2.75 million dollars. Do you anticipate that the circumstances that led the Commission to request that downward revision will recur in the future?

**RESPONSE**

No, we do not anticipate recurrence of the circumstances that led to the revision of our FY 2006 budget request.

The downward revision to the FY 2006 budget request was attributable to the build up of a large surplus during FY 2005. This surplus was, in turn, due to an unusually high average vacancy rate, which was almost 4% higher than the budgeted 7% rate, and the decision not to hire additional two-year term employees to deal with the sunset caseload.

We do not anticipate a significant budget surplus in FY 2006. Our average vacancy rate is currently at the projected/funded level of 9% and we eliminated additional two-year terms from the FY 2007 budget request.

**QUESTIONS FOR CHAIRMAN KOPLAN FROM SENATOR BAUCUS**

1. Evaluating trade effects is relatively easy if you only have to consider straight-forward reductions in tariffs. But we all know that other kinds of barriers –non-tariff measures like import licensing systems, unjustified technical requirements, and production-distorting policies – have a sizeable impact on trade. Innovative approaches are necessary for estimating the effects of these measures. What is the ITC doing to remain at the forefront of trade analysis?

**RESPONSE**

**ITC's Work Program in Non-Tariff Measures**

We have been recognized at the forefront of analysis of non-tariff measures (NTMs) since the early 1990s. We were among the early pioneers in the use of various methods to assess the effects on trade of policies other than tariffs, notably “price-gap” analysis.<sup>1</sup> That analysis derives the price-raising impact of NTMs by

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<sup>1</sup> Linkins, Linda A. and Hugh M. Arce (1994), “Estimating Tariff Equivalents of Nontariff Barriers,” USITC Office of Economics Working Paper 94-06-A (June).

examining the difference between domestic and world prices after adjusting for shipping and distribution costs. The resulting “tariff equivalents” of NTMs can be used to estimate their impact on trade, production, employment, and welfare. This method has been regularly applied in the “Import Restraints” studies of U.S. trade policies requested of us by the Office of the U.S. Trade Representative<sup>2</sup> to analyze such policies as the Agreements on Textiles and Clothing and tariff-rate quotas in agriculture. Our approach has been previously vetted, and is now recognized internationally as exemplifying a suitable methodology.<sup>3</sup>

Our concerns about NTMs imposed by U.S. trading partners led to our organizing an international conference in Washington, D.C. on estimation and modeling of NTMs in the Asia-Pacific region in 1998.<sup>4</sup> At the request of Canadian officials, we were invited to present the proceedings to the Asia-Pacific Economic Cooperation’s (APEC) Market Access Group in 2001. During this time, our Office of Economics initiated the “NTM Project” in an attempt to produce a comprehensive set of price gaps for foreign goods in different regions and industries using statistical methods. The first results of this were presented at an APEC workshop in Bangkok, Thailand in 2003, which was co-sponsored by Australia and the United States and co-organized by the ITC and Australia’s Productivity Commission. APEC has published the proceedings of this workshop.<sup>5</sup> Our staff has estimated that global removal of specific classes of NTMs<sup>6</sup> could yield over \$90 billion in benefits. The technical papers from the NTM project, which is ongoing, are available on our website (usitc.gov), have been presented at the International Monetary Fund and the World Bank, and appear prominently in a recent Organisation for Economic Co-operation and Development review of the literature.<sup>7</sup> The lessons learned from this research are currently being applied to provide more focused estimates of the effects of NTMs in potential U.S. FTA partners, which are intended to enhance our Section 2104 studies for Congress on these agreements.

The analysis of trade facilitation is closely related to NTMs, since trade facilitation often consists of removing barriers and inefficient practices in customs, shipping, and other aspects of the global supply chain. We have pioneered econometric analysis of the effects of removing supply-chain barriers and inefficiencies in two recent studies on express delivery and logistic services.<sup>8</sup> The potential gains from trade facilitation are very large. Our future work plans include focusing increasingly on understanding and analyzing gains from reform and barrier removal in the global supply chain.

Our research has also advanced understanding of non-tariff barriers in other service industries. We have conducted research in the telecommunication services sector to estimate the tariff rate equivalents of NTMs affecting international trade and investment. This research was published in our quarterly journal,

<sup>2</sup> *The Economic Effects of Significant U.S. Import Restraints: Fourth Update 2004*, USITC Publication 3710, June 2004, continued a series of studies that were released in 1993, 1995, 1999, and 2002.

<sup>3</sup> Deardorff, Alan, and Robert M. Stern (1998), *Measurement of Nontariff Barriers*. Ann Arbor: University of Michigan Press.

<sup>4</sup> *The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers to Trade*, USITC Publication 3101, April 1998.

<sup>5</sup> Dee, Philippa, and Michael J. Ferrantino, eds (2005). *Quantitative Methods For Assessing the Effects of Non-Tariff Measures and Trade Facilitation*. Singapore: World Scientific for APEC Secretariat.

<sup>6</sup> Specifically, import quotas; prohibitions; non-automatic licensing; voluntary export restraints; prior authorizations for human or animal health, environment, etc.; import surcharges; and customs measures considered to be impediments to trade.

<sup>7</sup> Ferrantino, Michael J., “Quantifying the Economic Effects of Non-Tariff Measures,” OECD Trade Policy Working Paper No. 28 (January), TD/TC/WP(2005)26/FINAL.

<sup>8</sup> *Express Delivery Services: Competitive Conditions Facing U.S.-Based Firms in Foreign Markets*, USITC Publication 3678, April 2004, and *Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*, USITC Publication 3770, May 2005.

“Industry Trade and Technology Review,”<sup>9</sup> and subsequently in the World Trade Review, a publication of the World Trade Organization.<sup>10</sup> More recently, we developed tariff rate equivalents for commercial banking services, placing this research in our annual publication “Recent Trends in U.S. Services Trade.”<sup>11</sup>

We are also enhancing our expertise in the area of technical requirements for agricultural products, such as sanitary and phytosanitary measures (SPS) that are not based on sound science, and other NTMs that distort agricultural trade. As part of this activity, we plan to construct a database of SPS measures and other technical requirements in order to examine how such policies affect the prices and flow of trade. In addition, we are utilizing the skills of our industry analysts and economists to fine tune our economic models to better examine how liberalization of agricultural support policies in countries such as the United States and the EU member countries would affect trade.

2. How is the ITC coping with the significant rise in intellectual property-related import cases? Do you have the resources you need to manage the workflow?

#### RESPONSE

The Commission has indeed experienced a substantial increase in its Section 337 intellectual property caseload in recent years. To meet this increase, since FY 2002, the Commission has added several legal positions in offices that work on Section 337 matters, particularly in the Office of Administrative Law Judges, the Office of Unfair Import Investigations, and the Office of General Counsel. Although the Commission’s intellectual property caseload is expected to remain at a high level throughout FY 2006 and FY 2007, we are not presently projecting continuing increases in the number of active investigations. Essentially, we are assuming that the caseload will stabilize at the historically high levels we have experienced in the last several years. If, however, the Section 337 caseload does continue to rise, the Commission’s resources in this area will be strained and additional personnel and space will likely be needed to meet increased workload demands.

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<sup>9</sup> USITC, *Industry Trade and Technology Review*, USITC Publication 3661, Nov. 2003.

<sup>10</sup> Brown, Richard W., and Robert M. Feinberg, “The Measurement and Effects of Barriers to Trade in Basic Telecommunication Services: the Role of Negotiations,” *World Trade Review* 3:2 (2004).

<sup>11</sup> USITC, *Recent Trends in U.S. Services Trade* (forthcoming).



**Testimony of Underwriters Laboratories Inc.  
to the  
Senate Committee on Finance**

**Hearing On:  
Authorizations of Customs and Trade Functions  
April 26, 2006**

**Statement of  
Brian Monks  
Director, Anti-Counterfeiting Operations, Underwriters Laboratories Inc.  
Board of Directors, International Anti-Counterfeiting Coalition**

Chairman Grassley and distinguished committee members, thank you for this opportunity to appear before you, to offer Underwriters Laboratories Inc.'s (UL) perspective on the critical role of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) in the fight against counterfeiting. Counterfeiting threatens health and safety of people and property, undermines the economy, and funds organized crime and terrorism. Ensuring that appropriate resources are dedicated to CBP and ICE is critical because these agencies are our first and best line of defense in preventing unsafe counterfeit products from reaching the United States marketplace and in penalizing the counterfeiters. The following testimony aims to provide you with anecdotal evidence of how CBP's and ICE's efforts have kept tens of millions of dollars worth of products bearing counterfeit UL Marks off the market, and with general recommendations on how additional funding could enhance their work and further protect the American public.

#### **Underwriters Laboratories Inc. in Brief**

For 112 years, UL's mission has been the protection of human life and property from product risks and hazards. UL is an independent, not-for-profit product safety testing and certification organization. Founded in 1894, UL has earned a reputation as a global leader in product safety standards development, testing, and certification. UL evaluates tens of thousands of products, components, materials, and systems for compliance to specific requirements, and enables manufacturers and the public to benefit from products that meet standardized safety requirements. In 2005, an estimated 20 billion products entering the global marketplace carried the UL Mark

#### **What is UL's Stake in Anti-Counterfeiting Enforcement?**

Make no mistake – we are in a battle. Product counterfeiting threatens health and safety, undermines the economy and funds organized crime and terrorism. Electrical products bearing counterfeit safety certification Marks are particularly egregious because they lull consumers into a false sense of security. We cannot let the counterfeiters win. Consumers, local and federal authorities, and retailers all look for the UL Mark to see whether products have met the appropriate safety standards.

We aggressively protect the integrity of the UL Mark against counterfeiters. We maintain a strict zero-tolerance policy, which states:

*"It is the policy of Underwriters Laboratories Inc. (UL) not to consent to the importation, exportation, or manipulation of merchandise that has been seized by Customs and Border Protection or any other international law enforcement agency for bearing counterfeit UL Certification Marks. This policy is uniformly applied and is considered reasonable and necessary in order to protect the integrity of UL's Registered Marks. UL does not compromise or negotiate with respect to this policy."*

### **How Does CBP's Work Affect Our Anti-Counterfeiting Program?**

More than a decade ago, UL launched a formal anti-counterfeiting program in recognition of the growing threat of counterfeits and the potential health and safety risks. Since that time, UL has worked closely with CBP and ICE (previously U.S. Customs) to eliminate trade in counterfeit goods and prosecute counterfeiters and distributors of counterfeits.

CBP officers are our first and best line of protection in this fight. Left unchecked, counterfeiters can and will flood the US market with poor quality, hazardous electrical products, endangering the lives and property of millions of consumers. Products like low-cost, high-volume extension cords can be purchased for under a dollar at discount stores across the country. Fortunately, the counterfeit one I have with me today never made it into the marketplace; someone trying to use this might have started a fire. To properly conduct current, an electrical cord requires wire of a certain thickness. The wire in these cords is so thin that there is no way they can properly conduct the current and will eventually overheat, melt and potentially catch fire. Why did this extension cord not make it to the marketplace? Because of CBP's vigilance; CBP determined that the product was counterfeit and seized this extension cord and the thousands of other cords like it. They make roughly 100 UL-related seizures each year, with an estimated value of millions of dollars. After a seizure has been completed, UL uses the information provided by CBP to determine the product's origin and to identify others in the supply chain in order to take appropriate legal action against the counterfeiters.

During a routine inspection at the San Francisco International Airport, a CBP officer detained an individual bringing in five suitcases containing "undeclared" goods. Examination revealed that the suitcases actually contained 1500 counterfeit circuit breakers. These breakers will not protect house wiring and pose a serious potential fire hazard. One average cargo container holds approximately 186,000 breakers. Stopping these products before they enter the stream of commerce is vital in the protection of consumer safety.

UL's anti-counterfeiting program has become among the most successful in the world. CBP's hard work and dedication have been a major factor in our success. They have welcomed our training initiatives and materials and have taken up our fight as their own. Over the last decade, they have seized more than 1,200 shipments of products bearing counterfeit UL Marks, or, put another way, literally millions of extension cords, power strips, nightlights and other poor quality electrical merchandise.

