

**CUSTOMS BUDGET AUTHORIZATIONS  
AND OTHER CUSTOMS ISSUES**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON TRADE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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JULY 25, 2006  
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**Serial No. 109-85**

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**CUSTOMS BUDGET AUTHORIZATIONS  
AND OTHER CUSTOMS ISSUES**

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**TUESDAY, JULY 25, 2006**

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

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room 1100, Longworth House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.  
[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE  
July 18, 2006  
TR-4

CONTACT: (202) 225-6649

### **Shaw Announces Hearing on Customs Budget Authorizations and Other Customs Issues**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on budget authorizations for fiscal year (FY) 2007 and FY2008 for the Bureau of Customs and Border Protection (CBP) of the U.S. Department of Homeland Security (DHS) and the Bureau of Immigration and Customs Enforcement (ICE) of DHS, and on other Customs issues. **The hearing will take place on Tuesday, July 25, 2006, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

Oral testimony at this hearing will be heard from both invited and public witnesses. Witnesses are expected to include representatives from CBP and ICE. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

##### *Budget Authorizations:*

Customs functions were last authorized in the Trade Act of 2002 (P.L. 107-210). For FY2007 the Administration requested \$6.574 billion for CBP and \$4.444 billion for ICE. On June 6, 2006, the House passed H.R. 5441, which would provide \$6.434 billion in funding for CBP and \$3.876 billion for ICE for FY2007. On July 13, 2006, the Senate passed an amended version of H.R. 5441, which would provide \$6.683 billion for CBP and \$3.920 for ICE.

##### *Other Customs Issues:*

*Reorganization in DHS: On November 25, 2002, the President signed into law legislation (P.L. 107-296) creating DHS. Among other provisions, this legislation required that the customs revenue functions that existed prior to the creation of DHS not be diminished. On March 1, 2003, the former U.S. Customs Service was divided into two new agencies within DHS. Customs inspectors, canine enforcement officers, and import specialists were merged with immigration inspectors, border patrol agents, and agriculture inspectors to create CBP. Customs investigators and personnel in the air and marine operations were merged with immigration investigators, Federal air marshals, and members of the Federal protective service to create ICE. In July 2005, DHS reorganized, eliminating the Under Secretary for Border and Transportation Security, which had overseen CBP and ICE, and creating an Assistant Secretary for Policy to, among other duties, coordinate trade policy.*

*Issues for the Subcommittee to address involve whether the new agencies are operating effectively, whether trade functions are being given sufficient priority now that the agencies are integrated into a department focused on security, whether trade concerns are adequately vetted before new DHS policies and programs are implemented, and whether adequate resources are devoted to customs functions.*

*Trade and Security: In November 2001, CBP initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), a program in which private companies improve the security of their supply chains in return for the reduced likelihood that their containers will be inspected for weapons. More than 6,000 businesses participate in C-*

*TPAT and more than 10,000 have applied, according to CBP. The U.S. General Accounting Office (GAO) issued a report regarding C-TPAT in March of 2005 in which it found C-TPAT to be a promising program but also identified a number of areas that needed to be addressed. In particular GAO cited concerns about whether CBP's validation process is rigorous enough to ensure the reliability of member's security profiles, the sufficiency of CBP's human capital to plan for the program; the need for a comprehensive set of performance measures and indicators to monitor program goals; and the need for an effective records management system for C-TPAT. Because C-TPAT also has yet to validate many of its members, some Members of Congress advocate that private sector firms be used for this purpose. In addition to C-TPAT, DHS has implemented several other new programs to increase screening of imports, such as requiring of advance data on shipments, and there have been several recent proposals to expand or enhance these efforts.*

*Finally, the enhanced security requirements related to individuals entering the United States has impacted the ability of U.S. companies to arrange for visits by potential customers and business partners to increase U.S. trade opportunities. U.S. companies rely on the ability of individuals to obtain visas to enter the United States to engage in trade and to work with their foreign counterparts in order to compete in the global market place. In addition, U.S. companies that rely on moving customers, passengers, and officials in and out of the United States have had to adjust due to enhanced and sometimes repeated screening of individuals. The DHS is exploring potential programs that will help facilitate such business travel and address other concerns while maintaining security.*

*Issues for the Subcommittee to address involve the effectiveness of these programs in enhancing security and facilitating trade, whether performance measures exist to determine the effectiveness of these programs, whether companies are receiving the anticipated trade benefits from programs such as C-TPAT, how confidential business information will be protected under these programs, and how the programs are being applied to and impact both large and small businesses.*

*Customs Modernization:* The current Customs automation system, the Automated Commercial System (ACS), is an aging system that has in the past experienced several "brownouts." Customs is in the process of replacing ACS with the Automated Commercial Environment (ACE). Some of the main differences between ACS and ACE are that ACE will use a single integrated system, modern standards, processes, techniques, and language, and will be compatible with commercial software. As of December 2005, the number of ACE portal accounts topped 1,000.