### **What Do We Need for CBP to Sustain (or Enhance) Its Effectiveness?**

In 1995, before UL approached CBP for assistance, seizures of consumer electrical products were minimal. By 2000, seizures of consumer electronics had climbed to three percent of total seizures. Recently released statistics for 2005 reveal that seizures of consumer electronics jumped to comprise 9 percent of total seizures and are now the fifth most-seized product category. These numbers do not surprise UL,

as they reflect CBP's increased vigilance and recognition of the clear and present threat that counterfeit electrical products pose. We support the priority that CBP places on seizing counterfeit goods.

This vigilance must be maintained, and ideally increased. Why? Because counterfeiters believe that they can flood the American market with shoddy counterfeits with impunity. More criminals are turning to counterfeiting as the crime of choice – margins are high and risk is low. Counterfeiters know the profit potential of supplying consumer electronics and will exploit that potential until it is no longer lucrative.

This means an increase in the resources dedicated to CBP counterfeit seizures. Over the past 4 years, UL has seen a general decrease in the number of staff at ports dedicated to counterfeit surveillance. At a minimum, *UL would encourage that additional staff and resources be dedicated to ports*, particularly those ports known to be high counterfeit traffic zones. For UL, top priority ports include Terminal Island/Long Beach, California (23 percent of UL-related CBP seizures); Miami, Florida (at 22 percent); Anchorage, Alaska (at 10 percent); Dallas, Texas (at 10 percent); and Newark, New Jersey (at 8 percent).

UL also supports measures that would *help CBP keep pace with the sophistication of counterfeiters*. This means investing in training to help CBP staff understand changing authentication technologies and in equipment that helps them more readily assess the authenticity of products and Marks. Counterfeiters are becoming more and more savvy. They know our laws and our procedures and they know how to exploit loopholes. If we lower our guard, then counterfeiters will take advantage of that. They can make better-looking copies and can more successfully duplicate security features.

UL supports the Coalition Against Counterfeiting and Piracy (CACP) recommendation for increased risk-based modeling in cargo screening for trafficking of counterfeit goods. We support any technology-based solutions that make CBP processes more streamlined and effective. But because technology works to the benefit of counterfeiters as well, nothing can beat hands-on inspection of cargo as it crosses our borders.

#### **How Does ICE's Work Affect Our Anti-Counterfeiting Program?**

CBP works to prevent the entry of counterfeit goods. ICE's work in identifying criminal activities and eliminating vulnerabilities that pose threats to our nation's borders both complements and enhances the work done by the CBP. An ICE investigation normally begins with a seizure by CBP. These agencies are most effective against counterfeiters when they are able to work hand in glove.

Shipment seizure alone is not enough to deter these criminals. To some, a seized shipment is simply the cost of doing business. They write off the loss and ship to a

different port. Prosecution and jail time, however, may pose risks they are not willing to take.

UL was recently involved in two cases that highlight just how effective CBP and ICE can be when working in tandem. Instigated by a 2003 CBP seizure, ICE conducted an investigation of XYZ Trading Corp. in Houston, TX. The investigation resulted in XYZ's owner, Zheng Xiao Yi, receiving convictions for six counts of trafficking and attempting to traffic in merchandise carrying counterfeit trademarks. Additionally, the jury found that Mr. Zheng had consciously and recklessly ignored the risk of serious bodily injury to the public. There is evidence to suggest that Mr. Zheng attempted to bribe his way to freedom after authorities learned that he was also the subject of an outstanding immigration warrant. Mr. Zheng was sentenced to 63 months in a federal prison and faces deportation upon his release.

Last year in Miami, a federal grand jury inducted five individuals on three separate charges involving the importation and sale of counterfeit goods. On December 13, 2005, ICE agents raided the defendant's homes, warehouses and the flea market booths where the products were sold. The merchandise seized, which included electrical cords, batteries, handbags, watches, clothing, footwear and other items, was valued at over \$24 million.

#### **What Do We Need for ICE to Sustain (or Enhance) Its Effectiveness?**

As the examples above demonstrate, CBP and ICE together make a stronger impact together than either working alone. With the proper funding, resources and direction to partner on these issues, we believe that many more successes of this kind can be achieved. These two cases send a clear message that trafficking in dangerous counterfeit goods will not be tolerated and that the penalties will match the crime. It is our hope that the combined efforts of CBP and ICE will act as a strong deterrent to counterfeiters while safeguarding the American public from the hazards associated with these products.

#### **CBP and ICE as Models for Counterparts in Other Countries**

Consideration should also be given to enhancing existing government-to-government cooperative endeavors with US trading partners by incorporating CBP's and ICE's anti-counterfeiting best practices into the mix, and appropriately funding them. Such cooperation is mutually beneficial, with both economic and public safety dividends.

In deciding which countries to prioritize for enhanced outreach, UL would recommend China as a top priority, followed by Canada. In 2005 alone, 80 percent of US Customs-seized counterfeits (related to UL) originated in China. With enhanced bilateral efforts underway to improve IPR enforcement, including that of the Joint Commission on Commerce and Trade, collaboration in this respect is relevant and

practical. UL would welcome an opportunity to support expanded US-China collaboration in this area.

**A Mission for Public Safety**

Americans understand that the post-9/11 world is a different place. UL is certainly cognizant of this fact and we applaud CBP's and ICE's dedication to protecting the American public against terrorists and the instruments of terror. As the CBP mission states, they are the guardians of our Nation's borders; they are America's frontline. The mission of ICE is to protect America and to uphold public safety. For 112 years, UL has been dedicated to promoting safe living and working environments. We believe that we all share a common goal – the safety of the American public. It is our hope that CBP and ICE will be supported adequately to sustain vigilance of not only terrorist threats but also the more subtle threats of counterfeits that ultimately jeopardize the same values and seek to undermine the American way of life.

Thank you, again, Mr. Chairman for affording UL this opportunity to share our perspectives on this important issue. UL would be happy to serve as a resource to you and your distinguished Committee colleagues as you consider ways to strengthen CBP's and ICE's anti-counterfeiting efforts.

**QUESTIONS FOR THE RECORD**

**United States Senate  
Committee on Finance**

**Hearing on  
“Authorizations of Customs and Trade Functions”  
April 26, 2006**

**QUESTIONS FOR MR. MONKS FROM SENATOR BAUCUS**

1. You noted in your testimony that counterfeiters of electronic products will spare no expense to exploit gaps in our targeting and investigative efforts. Merely seizing a shipment in one port does nothing to stop the larger racket that could involve multiple ports of departure and entry. Are Customs port personnel and the investigators at Immigration and Customs Enforcement connecting the dots –with one another? How has moving Customs investigators away from the rest of Customs personnel affected our efforts to shut down the flow of counterfeit and pirated products? Have there been benefits to splitting the agency? What are the drawbacks?

CBP’s and ICE’s predecessors worked seamlessly under the old integrated structure. While today’s structure may increase the risk of a disconnect, UL has so far not encountered this. But UL believes that our pre-existing relationship cultivated over more than a decade has preserved the continuity in CBP’s and ICE’s close collaboration on UL-related seizures. This includes a significant investment in anti-counterfeiting-related training programs. We cannot speak, however, to whether other companies have had similar or dissimilar experiences.

The split has mostly affected UL’s ability to offer integrated and cost-effective anti-counterfeiting training programs for CBP officers and ICE investigators. Today, fewer ICE investigators are able to participate in UL trainings.

2. A number of witnesses highlighted the failure of CBP to maintain adequate staffing levels at ports of entry (Customs and Border Protection Officers) as well as for trade facilitation and enforcement (Import Specialists, Entry Specialists, etc.). Do you believe that shortages of CBPOs have affected CBP’s ability to intercept counterfeit goods? In your opinion, are there enough import specialists evaluating the risks of counterfeit goods to enable better targeting?

Shortages of CBP officers indeed affect CBP’s ability to intercept counterfeit products. Prior to 911, there were many CBP officers engaged in Cargo Enforcement Teams (CET) and Merchandise Enforcement Teams (MET) at US ports that focused largely on intellectual property rights (IPR) responsibilities. For example, in Newark, New Jersey, the number of Customs staff with anti-counterfeiting responsibilities was roughly 30. Today, that number has dropped

dramatically to just a couple of individuals. This story is repeated at ports around the United States.

The trend is particularly troublesome when one considers the impact on the number of anti-counterfeiting-related examinations that physically can be conducted at a time when US imports have recorded double-digit growth in the past two years. Year-on-year total US imports increased nearly 14 percent in 2004 and nearly 17 percent in 2005. For China, those import rates are even more staggering. With counterfeiting traditionally correlated with trade volumes, we would expect to see an increase in seizures at US ports of suspect shipments. US Customs seizures of UL-related counterfeit products have remained flat, however, in recent years.

Counterfeiting has fallen in the portfolio of priorities for CBP and we would like to see heightened awareness paid to this national consumer safety issue. We believe that the number of import specialists, CBP officers, and ICE investigators dedicated to anti-counterfeiting efforts should be commensurate with trade levels. While computer targeting techniques for cargo inspection can be helpful for anti-counterfeiting efforts, there is no substitute for trained staff visually inspecting cargo. Import specialists aid CBP officers in targeting suspect shipments for inspection. When seizures are made, CBP furnishes information to ICE in order to determine if criminal investigations are warranted.



# U S. Immigration and Customs Enforcement

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**STATEMENT**

**OF**

**JULIE MYERS**

**ASSISTANT SECRETARY**

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

**BEFORE THE**

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

**REGARDING**

**"AUTHORIZATIONS OF CUSTOMS AND TRADE FUNCTIONS"**

**APRIL 26, 2006  
WASHINGTON, D.C.**

**10:00 A.M.**

**DIRKSEN SENATE OFFICE BUILDING 215**

**INTRODUCTION**

Chairman Grassley, Ranking Member Baucus and distinguished Members of the Finance Committee, my name is Julie Myers and I am the Assistant Secretary, U.S. Immigration and Customs Enforcement (ICE). I appreciate the opportunity to share with you today how ICE is applying its expertise and authorities to protect the American people from economic, criminal and terrorist threats that arise from our borders.

**THE ICE MISSION**

Within the Department of Homeland Security (DHS), ICE holds the most expansive investigative authorities and the largest number of investigators. ICE is the nation's principal investigative agency for violations of the law with a nexus to our borders, including violations of the laws governing trade and commerce.

Our mission is to protect the American people and our economy by combating those who seek to exploit our borders for criminal, business or terrorist purposes. Working overseas, along the nation's borders and throughout the nation's interior, ICE special agents and officers use ICE's unified immigration and customs authorities to identify, investigate, apprehend and remove transnational criminal groups and others who seek to move themselves and their supporters, their illicit proceeds, contraband and other illegal trade or weapons across the Nation's borders through traditional human, drug, contraband, commerce or financial routes and methods. Through these efforts, ICE

continues to make a strong contribution to our economic, border, homeland and national security.

#### **PROTECTING THE NATION'S GLOBAL COMMERCE**

The lawful movement of goods across our border is a foundational prerequisite for the continuing strength and integrity of our economy. This country seeks to create the conditions for maximum employment and economic prosperity through lawful international trade and the opening of new consumer markets to U.S. goods. At the same time, the growth of international trade and open border policies invites the increased risk of border security vulnerabilities and transnational economic crimes. ICE continues to apply aggressively its complete set of investigative authorities and capabilities to identify and defeat an array of threats to the U.S. homeland and our economy.

One of the most powerful new set of tools in the ICE arsenal of border security authorities, including those related to cross-border commercial fraud, were included in the recently passed reauthorization of the USA PATRIOT Act. The potential sentence for a violation of 18 USC 545 – Smuggling into the United States, was increased from five years to twenty years. That legislation also added, for the first time, an entirely new criminal charge for smuggling from the U.S.

By providing ICE with the additional tools necessary to more effectively investigate and combat smuggling and other commercial fraud violations, Congress has simultaneously strengthened ICE's ability to combat violent criminal

and terrorist organizations. On behalf of our special agents who work these important economic, border, homeland and national security cases, I thank you for this enhancement in 18 U.S.C. 545 and for your continuing strong support of ICE and our important mission.

At ICE, trade enforcement investigations fall under the purview of the Office of Investigations, Financial and Trade Investigations Division. Because most financial and trade violations that ICE investigates are motivated by profit, these crimes often are interlaced with conspiracies to earn, move and store illegal proceeds. ICE's Commercial Fraud and Intellectual Property Rights (IPR) Investigations Unit in this headquarters Division oversees these important investigations. ICE also has a cadre of dedicated and trained special agents assigned to the 26 ICE Special Agent in Charge offices across the nation, who specialize in investigating these violations. ICE also draws heavily upon our relationships with law enforcement partners around the world. We are able to do that because of ICE's global presence. Our special agents are deployed to 52 overseas Attaché offices. This global reach and our preexisting relationships with foreign law enforcement make it possible for ICE to effectively investigate commercial fraud investigations around the world.

Key to our investigative efforts at ICE is the strong support provided by our partners at U.S. Customs and Border Protection (CBP). By virtue of CBP's interdiction and regulatory mission on the nation's physical borders, that agency provides the bulk of investigative referrals that launch ICE commercial fraud and IPR investigations. ICE and

CBP also have a shared role in the process of identifying, investigating and issuing penalties that may accrue to violators under U.S. customs laws. While ICE and CBP work closely together in a number of areas, nowhere is that synchronization greater than in our cooperative effort to combat commercial fraud.

This close relationship is demonstrated by the decision in February 2004 to launch the joint ICE-CBP Commercial Enforcement Analysis and Response (CEAR) process to better ensure that commercial fraud violations were properly reviewed by both agencies, and that both agencies selected and coordinated the best response to these violations. The CEAR process includes both Headquarters and field working groups that make an early determination of the nature, extent and impact of the violation. These working groups are composed of both ICE and CBP personnel who are chosen as representatives of the various stakeholders within the agencies. The CEAR process ensures that significant commercial fraud violations receive priority. It further ensures that significant violations will be processed according to a clearly established set of national guidelines that have been agreed upon by both agencies. The CEAR process is an excellent example of the cooperation between ICE and CBP in carrying out our cooperative trade enforcement mission.

ICE Commercial Fraud and IPR investigative priorities are aimed at stopping predatory and unfair trade practices that threaten our economic stability, restrict the competitiveness of U.S. industry in world markets, and place the public health and safety of the American people at risk. These priorities include intellectual property rights, public health and

safety, textiles enforcement, in-bond diversion, tobacco smuggling, international trade agreements such as the North American Free Trade Agreement (NAFTA), anti-dumping, and general revenue fraud violations. I will address each in turn:

#### **INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT**

As the largest investigative arm of the Department of Homeland Security, ICE plays a leading role in targeting criminal organizations responsible for producing, smuggling, and distributing counterfeit products. ICE investigations focus not only on keeping counterfeit products off U.S. streets, but also on dismantling the criminal organizations that initiate, support and sustain this activity. IPR violations are direct threats to the engines of creativity and innovation that drive so much of the highly competitive, modern, global U.S. economy.

Estimates by industry and trade associations indicate that U.S. businesses lose as much as \$250 billion annually to counterfeiting and piracy. Some estimates indicate that five to eight percent of all the goods and merchandise sold worldwide is counterfeit. But as great as the monetary loss is, the loss of technology and trade competitiveness suffered by U.S. trademark and copyright owners is immeasurable. It impacts more than just the business community, however. In some instances, this crime also poses a direct threat to the nation's public health and safety with, for example, the illegal importation of unapproved, counterfeit pharmaceuticals.

The nature of the IPR criminal has also changed. ICE assesses that the number of criminal organizations involved in IPR crimes is growing because of the tremendous profits associated with the sale of counterfeit goods and because these organizations already have access to pre-existing smuggling infrastructures and routes. In some cases, these international organized crime groups take the enormous profits realized from the sale of counterfeit goods and use those profits to bankroll other criminal activities, such as the trafficking of illegal drugs, weapons and other contraband.

ICE agents use a variety of agency assets and resources to combat the counterfeiting problem. First, the National Intellectual Property Rights Coordination Center (IPR Center) was created in 2000 and is staffed with agents and analysts from ICE, CBP and the Federal Bureau of Investigation. The IPR Center, which is hosted by ICE, coordinates the U.S. government's domestic and international law enforcement attack on IPR violations. The IPR Center serves as the primary liaison between private industry and law enforcement in targeting IPR crimes.

ICE agents in the United States and abroad work closely with the ICE Cyber Crimes Center to combat the problem of piracy and related IPR violations over the Internet. The Cyber Crimes Center is ICE's state-of-the-art center for computer-based investigations, providing expertise and tools to help agents target Internet piracy. The Cyber Crimes Center coordinates its anti-counterfeiting efforts closely with the National IPR Center.

- In September 2003, ICE Gulfport, Mississippi, began an investigation, known as "Operation Spring," which grew to include the ICE Attaché in China, the ICE Office of Investigations in Houston, the IPR Center and the Internal Revenue Service. Chinese law enforcement soon joined the investigation, turning the case into the first undercover investigation conducted jointly by ICE and Chinese authorities. In July 2004, with the assistance of ICE agents, Chinese officials arrested Randolph Guthrie and several co-conspirators in China. Guthrie was considered by the Motion Picture Association of America to be the largest distributor of pirated DVD movies in the world, with sales over \$2 million annually. At the time of Guthrie's arrest, Chinese officials seized approximately 160,000 counterfeit DVDs valued at approximately \$3.5 million (U.S.) and the equivalent of approximately \$200,000 in U.S. and Chinese currency. In April 2005, Guthrie was convicted in a Shanghai court on criminal charges. He was sentenced to a jail term of 30 months in China, issued a fine of 500,000 Chinese Renminbi (equivalent to \$62,500 U.S.), and ordered deported from the country upon completion of his sentence. In late September 2005, Chinese authorities expelled Guthrie to the United States where he was arrested by ICE. He pled guilty in January 2006 and forfeited more than \$800,000. In March 2006, Guthrie was sentenced to 60 months in prison and 3 years of supervised release, and was fined \$15,000.
- In February 2005, ICE Attaché Beijing received information that Richard Cowley of Shelton, Washington, was linked to groups of individuals involved in the sale

of pharmaceuticals in the United States, the United Kingdom and other locations throughout Europe. This information led to the initiation of Operation Ocean Crossing, the second joint undercover enforcement operation with the Chinese. This operation targeted counterfeit pharmaceuticals being distributed via the Internet. In September 2005, Chinese authorities took action against the largest counterfeit pharmaceutical operation in China and 12 Chinese nationals were arrested. Three illicit pharmaceuticals facilities were shut down. Cowley was arrested in September 2005, and in February 2006, he pled guilty to importing counterfeit drugs.

#### **PUBLIC HEALTH AND SAFETY**

In addition to ICE's efforts to protect the health of the U.S. economy, many of our investigative cases have a direct impact on the physical health and safety of millions of Americans. By enforcing our trade laws governing the importation of pharmaceuticals and other goods destined for critical elements of our economy, ICE special agents help to guarantee the integrity of our medical, transportation and other critical infrastructure.

ICE Public Health and Safety investigations include multiple targeted investigative areas, including the illegal importation of commercial quantities of adulterated, counterfeit, diverted and/or unapproved pharmaceuticals; protected, endangered and non-native detrimental species; unapproved or non-compliant autos, automobile parts, aircraft parts and machinery; environmentally hazardous materials and chemicals; and, tainted

foodstuffs. These violations, if left unchecked, pose a dangerous risk to the health and safety of all Americans. For example:

- In January 2004, the ICE SAC/San Diego initiated a multi-agency investigation incorporating assets from ICE, the Food and Drug Administration, U.S. Postal Inspection Service, IRS and FBI, targeting various websites, Internet payment networks and pharmaceutical supply chains. The targets, *WorldExpressRx.com* and *MyRxForLess.com*, had in excess of 650 affiliated websites responsible for the illegal distribution via the Internet of more than \$25 million in counterfeit or unapproved pharmaceuticals in a three year period. To date, this investigation has resulted in 20 indictments and 18 convictions for various federal criminal charges. The primary violator, Mark Kolowich, was sentenced in January 2005 to 51 months imprisonment. More than \$1.4 million was seized. Prosecution of violators related to this investigation continues.

#### **TEXTILE ENFORCEMENT**

Within ICE, textile enforcement focuses on investigations of criminal and civil violations of customs laws through a variety of fraudulent schemes and practices, including false invoicing, false marking/labeling, false claims of origin, misclassification, false descriptions, and smuggling. Together ICE and CBP work to ensure that inadmissible goods are denied entry into the United States, that proper duties are paid, and that the trade complies with free trade agreements and legislative initiatives. While CBP is responsible for enforcing the legal

requirements of these agreements, and of other U.S. laws applicable to the textile industry, ICE investigates the criminal business enterprises and conspiracies that initiate, support and sustain the movement of goods in violation of our textile trade laws.

ICE also participates in Textile Production Verification Teams (TPVT) along with CBP. Since 1987, these teams have been deployed to foreign textile factories that claim to produce textiles that have been exported to the United States. The teams include both ICE special agents and CBP import specialists who are trained to verify production and manufacturing capabilities of the factories visited. In 2005, these teams visited a little over 400 factories in 11 foreign countries. Suspected violations were noted in a number of these factories. So far in 2006, these teams have made 6 out of 13 planned country visits.

- The SAC/Miami investigated TEX GROUP OF COMPANIES, INC., for conspiracy to divert/smuggle quota/visa restricted Chinese-manufactured wearing apparel into the United States via an in-bond diversion scheme. Win Yu LEE, a naturalized U.S. citizen and the President of TEX GROUP, conspired to smuggle over 300 containers of quota/visa restricted textile goods without payments of duties or having obtained quotas/visas. The diverted textile goods were valued at approximately \$43 million. In November 2005, LEE and TEX GROUP pled guilty to Conspiracy. In January 2006, LEE was sentenced to four years of unsupervised probation, and ordered to

pay a criminal forfeiture in the amount of \$5,393,579.36. The TEX GROUP was sentenced to four years probation, and a court fine of \$50,000.00.

#### **IN-BOND DIVERSION**

In-bond movements of merchandise are authorized by federal statute. The in-bond system allows merchandise not intended for entry into U.S. commerce to transit the United States or allows foreign merchandise to be entered at a port other than the port of importation. When conducted legally, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. However, the in-bond system has been exploited for the purposes of smuggling restricted, high duty and quota/visa merchandise into the United States.

In response to the vulnerabilities ICE and CBP have identified in the in-bond system, ICE and CBP have jointly implemented special enforcement operations, such as Operation Security Bond, which targets the illegal use of the in-bond system to smuggle merchandise. ICE and CBP also field Fraud Investigation Strike Teams (FIST) that target fraud within foreign trade zones and customs bonded warehouses. During these operations, ICE's enforcement of customs and immigration statutes has resulted in increased detection of commercial fraud violations and the identification and removal of undocumented aliens with unauthorized access to secure areas.

- In November 2004, ICE ASAC/ Laredo initiated an in-bond diversion investigation. ICE agents determined that Customs Broker Rosa E. Garcia was involved in the smuggling of Chinese-made clothing by diverting it from the in-

bond system. Garcia, a retired Fines, Penalties & Forfeitures Director for the Port of Laredo, arranged for the filing of false in-bond documents, and unlawfully diverted two shipments of wearing apparel to Los Angeles, California, instead of exporting them to Mexico. Garcia and a co-conspirator were indicted for smuggling. In March 2006, Garcia was sentenced to a term of 18 months in prison and 3 years probation.

#### **TOBACCO SMUGGLING**

International cigarette smuggling has become a lucrative criminal enterprise, resulting in the annual loss of billions of dollars in tax revenue and customs duties around the world. While the extent of cigarette smuggling in the United States is unknown, it is ICE's formal assessment that the volume of this illegal trade is significant. Cigarette smuggling activities attract international and domestic criminal groups with the lure of high profits and relatively low risk for prosecution. Smugglers under-report weight on shipments, undercount and undervalue shipments, and sometimes improperly mark the country of origin.