In addition, CBP is in the process of integrating the International Trade Data System (ITDS) with ACE. The ITDS was chartered in 1995 to facilitate information processing for businesses by accommodating the more than 100 Federal agencies that need access to international trade data. Currently, traders are required to provide this information to each individual trade agency using a variety of different automated systems, a multitude of paper forms, or a combination of systems and forms. With ITDS, traders will submit standard electronic data for imports or exports only once to ITDS. Then, ITDS will distribute this standard data to the pertinent Federal agencies that have an interest in the transaction for their selectivity and risk assessment. The ITDS will provide only the data necessary to an agency's mission. As of November 2005, 20 Federal agencies utilize the ITDS and ACE systems.

There are several issues for the Subcommittee to consider relating to customs modernization: (1) whether ACE's design and architecture will meet future requirements, including the requirements of other agencies participating in the ITDS program; (2) whether the current participation by Federal agencies in the ITDS program is adequate and whether additional resources are required to facilitate participation; (3) the timing of the expansion of ACE; and (4) the role of the business community in building ACE.

In announcing the hearing, Chairman Shaw stated, "One of the highest priorities of our government is ensuring the security of our borders, while facilitating the legitimate trade that is the lifeblood of our economy. The efforts of the Department of Homeland Security in this area are vitally important to protecting both the safety and economic security of America's citizens. I look forward to the opportunity to see how the Subcommittee can make sure that the Department has the resources it needs and to examine the systems that the Department has in place."

**FOCUS OF THE HEARING:**

The hearing will focus on budget authorizations for FY2007 and FY2008 for CBP and ICE. In addition, the hearing will address other Customs issues, including: the creation of CBP and ICE and the integration of the former U.S. Customs Service into DHS, the C-TPAT program, Customs automation and modernization efforts and the mechanisms needed to fund them, and general Customs oversight issues.

**DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:**

Requests to be heard at the hearing must be made by telephone to Matthew Turkstra or Cooper Smith at (202) 225-1721 no later than noon, **Thursday, July 20, 2006**. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225-2610. The staff of the Committee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Committee staff at (202) 225-1721.

**In view of the limited time available to hear witnesses, the Committee may not be able to accommodate all requests to be heard.** Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing in lieu of a personal appearance. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Committee are required to submit 100 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format*, of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee office, 1104 Longworth House Office Building, no later than close of business on Friday, July 21, 2006.** The 100 copies can be delivered to the Subcommittee staff in one of two ways: (1) Government agency employees can deliver their copies to 1104 Longworth House Office Building in an open and searchable box, but must carry with them their respective government issued identification to show the U.S. Capitol Police, or (2) for non-government officials, the copies must be sent to the new Congressional Courier Acceptance Site at the location of 2nd and D Streets, N.E., **at least 48 hours prior to the hearing date. Please ensure that you have the address of the Subcommittee, 1104 Longworth House Office Building, on your package, and contact the staff of the Subcommittee at (202) 225-6649 of its impending arrival.** *Due to new House mailing procedures, please avoid using mail couriers such as the U.S. Postal Service, UPS, and FedEx.* When a couriered item arrives at this facility, it will be opened, screened, and then delivered to the Committee office, within one of the following two time frames: (1) expected or confirmed deliveries will be delivered in approximately 2 to 3 hours, and (2) unexpected items, or items not approved by the Committee office, will be delivered the morning of the next business day. The U.S. Capitol Police will refuse all non-governmental courier deliveries to all House Office Buildings.

**WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:**

**Please Note:** Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "109th Congress" from the menu entitled, "Hearing Archives" (<http://waysandmeans.house.gov/Hearings.asp?congress=17>). Select the hearing for which you would like to submit, and click on the link entitled,



*“Click here to provide a submission for the record.”* Once you have followed the on-line instructions, completing all informational forms and clicking “submit” on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You **MUST REPLY** to the email and **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Tuesday, August 8, 2006. **Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing can follow the same procedure listed above for those who are testifying and making an oral presentation. For questions, or if you encounter technical problems, please call (202) 225-1721.

#### **FORMATTING REQUIREMENTS:**

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

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

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

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

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

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

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Chairman SHAW. Good morning. In the wake of September 11, 2001 (9/11), few Americans would question the importance of securing our borders. At the same time, the free flow of international trade is the lifeblood of our Nation’s economy and vital to the economic prosperity of our citizens. Today, we are exercising a critically important responsibility of the House Committee on Ways and Means Subcommittee on Trade, that is to examine how these goals are balanced by our government.