- Tobacco smuggling often involves false statements regarding shipments from foreign countries, the illegal manipulation of the in-bond system, and the improper storage of imported cigarettes. ICE works closely with CBP and foreign and domestic counterparts to investigate tobacco violations, and I would like to highlight a few ICE successes in this area: ICE SAC Baltimore and SAC Seattle initiated investigations of money laundering through the purchase of contraband

cigarettes. Stormy PAUL conspired with Rubens CARDOSO and others to smuggle cigarettes from Paraguay, and separately conspired with others to smuggle cigarettes from China. The investigations resulted in the arrests of 8 individuals. In March and April 2006, CARDOSO and six other defendants pled guilty to conspiracy to traffic in contraband cigarettes. PAUL is scheduled for trial in July 2006.

- The ICE SAC/El Paso investigated INTERNATIONAL TRADERS OF EL PASO (ITEP), the intended recipient of a large quantity of counterfeit cigarettes. Jorge ABRAHAM was identified as the leader of the organization and MILLER was his partner. The investigation revealed that this organization was willing to smuggle any type of merchandise, goods, or commodities for a profit. The SAC/El Paso established that ABRAHAM was receiving counterfeit and contraband cigarettes from various companies in Miami, Florida, and El Paso, Texas, as well as from manufacturers in Taiwan and China. In total, 10,726 cases of counterfeit and contraband cigarettes and 101 cases of liquor worth approximately \$20 million were diverted or intended to be diverted into the commerce of the United States for illegal sale. The total loss of revenue to the Federal Government and various state governments is approximately \$8 million. MILLER and 14 co-defendants were arrested, and approximately \$75,000 was seized. To date, a total of 13 defendants in this case have pled guilty. Plea negotiations and trial preparations are ongoing for one remaining defendant. ICE is also seeking forfeiture of

property and assets derived from the proceeds of the alleged illegal activities, valued at over \$6 million.

The reauthorization of the USA PATRIOT Act included a lowering of the threshold quantity of contraband cigarettes from 60,000 to 10,000. This change allows ICE to present more tobacco smuggling cases for prosecution. In case after case, ICE special agents have witnessed how traditional smuggling conspiracies, such as those centered on cigarettes, are often linked -- usually as a funding mechanism -- to other more serious, global criminal enterprises.

#### **NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)**

A major objective of NAFTA is the elimination of barriers to trade for cross-border movement of goods and services among the United States, Canada and Mexico. Under NAFTA, tariffs on most goods originating in the three countries are eliminated. Merchandise that enters the United States under NAFTA does so under favorable duty rates. To ensure the validity of NAFTA claims, CBP has an aggressive, multi-disciplinary verification process in place. ICE works jointly with CBP, conducting criminal and civil fraud investigations when potential violations are detected. Thus, ICE investigations are important tools used to insure NAFTA compliance.

- In November 2002, ICE ASAC/El Centro agents investigated TRIUNFO-MEX for allegedly submitting altered and false invoices for food products that it

imported into the United States. Under NAFTA, these food products could be imported without duty until the quota was met. The investigation revealed that TRIUNFO-MEX significantly undervalued these imported food products after the quota ceilings were reached, thereby avoiding the payment of higher tariffs. A CBP review revealed a potential loss of revenue in excess of \$3.5 million. The corporate president and two employees were convicted for falsely classifying goods. In February 2006, the president was sentenced to 12 months incarceration, 6 months in a halfway house, and fined \$7,500. He was ordered to pay \$3.5 million in restitution. TRIUNFO-MEX, the corporation, was sentenced to 5 years probation and fined \$2.1 million.

#### **ANTI-DUMPING AND COUNTERVAILING DUTIES**

The United States imposes anti-dumping and/or countervailing duties (AD/CVD) on certain imports to help domestic producers compete against foreign suppliers engaged in (or benefiting from) the unfair trade practices of dumping and export subsidy. The Department of Commerce and the U. S. International Trade Commission (ITC) play key roles in administering AD/CVD laws. Once the Department of Commerce sets AD/CVD duties, CBP is notified and thereafter collects the additional duties. Attempts to circumvent the AD/CVD duties may be investigated by ICE based on the multidisciplinary Commercial Enforcement Analysis and Response (CEAR) evaluation. The methods often used to evade antidumping duties include transshipment, re-marking, under-valuation, and false description. The objective of ICE is to stop predatory unfair

trade practices that threaten U.S. economic stability and restrict the competitiveness of U.S. industry in world markets.

- In September 2003, SAC Los Angeles investigated an anti-dumping scheme involving PRC-produced crawfish tail meat. LIN was the head of logistics of the U.S. importer, and was also a Vice President of the BAOLONG GROUP, a People's Republic of China (PRC)-based crawfish tail meat producer. Extensive documentary evidence disclosed that LIN and another person conspired with the BAOLONG GROUP to import falsely invoiced PRC-produced crawfish meat in order to avoid anti-dumping duties of approximately 224 percent. The loss of revenue was estimated to be approximately \$3 million. In May 2004, LIN was convicted for conspiracy.

#### **BULK CASH SMUGGLING**

As the opportunity to exploit US financial institutions diminishes, the smuggling of currency out of the United States has become a preferred method of moving proceeds across our borders. ICE Special Agents have used the Bulk Cash Smuggling statute with great effect, having arrested 330 individuals since its passage in October 2001. In addition, ICE and CBP, have worked together to seize over \$160 million involved in these violations.

However, ICE's enforcement of bulk cash smuggling does not end at the border. In August 2005, ICE partnered with CBP and the State Department to initiate a joint

training program known as Operation Firewall with our Mexican counterparts. As a result, Mexican authorities seized over \$30 million in cash and negotiable instruments, including the single largest bulk cash seizure in Mexico of \$7.8 million dollars. ICE and Mexican authorities continue to investigate these seizures to tie them to larger investigations in the United States, Mexico and Latin America. The State Department continues to fund these international efforts and we are grateful for their support.

#### **TRADE-BASED MONEY LAUNDERING**

Because of ICE's expertise in customs matters, our Special Agents are highly effective at combating trade fraud and trade-based money laundering. Trade can be used to transfer proceeds in a variety of ways such as, overvaluing the cost of imported goods to disguise illegal-proceeds as legitimate payment for those goods; converting proceeds into merchandise which is then shipped abroad and sold for local currency; even *hawalas*, use trade transactions as a way to balance their accounts.

To detect and combat Trade based money laundering ICE has established a Trade Transparency Unit - TTU. The ICE TTU analyzes Trade and BSA data to identify anomalies related to cross-border trade indicative of money laundering or trade fraud. The ICE TTU initiates and supports investigations related to trade-based money laundering. In addition to analyzing US trade data, ICE has begun exchanging trade data with foreign counterparts. ICE and participating governments are, for the first time, able to see both sides of trade transactions for

commodities entering or leaving their countries. This truly makes trade transparent and greatly assists in the detection of money laundering and customs fraud. Currently, ICE has TTU agreements with Colombia, Paraguay, Brazil and Argentina. Both the Department of The Treasury and Department of State have provided valuable support to this initiative.

### **CONCLUSION**

As the Department of Homeland Security's largest investigative agency with unique authorities to protect the American people from threats that arise from our borders, ICE is demonstrating daily that it is uniquely equipped to aggressively enforce our nation's laws against threats to the American people and our economy that arise from our borders.

While ICE is a new agency, we are aggressively applying our investigative authorities and capabilities to identify and combat threats to our economic, border, homeland and national security. At the same time, we are bringing to bear the best of our former agencies' expertise, cultures, and techniques, while building a new federal law enforcement agency that is more effective and efficient than the sum of its parts. In case after case, ICE agents and officers are putting into practice on behalf of the American people and our economy the powerful advantages that flow from our unified authorities. The net result is a greater contribution to the Nation's economic integrity and the protection of our border, homeland and national security.

On behalf of the men and women of ICE, I thank the Finance Committee and its distinguished members for your continued support of our work.

I would be pleased to answer your questions.

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**NATIONAL CUSTOMS BROKERS &  
FORWARDERS ASSOCIATION OF AMERICA**

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**TESTIMONY OF**

**PETER H. POWELL  
CEO, C. H. POWELL CO.**

on behalf of

**The National Customs Brokers and  
Forwarders Association of America, Inc.**

**Re: Authorizations of Customs and Trade  
Functions**

before the

**Senate Finance Committee**

**April 26, 2006**

**SERVICE INTEGRITY TRUST**

Mr. Chairman, I am Peter H. Powell, CEO of the CH Powell Company of Westwood, Massachusetts, and Chairman of the Board of the National Customs Brokers and Forwarders Association of America. I appreciate the opportunity to testify before you and comment on customs authorization legislation.

First, let me say that we are grateful for the support that the Committee on Finance has provided to the international trade community over many years. Your special focus on trade and revenue gives you a unique appreciation for the commercial operations responsibilities of Customs and Border Protection. As security issues have dominated the agenda and generated issues of jurisdiction in the Senate, we have consistently supported the Committee's primacy over Customs' commercial functions and we support your continued jurisdiction over these matters. You have shown that you are willing to hold CBP into strict account when the bureau vows to balance commercial and security operations. CBP's promise must be taken literally when you consider the dramatic growth in world trade. We are rapidly becoming a global economic community and international commerce is indeed our life's blood.

**1. CBP's attention to commercial operations is greatly reduced and resourcing is inadequate**

Despite its promise, the truth is that CBP is **not** balancing its twin responsibilities of security and commercial operations. Resourcing for trade facilitation has dramatically diminished as the agency has scrambled to meet criticisms of its performance in the security realm. When the Government Accountability Office (GAO) pointed to disappointing output in Customs-Trade Partnership Against Terrorism (C-TPAT) validations, CBP quickly moved import specialists into these areas of responsibility, leaving a skeleton crew to serve the needs of U.S. trade. In the Port of New York and New Jersey, for example, trade inspectors numbered forty before 9/11 but were reduced to eight at a recent count. Similarly, in-bond inspectors at the Port of LA/Long Beach numbered twelve, but are now zero, as CBP shifts personnel to operate VACCIS equipment, which screens for security purposes.

These examples are representative of a wholesale diversion of personnel, as Customs robs Peter to pay Paul. The attention of CBP to its trade mission has rapidly diminished as it gives priority to security programs. Rank-and-file know this and fully understand that a successful career path at the agency calls for making their mark in C-TPAT, the Container Security Initiative, or other high-profile programs. The answer? Congress must insist that CBP dedicate sufficient personnel to conduct its commercial trade mission. Congress should set a floor for import specialists and other commercial operations personnel, fencing off these assets from diversion elsewhere within Customs.

**2. CBP's approach to security and commercial operations disadvantages small and medium-sized businesses.**

Similarly, Customs is not dedicating sufficient energy or attention to the needs of small and medium-sized enterprises. I must say that customs brokers and forwarders have a unique vantage in this regard – the vast majority of those on our client lists are small businesses. We must therefore be their advocates.

It is common knowledge that small firms represent 99.7 percent of all employers; they employ half of all private sector employees; and, they pay 45 percent of America's private sector payroll. It is these small firms -- those with limited internal resources and expertise -- that are short-changed when there are reductions in import specialists, or when they are denied access to client representatives. But they also encounter an uneven playing field when CBP focuses almost exclusively on the needs of the 50 largest importers. We constantly hear that the Top 50 represent approximately 50% of imports *by value*; however, CBP ignores the fact that small enterprises account for the vast majority of all *transactions*. There are hundreds of thousands of small business importers, a large percentage with limited experience and resources. It is they who need the availability of import specialists and client representatives most. And, in many circumstances, it takes only one inefficient shipment to back up the entire flow of goods.

As another compelling example, while CBP constructs C-TPAT and its three tiers, it is single-mindedly looking to big companies as the mainstay of that program. Its demands and incentives are geared to the largest of companies. Companies must require their overseas suppliers to meet best practices -- who but the largest of companies has the economic clout to exert this leverage? Companies must often take resource-intensive steps to meet CBP's standards -- who but the largest have the in-house expertise and finances needed to comply? Companies are incentivized with promises of expedited clearance -- who but the largest can avail themselves of this competitive advantage? Companies are expected to require C-TPAT membership of their supply chain partners -- who but those admitted to the program, the very largest, can qualify for this business?

Our answer, Mr. Chairman, is for Congress to insist that Customs develop separate and independent strategies for incorporating small and medium-sized businesses into its programs. How, for instance, can these smaller enterprises successfully participate in C-TPAT? When they control almost 70% of our imports, smaller firms must become part of the equation.

### **3. Customs has demonstrated outstanding leadership and vision in the development of security programs, but there is room for improvement.**

CBP has, since 9/11, displayed exceptional leadership in developing programs of homeland security with a global reach. Accepting the mandate to protect our borders, its focus has been on the terrorist threat generated from outside the United States. CBP has recognized, quite correctly, that America's borders need to be pushed outward to the overseas ports where the vessels are laden. After all, examination at the port of origin reduces the danger to America and permits expedited clearance at our domestic ports which are already deluged with cargo and opportunities for delay.

**C-TPAT:** Of specific interest to the Committee, CBP has established C-TPAT as a primary tool for securing the supply chain. Recognizing the limits of extraterritoriality, the program nonetheless permits our government to use the economic leverage of our importers to induce their overseas suppliers to meet standards of security. Putting aside for the moment our comments about diverting resources and the need to incorporate small and medium-sized business in C-TPAT, the program is an inspired concept serving as one layer in a multi-layered approach to security. It will succeed because it has been **voluntary**. From soon after 9/11,

fundamental to the program is the partnership of the private sector with Customs. C-TPAT recognizes that “one size does not fit all” and allows for flexibility in its implementation. In fact, through the overwhelming response of U.S. industry, membership in C-TPAT has become an obligatory element of doing international business. Now we see that its critics would turn this concept on its head and make it subject to notice-and-comment regulation. We believe that such a direction is counterproductive and ill-advised. Our view? Congress should resist efforts to put C-TPAT in the straight-jacket of federal regulation.

**Automated Targeting System:** CBP is also on the right track in utilizing risk analysis and targeting to determine which containers require further scrutiny. By marshalling a variety of key data -- well beyond the manifest data presently required by the Trade Act of 2002 -- and introducing it to a sophisticated, robust and real-time automated targeting system, decisions can be made to apply inspectional resources only to high-risk containers rather than spreading those resources thinly through an overwhelming volume of imports. But GAO has criticized the present system -- the Automated Targeting System (ATS) -- for its deficiencies, and those shortcomings do indeed need to be addressed. Furthermore, CBP and some others have exhibited the inclination to require vast amounts of data, without rhyme or reason, without regard for the costs to its providers from the private sector, and without any guarantee of confidentiality for competition-sensitive information. What do we suggest? Congress should permit the private sector and CBP to continue to develop the requirements for acquisition of advance data, and resist the urge to dictate specific data elements -- such as requiring the filing of entries in advance of lading. For its part, Customs needs to be clear about precisely what advance data they genuinely need for a better targeting system.

**Export data:** Finally, CBP recently informed the Bureau of the Census that they were withholding approval of their long-awaited Automated Export System regulations until Census relented on an unrelated matter -- its opposition to providing sensitive export data to overseas governments. Customs views its commitment to a multi-nation security agreement at the World Customs Organization as requiring the United States to make export data available, while Census feels bound by statutory constraints requiring it to protect the export information that it collects for statistical purposes. For its part, American exporters are opposed to providing information to overseas governments that might filter through to their competitors. Our view? NCBFAA feels strongly that the wholesale delivery of export information to foreign nations runs counter to our international trade interests. At a time when we are struggling with trade deficits, the United States should not be undermining the competitive standing of the very exporters that must bring these statistics more into balance.

#### **4. CBP is successfully working with the trade community to develop the Automated Commercial Environment (ACE).**

Through its Trade Support Network (TSN), CBP has actively worked with the trade community in partnership to field the automated program that will conduct the day-to-day transactions for commercial operations. ACE will revolutionize the processing of commercial entries, adding such features as periodic payment and periodic entry, moving processing into a totally paperless environment, and adding the other federal regulatory agencies to the data pipeline.

It is this last feature -- the International Trade Data System (ITDS) -- that has attracted so much attention recently. While Customs has promised the reward for the high-tiered C-TPAT members to be expedited processing, this carrot for enhanced supply chain security is meaningless if federal agencies other than CBP do not cooperate. In other words, CBP can clear products quickly for C-TPAT members, but the entire shipment can be brought to a dead stop if it is not cleared by FDA or USDA, for example.

There is however much that must be done if ITDS is to become the "front end" of ACE, with data being input through one window and routed to all of the affected regulatory agencies at the very beginning of entry processing. One essential element is that all appropriate agencies agree to participate, which they have not. The problem lies in one fundamental defect: CBP (and, therefore, the Department of Homeland Security) has no authority over agencies in other departments. DHS and the Department of the Treasury (DHS' predecessor in directing Customs) have successfully marshaled a significant number of key agencies -- but not all.

How can this be solved? NCBFAA believes that the Office of Management and Budget, which has previously had a significant role in federal data management, has the capability to overcome this "stovepipe" problem. We believe that Congress should designate OMB as chair of the multi-agency board that directs the ITDS project. And, in consultation with other departments, OMB should evaluate what agencies are necessary to the success of ACE and direct, on a phased-in basis, the participation of those still uninvolved in ITDS. This should be completed concurrent with the completion of ACE in 2010. ITDS has profound security and commercial benefits for America. It needs the Finance Committee's support if these benefits are to be fully realized.

A final element of completing ACE is bringing technical customs law into conformance with new procedures introduced by this automation system. In concert with CBP, the trade community through the CBP's Trade Support Network has developed a number of technical changes to customs law that we would like to see included in this year's authorization bill.

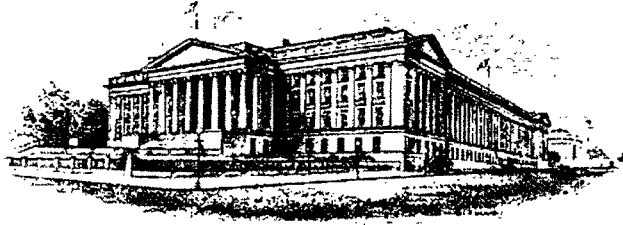
**5. Customs has joined with the trade community in modernizing drawback. A compromise between the two parties is now ready to be considered by Congress.**

Those who are conversant with the technical features of customs law know that duty drawback is an important incentive to exports. Acknowledging that goods are often imported for use as components of American manufacturing or as other valuable products, and then exported from the United States, the law has long provided for a return of duties paid on those products brought temporarily within our borders and then subsequently shipped overseas. Current law is however very cumbersome, recordkeeping --intensive, and demanding on Customs, which must administer the law and ensure that revenues are protected. Customs and a diverse range of national, private sector drawback specialists have worked over the past several years to modernize and streamline its processing. In what has been a highly interactive and even sometimes contentious process, agreement has been reached and a compromise struck.

Modernization of drawback will save the government and the private sector millions of dollars. At CBP, for example, personnel can be shifted to other commercial areas since the intensive

management and accounting of drawback claims will be substantially reduced. NCBFAA asks the committee to make the technical changes to customs law necessitated by drawback modernization, preferably in this year's customs authorization legislation.

Mr. Chairman, NCBFAA is grateful for this opportunity to share its views and will gladly respond to your questions.



**U.S. TREASURY DEPARTMENT  
OFFICE OF PUBLIC AFFAIRS**

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

Testimony Before the Senate Committee on Finance  
April 26, 2006

Hearing on Authorizations of Customs and Trade Functions

Mr. Chairman, on behalf of the Treasury Department and also on behalf of the many Federal agencies who are working together to create an international trade data system, I want to thank you and the other Members of the Committee for giving me the opportunity to appear here today.

As this Committee is well aware, the Homeland Security Act transferred the former Customs Service to the Department of Homeland Security (DHS) but left the Secretary of the Treasury with the authority for “customs revenue functions,” as defined by that Act. The Act also provides for the delegation of customs revenue authority to the Secretary of Homeland Security. That authority has been delegated to DHS by the Secretary of the Treasury with the following exceptions:

- Treasury has retained sole authority to approve regulations “concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto.”
- Treasury reviews all rulings involving the topics noted above that result in a change in practice or are the result of a petition process.
- Treasury also shares the chairmanship of COAC, the Advisory Committee on commercial operations of Customs and Border Protection (CBP).

Treasury’s involvement in customs policy is important to our mission not only because revenue collection is a core Treasury function, but also because taxing and regulating international trade has an important impact on our economy, and because regulation of international trade can have an important effect on promoting global growth. Treasury’s overall goals in this area are promoting trade and growth, simplifying and clarifying regulations, and collecting tax accurately and efficiently, with minimal burden on the taxpayer.

We at Treasury also work with DHS and CBP on other areas of mutual concern involving customs revenue functions, as well as on the International Trade Data System (ITDS), a topic which I understand the Committee would like me to address.

The International Trade Data System is the name given to the mechanism for interagency participation in ACE, or the Automated Commercial Environment, the new computer system that CBP is building. The goal of ITDS is to create a “single-window” system so that commercial reporting on international trade can be done through a single electronic filing rather than through separate filings with multiple agencies.

Let me begin by describing the current trade reporting environment.

Today, separate reporting and data systems are maintained by U.S. Federal Government agencies involved in various aspects of the international trade process, including regulation of goods, transportation, and immigration. Exporters and importers deal with numerous paper and electronic systems, and are confronted with duplicative and non-uniform data reporting and record-keeping requirements.

Because international trade is important to our economy, the cost of multiple government reporting requirements imposed on import and export transactions is a burden on the performance of the economy as a whole.

This burden is not imposed as a matter of conscious policy. Rather, as laws have been enacted to implement trade agreements; prevent unfair trade practices; protect the environment, consumers, animal and plant health, and endangered species; ensure highway, rail, and air safety; impose economic sanctions on hostile regimes; and prevent export of sensitive technologies to the wrong people, multiple reporting schemes have been superimposed one on top of another, despite efforts to limit the cumulative burden.

These multiple information collection systems are not only costly and burdensome for both government and the trade community, they also limit the effectiveness of individual agencies in carrying out their enforcement and regulatory responsibilities at the border. Agencies do not necessarily have access to information that other agencies collect, or have the benefit of knowing what enforcement or regulatory actions other agencies have taken in response to that information. They act in isolation rather than together.

The goal of ITDS is to make the Federal Government's collection and use of international trade data can be made less burdensome and more efficient. ITDS is an information technology initiative to reduce the paper and reporting burden on traders by integrating and fully automating the government-wide collection, use, and dissemination of international trade data. Under the ITDS concept, agencies would harmonize their data requirements, eliminating redundancies and minor definitional differences. Traders

would submit standardized electronic import and export data one time to a single collection point, commonly called the “single-window.” The data would then be distributed to agencies depending on what information they need to perform their respective trade-related missions.

Contrary to what the name may suggest, ITDS is not a separate computer system. The ITDS concept will be implemented as a feature of Customs and Border Protection’s ACE Project, the Automated Commercial Environment. The ITDS project is funded and managed by CBP with the collaboration of 28 other government agencies working through the ITDS Board of Directors. Agencies represented on the Board include Treasury; CBP; Food and Drug Administration; Departments of Transportation, Agriculture, and Commerce; and U.S. International Trade Commission. Board members and other agency representatives work closely with a number of CBP offices, but particularly CBP’s Office of Information Technology, and with the ACE Support Team, the consortium of contractors hired by CBP to implement ACE and ITDS.

ITDS is intended to:

- (1) reduce the cost and burden of processing international trade transactions and transport for both the government and the private trade community by substituting standard electronic messages for the multiple and redundant reporting – often on paper forms – that occurs today;
- (2) improve compliance with laws and regulations that apply at the border to carriers (for example, highway safety and vessel clearance), people (drivers and crews of commercial conveyances), and goods (several hundred laws such as those addressing public health and safety, animal and plant health, consumer protection, and enforcement of trade agreements);
- (3) in conjunction with ACE, improve risk assessment. By centralizing and integrating the collection and analysis of information, ACE will enhance CBP’s ability to target cargo, persons, and conveyances. The trade data will allow for advanced inter-agency assessment of risks and threats to determine

which goods and people must be scrutinized. In addition, through ACE, ITDS will be capable of linking the government's law enforcement and other databases that track commerce crossing our borders. ITDS thus extends the functionality of ACE by bringing together critical security, public health, public safety, and environmental protection agencies on a common platform; and

- (4) provide convenient access for Federal agencies to data on international trade that are more accurate, complete, and timely.

ACE/ITDS can also serve as a common payment point for taxes and fees paid to multiple government agencies, providing a single billing and collection point for the variety of charges incurred by traders.

ACE/ITDS will function as a custodian of records for information, and a convenient, single point of access for Federal agencies to data on trade transactions, with each agency having its own, and appropriate, level of access.

One aspect of ITDS is already operational. Sixteen of the participating ITDS agencies already have access to data on import transactions, through the web-based ACE portal. Much groundwork for next steps has been accomplished. With the participation of all the involved agencies, an effort to identify and harmonize their trade data requirements is well underway. Those data requirements are being aligned with data sets developed by the G-7 countries and the World Customs Organization so that we will be closer to the vision of having internationally as well as nationally harmonized trade reporting.

That concludes my remarks Mr. Chairman; I am more than happy to answer any questions you and the Committee may have.

Thank you.

Deputy Assistant Secretary Timothy Skud  
Responses to Questions for the Record

**Questions from Senator Grassley**

**Question:** Please identify the number of agencies participating in the International Trade Data System (ITDS) and the extent of their participation.

**Response:** During the past two years, the original group of eight Participating Government Agencies (PGAs) has grown to twenty-eight Federal agencies. A list of the participating agencies is attached. ITDS Participating Government Agencies (PGAs) are working with U.S. Customs and Border Protection (CBP) to develop the requirements for future releases of Automated Commercial Environment (ACE) software, define how PGAs will use ACE, and identify when PGAs will be able to begin using future ACE capabilities. Although integration efforts with some PGAs have not proceeded as quickly as originally projected, integration efforts with all PGAs should yield trade-facilitation benefits from improved inter-agency information sharing as CBP fields future ACE capabilities.

Use of ACE by PGAs continues to grow. Over 120 users from 16 PGAs now have read-only access to certain ACE data. PGA users are able to view and run over 30 reports that draw from entry and entry summary data collected via the ACE Secure Data Portal. The number of users is expected to grow during the 2006 calendar year to approximately 150 users as PGAs complete security requirements for access to the ACE Secure Data Portal and access is provided to as many as five additional agencies. Initial user feedback has been positive, including reports by some agencies that ACE enables them to improve the efficiency of their business processes.

**Question:** Please identify the number of agencies that could benefit from ITDS but that are not participating in the program. For these agencies, please describe any plans to participate in ITDS in the future.

**Response:** Based on a recent survey of the trade community, respondents confirmed that ITDS already includes most of the primary Federal agencies whose participation will facilitate international trade. As many as 56 other agencies may have an interest in data from border transactions or have a border regulation role and could be considered potential candidates for ITDS. On the other hand many if not most of these agencies may well most effectively meet their requirements as customers of the Census Bureau or other data agencies, rather than as recipients of raw data from CBP.

There are some agencies that regulate imports or exports that are not yet PGAs. The work on exports is not as far along as that on imports and a number of those agencies may decide to join as work advances. Some other agencies may have limited border regulatory functions that could be automated as simply as

providing the capacity for CBP to receive scanned copies of paper documents, or through the reporting of authorization codes, without more active participation in the ITDS process. Two formerly identified potential ITDS participants—the Internal Revenue Service and the National Oceanographic and Atmospheric Administration, National Marine Fisheries, Office for Law Enforcement—recently joined ITDS as PGAs.

**Question:** Are there any means that Congress should consider to improve the participation rate in ITDS? If so, please describe. Are there any means that Congress should consider to speed implementation of ITDS? If so, please describe.

**Response:** Continued support and funding by Congress for ITDS and PGA integration efforts has enabled U.S. Customs and Border Protection and the ITDS Board of Directors to add 20 Federal agencies to the original roster of eight ITDS Participating Government Agencies (PGAs), continue efforts to integrate PGA requirements within Automated Commercial Environment (ACE) releases, and continue developing an ITDS standard data set that is aligned with World Customs Organization standards. ITDS outreach and integration efforts have also facilitated efforts by PGAs to consider what information technology projects might be required to maximize the benefits of integration with ACE and advance the implementation of the ACE/ITDS vision of a single-window for collecting and disseminating international trade and transportation data.

**Question:** Are there any means that Congress should consider to improve the operation of the Commercial Operations Advisory Committee (COAC)?

**Response:** The COAC is most effective when CBP is fully engaged in the dialogue with the private sector. The recent transfer of responsibility for co-chairing the COAC to CBP should promote CBP engagement.

#### **Questions from Senator Baucus**

**Question:** The authority that the Treasury Department retained over Customs commercial functions prior to the creation of the Homeland Security Department is a key component in a balanced approach to trade facilitation and security at the Bureau of Customs and Border Protection. In order for that balance to work, there needs to be a close dialogue between Treasury and Homeland Security. How closely do you work with your counterparts at the Department of Homeland Security? I am concerned that trade has taken a backseat to security at Customs. What is the Treasury Department doing to make sure that an appropriate balance is achieved?

**Response:** We work closely and collegially both at CBP and DHS HQ. There is a constant dialogue on customs revenue functions and related issues. The primary way in which Treasury ensures that the proper balance between trade

and security is by ensuring that regulation of customs revenue functions is clear to traders, and does not unnecessarily burden trade. The emphasis on security at the border has necessarily accelerated CBPs movement trade to enforcement by post-entry audit, which the Treasury has long advocated.

**Question:** The International Trade Data System holds considerable promise for improving efficiency of information flows at the border, collecting better information on what comes in and goes out. It also has the potential to improve enforcement of our trade laws and domestic regulations for food safety, agricultural health, and transportation safety. I'd like to have an update from you on the current status of ITDS implementation. How much of the information that importers need to submit can now be submitted through ITDS? What feedback have you received from the participating Government Agencies in the System? What can we do to encourage more agencies to plug into this system? What are the major impediments to wider participation? How will you rate the overall efficacy of ITDS?

**Response:** The International Trade Data System is the name given to the mechanism for interagency participation in Automated Commercial Environment (ACE), the new computer system that is being developed by U.S. Customs and Border Protection (CBP). Future ACE capabilities, including Entry Summary, Accounts, and Revenue (Release 5) and Cargo Control and Release (Release 6) will increase ITDS capabilities. Efforts of existing PGAs to take full operational advantage of these new ACE/ITDS capabilities will make even more transparent the benefits of ITDS participation, which should, in turn, provide an additional incentive for more Federal agencies to join ITDS. Expanded ACE/ITDS capabilities, combined with the increased depth and breadth of ITDS participation, will further the ITDS vision of the "single window" through which the trade community can submit international trade data for use by affected Federal agencies.

We have received positive feedback from the 120 Participating Government Agency staff members who are already using the ACE Secure Data Portal, including reports that ACE enables them to improve the efficiency of their business processes. ACE provides users the ability to run more than 30 different reports that draw from cargo entry and entry summary data.

We continue to work to expand the depth and breadth of ITDS participation. Fully participating in ACE/ITDS requires an investment of Federal agency resources to harmonize required data elements, modify internal agency business processes, and modify or modernize their internal information technology systems to derive the full benefit of integration with ACE. The extent to which ITDS efforts surmount these challenges by successfully facilitating information sharing between agencies will ultimately prove to be the measure for rating the efficacy of ITDS efforts.



## COMMUNICATIONS

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REVISED WRITTEN SUBMISSION OF  
THE NATIONAL RETAIL FEDERATION  
BEFORE THE  
SENATE FINANCE COMMITTEE  
ON  
U.S. CUSTOMS AUTHORIZATION AND OTHER CUSTOMS ISSUES

April 26, 2006

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May 3, 2006

The Honorable Charles Grassley  
Chairman  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the U.S. retail industry, the **National Retail Federation (NRF)** submits these comments to the Senate Committee on Finance for its hearing on U.S. Customs authorization and other customs issues. NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees -- about one in five American workers - and 2005 sales of \$4.4 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

Most of NRF's members import products into the United States or rely upon imported products to fill out their merchandise assortments. Many, if not all, of our members are also participants in the Customs-Trade Partnership Against Terrorism (C-TPAT), and quite a few are regarded by U.S. Customs as significant importers. For this reason, NRF has a strong interest in making sure that there are adequate resources to support the trade compliance and security activities of the Department of Homeland Security (DHS) and the Bureau of Customs and Border Protection (CBP).

NRF and the retail industry would like to impress upon this committee the need to guarantee that resources are apportioned appropriately to meet the twin demands of supporting trade compliance and trade security. We continue to be concerned that the agency does not have sufficient resources to carry out its mandates, and that with the focus on security, trade compliance functions of the agency continue to degrade over time. We urge the Committee to continue oversight of the agency to ensure that resources are deployed in the most efficient manner both to collect tariffs and promote trade security.

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We have several issues that we would like to address as part of this hearing:

- 1) The appropriate development of the new customs computer system, the Automated Commercial Environment (ACE); 2) Human resource management; 3) Issues relating to non-intrusive cargo exams; and 4) Government funding for security.

#### Development and Funding of the Automated Commercial Environment

More than a dozen years ago, Congress authorized and appropriated funds for the development of the Automated Commercial Environment (ACE) – the electronic interface that was to deliver modernized customs processing to both the government and the trade.

The effort to create ACE is now several billion dollars over budget and years behind schedule. To be sure, its purpose – as an interface to begin paperless, account-based duty collection and reconciliation – has been subsumed by the security mission imposed on Customs as a result of the September 2001 terrorist attacks. Nevertheless, we believe this committee should insist that a state-of-the-art duty collection system be put in place as quickly as possible. We urge you to hold oversight hearings on ACE, to explore the reasons why it has not yet delivered its promise of paperless entry to the trade, and to ensure that ACE meets Customs' current and future needs for both trade facilitation and security.

NRF's members are particularly anxious to move forward to an account-based system where duties can be paid and entries filed centrally without the transmission of original paperwork. In our view, such a system provides enormous benefits, not merely to the trade, but to government as well.

If ACE were on line, the agency could better manage its twin goals of security and trade compliance. As a result, Customs could detail more port personnel to the important task of security, and leave duty collection issues to centralized offices that can review classification and duty determinations, and audit importers to make sure that duties are being properly paid.

As it is today, however, importers continue to face a lack of uniformity in trade compliance actions at the nation's ports. For example, Customs officials in the port of Los Angeles regularly require original paperwork for entries from certain countries, while officials in other ports do not. Some ports detain goods over classification issues while other ports readily admit such goods, which in any event are covered by import bonds, while such issues are under consideration. Were ACE in place, this sort of lack of uniformity would largely disappear. More important, port-specific resources could be redirected to the important job of cargo security, instead of trying to ascertain the classification of a particular article of commerce.

While we strongly believe the duty collection functions of ACE need to be implemented quickly, we also believe that this Committee should inquire as to how

CBP plans to incorporate new trade security features into ACE development, and what can be done to speed the deployment of these features.

Among these features would be the much awaited and much needed International Trade Data System – the multi-agency interface that would allow all federal agencies to use a single portal for communicating with the trade and collect both compliance and security information efficiently through a single system.

In addition, NRF supports the development of functionality within ACE to offer a secure environment for importers to provide business confidential cargo information, like factory names, that is not now available on cargo manifests. ACE could be used to obtain additional important security targeting information that would make our supply chains more secure. We believe this committee should have a clear picture of when Customs plans to develop these systems and how much these systems will ultimately cost.

#### Human Resource Management

NRF is concerned that CPB has not devoted scarce human resources appropriately to reflect the current mission of the agency. For example, well over half of all import specialists are devoted to enforcing restrictions on the importation of wearing apparel and textiles. However, under the terms of the World Trade Organization (WTO) Agreement on Textile and Clothing, quotas on imports of these products were lifted on January 1, 2005. Today, CBP only enforces quotas on textile and clothing from China, pursuant to special rules negotiated as part of that country's entry into the WTO, and a handful of non-WTO member states. Retailers and other importers largely operate in a quota free world. However, CBP still maintains a disproportionately large staff devoted to textile and apparel enforcement issues.

The continuation of a large textile and apparel enforcement team in the face of pressing needs on the security side of the ledger suggests that some re-deployment of resources is warranted. For example, a recent Government Accountability Office report criticized CBP for maintaining inadequate staff needed to perform validations of each member of the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Under this voluntary program, qualified importers (those undertaking supply-chain security initiatives) receive a lower probability of being subjected to a security-based cargo exam. As part of the program, CBP has hired about 90 supply chain specialists responsible for making in-country validations to ensure that each member of C-TPAT adheres to their submitted supply chain profile. Unfortunately, with over 7,000 C-TPAT members and only 90 supply chain specialists, CBP has been able to validate only about 50 percent of program participants.

Retailers also continue to have problems with inadequate human resource management in traditional trade compliance functions of CBP. NRF members frequently cite the difficulty of receiving prompt rulings from the Office of Regulations and Rulings, and, as noted above, importers continue to have problems with a lack of uniformity among port personnel. We urge Members of the Finance Committee to

examine the trade compliance priorities of CBP, and ensure that the Bureau devotes adequate human resources to meet these priorities, and reduces resources in areas that are no longer important.

#### Cargo Inspection System Issues

In the wake of the events of September 11, 2001, CBP has significantly increased the number of cargo inspections it undertakes. The vast majority of these inspections is non-intrusive and uses Vehicle and Cargo Inspection System (VACIS) technology, which scans containers through the use of gamma ray imaging. CBP is also committed to screening and scanning more overseas containers through the Container Security Initiative (CSI).

The use of VACIS exams is preferable to full physical cargo examination. However, it is clear that many seaports do not have a sufficient number of these systems. More important, the use of these systems has raised important health and safety concerns among longshore workers that calls into question their efficacy and long-term viability as an inspection tool.

VACIS systems are portable, but they are designed to operate as a stationary piece of equipment. The system is supposed to be set up at a location where trucks bearing shipping containers can drive through the equipment. During the drive-through, an x-ray is taken of the international shipping container. When used in this fashion, a VACIS system can process a container a very short time, and significantly improve Customs' ability to inspect cargo.

However, most VACIS systems are not being used this way. Longshore workers have raised concerns about the long-term health effects on drivers who must drive a truck through this system day in and day out. Consequently, most VACIS systems are now being used in a mobile mode where shipping containers are lined up and the VACIS machine is moved over them. This practice significantly slows the rate of inspection, results in many system failures and breakdowns, and is adding to congestion and air-pollution at the nation's ports.

Congress should conduct further oversight with respect to the use of these systems. They must be certified as safe for the longshore workers who must work with them. If they are safe, then the government ought to take steps either to compel port workers to cooperate with these exams, or devote enough resources to employ its own truck drivers. Congress cannot hope to increase the number of non-intrusive exams, if the technology is not well-accepted by the workers who must use it, or if there are significant health or safety concerns about its use.

Efforts to require overseas screening of containers using VACIS or similar technology could also prove problematic. NRF members support the screening and scanning of containers overseas, so long as those arrangements are negotiated bilaterally. NRF opposes unilateral action that could disrupt trade without providing any appreciable improvement in security. Moreover, we believe it's very important

that foreign governments not be mandated to use equipment that raises health issues for port workers. We must not appear to be pushing foreign dockworkers to use a technology that potentially imposes unacceptable health risks for U.S. dockworkers.

#### Cargo and Port Security Fees

Perennially, lawmakers propose that the trade community ought to "pay for" security in some way, usually through some kind of tax on import or export containers, or through tonnage taxes imposed on ocean carriers. The argument is often made that airport security is funded through passenger taxes. Some lawmakers frequently suggested that such a tax be used to support the funding needs of DHS.

NRF strongly opposes any taxes or user fees that are applied to seaport containers. The trade community already makes a significant contribution to the U.S. treasury through Customs Merchandise Processing Fees and import tariffs. In fact, the trade-related revenues generated by trade activities are in excess of \$20 billion each year, a large portion of which is collected on imports of consumer goods, like clothing and footwear that are sold at retail. It is NRF's conviction that the proceeds of the MPF should be specifically earmarked for U.S. Customs trade compliance and trade facilitation programs since those fees are collected directly from the trade for those purposes. We would urge the Committee to support for such an earmark of the MPF for trade facilitation and compliance functions.

We do not support specific earmarks for tariff collections. However, we do urge Congress to keep these revenues in mind as we move forward with budget authorizations, and, more important, appropriations. Ensuring that DHS and CBP have sufficient resources to facilitate trade and meet security concerns ought to be a high federal priority. The fact that significant revenue is generated by international trade, should be an important factor in setting spending priorities.

In closing, NRF thanks the committee for holding these hearings and urges it to continue its oversight activities of DHS and CBP trade compliance activities. If you have questions about NRF or its positions on these issues, please contact Erik Autor, Vice President and International Trade Counsel at (202) 626-8104.

Sincerely,



Steve Pfister  
Sr. Vice President  
Government Affairs



**STATEMENT OF COLLEEN M. KELLEY  
NATIONAL PRESIDENT  
NATIONAL TREASURY EMPLOYEES UNION**

**ON**

**AUTHORIZATION OF CUSTOMS  
AND TRADE FUNCTIONS**

**SUBMITTED TO**

**SENATE COMMITTEE ON FINANCE  
UNITED STATES SENATE  
APRIL 26, 2006**



Chairman Grassley, Ranking Member Baucus, distinguished members of the Committee; I would like to thank the Committee 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 15,000 Customs and Border Protection Officers (CBPOs) and trade enforcement specialists who are stationed at 317 land, sea and air ports of entry (POEs) across the United States. CBPOs make up our nation's first line of defense in the wars on terrorism and drugs.

In addition, Customs and Border Protection (CBP) entry specialists, import specialist and trade compliance personnel 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, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency. In 2005, CBP commercial operations personnel collected an estimated \$31.4 billion in revenue on over 29 million trade entries.

#### **Commercial Operations Staffing Shortages:**

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; collecting import duties; and enforcing U.S. trade laws.

NTEU is deeply concerned with the lack of resources, both in dollars and manpower, devoted to the facilitation and operations aspects of CBP's trade functions. Because of continuing staffing shortages in commercial operations personnel, experienced commercial operations professionals at all levels, who long have made the system work, are leaving or have left or are so discouraged that they are resigned to frustration. In addition, 25% of import specialists will retire or are 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 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."**

When questioned on DHS compliance with Sec. 412 (b), then-CBP Commissioner Bonner stated in a June 16, 2005 letter to Ways and Means ranking member Representative Charles Rangel that “While overall spending has increased, budget constraints and competing priorities have caused overall personnel levels to decline.”

The bottom line is that DHS is non-compliant with Section 412(b) of the HSA. As stated in the June 16, 2005 letter, “CBP employed 1,080 non-supervisory import specialists in FY 2001 and 948 as of March 2005.” CBP’s most recent data shows 892 full-time, plus 21 part-time Import Specialists—913 total employed by CBP.

On March 30, 2006, legislation was introduced in the House and Senate, S. 2481 and H.R. 5069, that would require the Department of Homeland Security to comply with Section 412(b) of the Homeland Security Act (P.L. 107-296).

Customs revenues are the second largest source of federal revenues collected by the U.S. Government next to tax revenues. The Committee depends on this revenue source to fund federal priority programs. The Committee should be concerned as to how much DHS non-compliance with Section 412(b) of the HSA cost in terms of revenue loss to the U.S. Treasury?

The Committee should inquire of CBP their plans to become compliant with Section 412(b) and timeline to become compliant.

#### **CBP’s Lack of Optimal Staffing Model:**

According to the GAO, “**as of June 2003, CBP has not increased staffing levels [at the POEs]**” (see GAO-05-663 page 19) and “**CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide...**”

GAO observes that “**not identifying optimal staffing levels prevent CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests.**” This is information Congress needs in order to perform its oversight and appropriations function. CBP states that “absent additional resources, the only way to address these gaps would be to relocate officers...this is not a viable solution because of the costs associated with relocating CBP officers. **CBP officials stated that they have not assessed overall staffing needs across ports or airports and do not plan to do so with the proposed model because they do not expect to receive any additional resources given the current budget climate.**” (pages 28-29)

It is instructive here to note that the former U.S. Customs Service’s last internal review of staffing for Fiscal Years 2000-2002 dated February 25, 2000, known as the Resource Allocation Model (RAM), shows that the Customs Service needed over 14,776 new hires just to fulfill its basic mission--and that was before September 11. Since then the Department of Homeland Security was created and the U.S. Customs Service was

merged with the Immigration and Nationalization Service and parts of the Agriculture Plant Health Inspection Service to create Customs and Border Protection (CBP). CBP was given an expanded mission of providing for both the first line of defense against domestic terrorism and to make sure trade laws are enforced and trade revenue collected.

The RAM also notes that in 1998 the base total of import specialist positions was 1,249 and the import specialist optimal staffing level for 2002 is 1,489 -- an addition of 240 positions. It is NTEU's understanding that the current number of full-time import specialists is 892. This is 357 less than the 1998 base total, and 597 less than the projected 2002 optimal staffing level. (See page 2 of U.S. Customs Service Optimal Staffing Levels Fiscal Years 200-2002 attached.)

The original deadline for completing CBP's proposed, but fatally flawed, staffing model was April 2005. NTEU asks the Committee to direct CBP to design and complete a new staffing model that includes overall staffing needs and to assess optimal staff levels at the 317 Ports of Entry to fulfill their dual security-commercial mission, so that Congress will have information from CBP that justifies its budget and staffing request allowing Congress to adequately address its authorization, oversight and appropriations responsibilities.

#### **Import Specialist Redesign Model:**

It has come to NTEU's attention that Acting Commissioner Spero is in the process of reviewing the Import Specialist Redesign Model. It is our understanding this Import Specialist Redesign Model proposes to change the day-to-day operations of Import Specialists by migrating the physical verification of cargo from CBPOs to import specialists. Import Specialists have an interest in performing the trade examinations that their investigations generate, they do not have the resources or training to do the physical cargo inspections that are currently tasked to CBPOs.

The Committee should be concerned that CBP is contemplating the transfer of some of the CBPO's inspection duties to their unarmed commercial trade enforcement and duty collection specialists. Will this further dilute the trade and revenue functions at CBP? Will it dilute the security functions at the POEs?

What is the timeline for CBP's development of its Import Specialist Redesign Model? How will CBP ensure that this redesign plan is in compliance with Section 412(b) of the HSA that prohibits the Secretary from consolidating, discontinuing or diminishing trade functions or reducing the staffing level, or resources attributable to such functions?

In Section 412(b), Congress has set a floor for import specialists and other commercial operations personnel. Congress must also make sure that these personnel assets are fenced off from being diverted elsewhere within CBP.

**One Face at the Border Initiative:**

On September 2, 2003, CBP announced the misguided One Face at the Border (OFAB) initiative. The initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. In practice the OFAB initiative has resulted in diluting customs, immigration and agriculture inspection specialization and quality of passenger and cargo inspections. Under OFAB, former INS agents that are experts in identifying counterfeit foreign visas are now at seaports reviewing bills of lading from foreign container ships, while expert seaport Customs inspectors are now reviewing passports at airports. The processes, procedures and skills are very different at land, sea and air ports, as are the training and skills sets needed for passenger processing and cargo inspection.

It is apparent that CBP sees its One Face at the Border initiative as a means to “increase management flexibility” without increasing staffing levels. For this reason, Congress, in the Immigration and Border Security bill passed by the House last year, HR 4437, section 105, requires the Secretary of Homeland Security to submit a report to Congress “describing the tangible and quantifiable benefits of the One Face at the Border Initiative...outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions...” NTEU urges the Committee to add similar OFAB study language to the Customs Authorization legislation.

In the same vein as the One Face at the Border initiative, it has come to NTEU’s attention that increasingly CBP is “detailing” import specialists and other commercial operations personnel to backfill CBPO vacancies. The stresses of commercial operations staffing shortages are being compounded by CBP assigning new inspection duties to commercial operations personnel. NTEU has heard that OPM may be in the process of rewriting commercial operations position descriptions to reclassify job duties previously assigned to CBPOs to import specialists and/or entry specialists. NTEU urges the Committee to look into any reclassification of these commercial operations jobs that supply a valuable U.S. Government funding source.

**Customs-Trade Partnership Against Terrorism (C-TPAT):**

C-TPAT is a voluntary program whereby importers, brokers, air, sea, land carriers, and other entities in the international supply chain and intermodal transportation system to enter into partnerships with DHS. C-TPAT allows DHS to validate the entities’ security procedures and supply chains in exchange for speedier entry and clearance into U.S. ports. Currently, CBP employs only 80 Supply Chain Specialist to validate over 10,000 C-TPAT applicants. NTEU strongly endorses CBP hiring additional staff to validate C-TPAT applicants.

NTEU recognizes that the only way to speed up the validation process for the voluntary C-TPAT program is to commit more financial and human resources to the

validation process. In several pieces of port security legislation before Congress, however, provisions have been added that would allow expanding the validation effort through the use of third parties. In order to speed up the C-TPAT validation process, whether done by CBP employees or CBP contracting out the validation process to the private sector, it will cost additional money. A key question remains, where does this money come from?

NTEU is concerned that legislative language in proposed port security legislation would allow CBP to spend their limited budget to hire private contractors to perform these third party validations.

As stated before, NTEU believes that C-TPAT validations should be done by CBP employees paid for by a customs fee. We also recognize that CBP's resources are extremely limited and not likely to be significantly increased. If Congress decides to allow third party validations, the applicants, not CBP, should pay the costs of these third party contracts. CBP should not be a party to the third party validation contract, nor responsible for the cost of third party validations. The applicant must pay all costs associated with the third party validation.

NTEU also strongly believes that CBP must have final say in reviewing and approving these certified third party validations, before the designation is final. C-TPAT participants should only be allowed to contract with independent third parties to conduct validations and assessments if these validations are submitted to the Secretary for approval. It is CBP that must have the ultimate responsibility to review the validation submitted by the third party entity hired by the C-TPAT applicant, and it is CBP, not the third party entity, that makes the final determination as to eligibility.

Finally, in order to eliminate conflicts of interest and possible collusion, third party validators must be independent of the C-TPAT participants they are validating. C-TPAT applicants, under the third party validation program, should not be policing themselves by paying another company to validate them, with no federal requirements, review and approval.

This third party validation process would be similar to the independent third party accounting audits required under Sarbanes-Oxley and submitted to the Securities and Exchange Commission for approval.

#### **Study of Dedicated Funding:**

In 2006, 11 million containers came into the United States and this year that figure is expected to grow by ten percent. Additional commercial operations staffing and training funds are needed to address this growth in trade. In addition, as evidenced by the C-TPAT program, private sector coordination funding is also needed. Multiple proposals for utilization of some form of additional customs fees are currently being promoted to support a great variety of proposed programs. The new security needs along with important national trade policy goals require additional financial resources.

NTEU encourages the Committee to examine the question of collection and utilization of fees. This study should determine the relationship between current fees and monies allocated for CBP services and assess the need for additional fees.

**Increase Trade Personnel Pay Grades:**

One final issue tied to CBP funding of commercial operations personnel is the fact the journeyman grade of import specialists has remained at a GS-11. This, despite the fact that most import specialists across the country regularly do higher graded work in the course of their daily duties as their position has evolved from one that was more transaction-based to one that is account-based which requires more specialized knowledge and experience of particular industries such as agriculture, automotive, communications, textile and steel to properly enforce the complex trade rules accompanying each industry.

In addition to not adequately staffing trade function jobs as required by Section 412(b), CBP continues to refuse to properly compensate import specialists for their invaluable work on behalf of the trade community and the American people. NTEU strongly urges the Committee to increase the journeyman grade for CBP import specialists to GS-12. The upgrade has been long overdue and would show CBP trade personnel that Congress recognizes the high level of expertise that all import specialists possess.

**Conclusion:**

Each year, with trade and travel increasing at astounding rates, CBP personnel have been asked to do more work with fewer personnel, training and resources. The more than 15,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology so that they can perform their jobs better and more efficiently.

In reauthorizing CBP, the Committee should endeavor to reestablish a productive balance between trade security and trade facilitation. The American public expects its borders and ports be properly defended. Congress must show the public that it is serious about protecting the homeland by fully funding CBPOs and commercial operations personnel at our 317 POEs. To maintain its commercial-security balance, Congress must ensure CBP comply with Section 412 of the Homeland Security Act.

Finally, to better understand the challenges that CBP employees face everyday, I urge each of you to visit the land, sea and air CBP ports of entry in your home districts. Talk to the CBPOs, canine officers, and trade entry and import specialists there to fully comprehend the jobs they do and what their work lives are like. Thank you for the opportunity to submit this testimony to the Committee on their behalf.



**U.S. Customs Service  
Optimal Staffing Levels  
Fiscal Years 2000 – 2002**

February 25, 2000

*fw*

U.S. Customs Service  
Optimal Staffing Levels  
Fiscal Years 2000 - 2002



## 1. Optimal Staffing Level Overview

In recent years, Customs has seen a decrease in the level of funding, relative to other Federal law enforcement agencies and relative to Treasury, while having significantly higher workloads and threat. This trend is evidenced in the chart shown below.

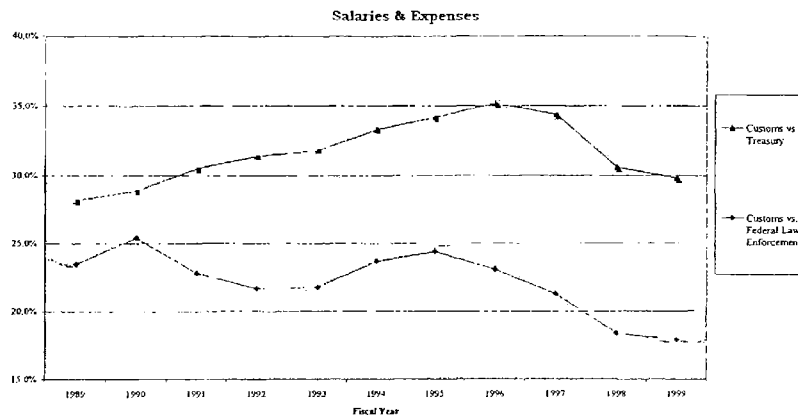


Figure 1— Customs Salaries & Expenses as a Percentage of Other Related Organizations

→ Using the Resource Allocation Model (RAM), the U.S. Customs Service reviewed staffing levels and projected the required number of positions to fulfill its mission. Specifically, we found three major challenges to which we needed to respond:

- **Workload Growth.** The growth of the Customs workload over the past four years has been substantial. Workload drivers for Customs includes such items as number of passengers, number of conveyances and number of containers. Unfortunately, the growth in staff has not kept pace with the growth in the workload across all of Customs activities. For the purposes of this analysis, the RAM was used to predict the required growth in staff driven by the increase in workload. For more detail, see Section 2.2.1.
- **Border Presence.** Given recent threats identified along our nation's land borders, the U.S. Customs Service needs to re-establish a strong presence at all land border ports. To do this, the U.S. Customs Service must increase its staffing at the land border ports to allow 24 hours a day, 7 days a week human coverage of all land border crossings into the United States. Also, to ensure the safety of Inspectors and increase their effectiveness, these crossings will be manned by two Inspectors at all times. For more detail, see Section 2.2.2.

**U.S. Customs Service**  
**Optimal Staffing Levels**  
**Fiscal Years 2000 - 2002**



- **Enforcement Threat.** Over the past four years, workload has grown substantially. However, using number of seizures as a proxy for enforcement threat, the threat has grown at an alarmingly high rate. Consequently, Customs has identified the need for a significant increase in positions to effectively respond to this increasing threat. For more detail, see Section 2.2.3.

The U.S. Customs Service developed scenarios and set assumptions in the RAM to predict the number of positions that would be required to proactively address these three major challenges. The following table is a summary of optimal staffing levels and the required additional number of positions above fiscal year 1998 staffing levels that resulted from that analysis.

|                           | <u>1998 Base</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|---------------------------|------------------|-------------|-------------|-------------|
| <u>Inspectors</u>         | 7,677            | 7,677       | 7,677       | 7,677       |
| required additional       |                  | 2,806       | 4,425       | 6,481       |
| Total                     |                  | 10,483      | 12,102      | 14,158      |
| <u>Agents</u>             | 2,363            | 2,363       | 2,363       | 2,363       |
| required additional       |                  | 951         | 1,387       | 2,044       |
| Total                     |                  | 3,317       | 3,750       | 4,404       |
| <u>CEOs</u>               | 641              | 641         | 641         | 641         |
| required additional       |                  | 275         | 446         | 650         |
| Total                     |                  | 916         | 1,087       | 1,291       |
| <u>Import Specialists</u> | 1,249            | 1,249       | 1,249       | 1,249       |
| required additional       |                  | 128         | 172         | 240         |
| Total                     |                  | 1,377       | 1,421       | 1,489       |
| <u>All Other</u>          | 7,498            | 7,498       | 7,498       | 7,498       |
| required additional       |                  | 2,673       | 3,823       | 5,364       |
| Total                     |                  | 10,171      | 11,324      | 12,862      |
| <u>Service-wide</u>       | 19,428           | 19,428      | 19,428      | 19,428      |
| required additional       |                  | 6,836       | 10,256      | 14,776      |
| Total                     |                  | 26,264      | 29,684      | 34,204      |

**Figure 2 – Fiscal Year 2000 – 2002 Optimal Staffing Level Summary**

The analysis applied specifically addressed the three major challenges identified for the U.S. Customs Service. For a breakout of the optimal staffing levels, showing required additional positions by assumption type, see Appendix A. The breakout of the optimal staffing levels, showing required additional positions by location, can be found in Appendices J through N. The methodology behind the analysis is detailed in Section 2.



## **2. Optimal Staffing Level Methodology**

The Resource Allocation Model is used as a Customs-wide tool to determine the optimal number of positions by occupation and location. The detailed analysis focuses on core occupations stationed at core locations. Core occupations are defined as those occupations which directly perform one of the four core functions (Passenger Processing, Trade Compliance, Outbound, Enforcement). Core locations are defined as those locations where any core function is directly performed. For a full list of core locations, see the Master Locations list in Appendix B.

The core occupations that are specified for detailed analysis in the model are:

- Inspectors
- Agents
- Import Specialists
- Canine Enforcement Officers (CEOs)
- Entry Specialists
- Regulatory Auditors
- Pilots
- Marine Enforcement Officers (MEOs)

Other occupations were included into a category labeled as Mission Support and a ratio was developed to represent the relationship between the selected occupations and their support requirements.

Customs locations were also divided into core and mission support locations. The RAM will predict the number of staff years for all combinations of location and occupation types:

- Core occupations located at core locations (approximately 68% of Customs fiscal year 1998 staff years)
- Core occupations located at mission support locations (approximately 2% of Customs fiscal year 1998 staff years)
- Mission support occupations located at core locations (approximately 15% of Customs fiscal year 1998 staff years)
- Mission support occupations located at mission support locations (approximately 15% of Customs fiscal year 1998 staff years)