In recent years, there have been dramatic changes in how we address these issues. One of the largest government agencies ever created, the Department of Homeland Security (DHS), was established by Congress and given jurisdiction over these critical missions. The former Customs Bureau saw its function divided into two DHS entities—the Bureau of Customs and Border Protection (CBP), and the Bureau of Immigration and Customs Enforcement (ICE), and the heads of these bureaus are here before us today. In

creating DHS, the Committee on Ways and Means and the Congress insisted that the trade and customs revenue function that existed prior to its creation not be diminished. This is an important oversight issue that we will be reviewing today, and particularly whether more needs to be done to ensure that CBP and ICE have the resources, authority, and organizational capacity to both guard our Nation and facilitate trade. In order for these efforts to be successful, they must be done in partnership with the Congress and committed U.S. companies who have the experience and information to secure the supply chain against threats. The Customs Trade Partnership Against Terrorism (C-TPAT) and the similar programs reflect this important partnership. Today, we will be looking at ways to strengthen such partnerships and to ensure that congressional and private sector concerns are fully factored into important DHS decisions that impact trade.

I am glad that we have a strong and wide representation of private sector witnesses with us today to help us examine these issues. Both U.S. competitiveness and security also depend on our ability to make our customs process modern and efficient while obtaining and protecting appropriate information. Efforts such as automated customs environment (ACE) and integrated trade data systems have been in the works for years but must be moved rapidly to completion. In addition, the Committee on Ways and Means has placed a great deal of emphasis on enforcing our trade agreements, and CBP and ICE are on the frontlines of efforts to combat fraud in areas such as textile transshipment and defend against intellectual property rights theft, costing the United States billions of dollars each year. We look forward to thoughts on how these efforts can be strengthened.

Let me say now for the record, defending this country is our Nation's number one priority. I believe this. I have no doubt the Ranking Member believes this, and I feel safe in assuming that everyone else in this room right now feels this to be the case. However, our economy depends upon the free flow of international trade. CBP and ICE do not have an easy challenge before them. Every day they must not only do what is necessary to protect our citizens, but, at the same time, they must ensure the greatest and largest economy in the world, our economy, continues to run smoothly. I look forward to hearing our witnesses today, and I now recognize the gentleman from Michigan, Mr. Levin, for any comments he might have, and for the record, any other Members that wish to put an opening statement in the record, it will remain open for that purpose. Mr. Levin.

Mr. LEVIN. Thank you. Thank you, Mr. Shaw, and I am glad we are holding the hearing today and that we have these two panels. The trade facilitation and trade enforcement functions performed by CBP and ICE are of critical importance to all American companies that import and export more than a trillion dollars of goods across the borders each year. You are right, Mr. Chairman, we very much share the absolute essential nature of providing border security. We also need to pay attention to the trillion dollars of goods that come across our borders. So, it is particularly important that this Committee take the time to review the trade-related operations of CBP and ICE.

Homeland Security Committee has taken a look at the efforts relating to the security of this country, but of course, as mentioned, there are the trade functions, and it is our mission; ensuring the flow of legitimate trade and enforcing U.S. trade laws, that falls under the jurisdiction of our Committee. As we have looked at the data, it unfortunately appears that, under this administration, there has been inefficient attention to the trade functions of CBP and ICE. One concrete example of this is, the staffing for CBP and ICE's trade functions has fallen in recent years despite the increased flow in trade across our borders and the increased complexity of our trade laws. As we understand it, the number of import specialists employed by CBP at U.S. ports has dropped from 984 positions in March of 2003 to 892 positions 3 years later.

Similarly, as we understand it, the number of personnel dedicated to trade enforcement at ICE has dropped from 276 in 2004 to 228 today. What does this mean in practice? Fewer import specialists to review shipments entering our ports. More imports entering the U.S. market in violation of U.S. rules. It means fewer trade enforcement officers at ICE to investigate customs violations, contraband smuggling operations and Intellectual Property Rights (IPR) violations. I think what is even more disturbing has been the decline in staffing for trade functions and that this decline violates section 412(b) of the Homeland Security Act of 2002, (P.L. 107-296). It was placed in the law as follows: that the Secretary may not reduce, and I quote, "the staffing level or the resources attributed," end of quote, to the functions performed by the former customs service. It was placed in the act at the behest of this Committee out of concern that the trade functions might be receiving less attention.

In November, the Inspector General at the Department of Homeland Security released a report stating that a lack of cooperation—this is another factor—between CBP and ICE has created, and I quote, "an environment of uncertainty and mistrust between CBP and ICE personnel." If CBP and ICE are to function as two separate agencies, communication between the two agencies must be seamless.

So, I hope both of you will address these issues. Let me raise two other issues. One relates to the inspection of cargo containers coming to the United States. Five years after 9/11, as we understand it, only 6 percent of these containers are now being physically inspected, and that seems clearly unacceptable.

Secondly, and I want to raise this quickly, an issue of special concern to Michigan but also to other States, and that relates to the issue as to identification of persons who pass between United States and Canada. The Western Hemisphere Travel Initiative, WHTI, will require that all entrants to the United States provide a passport or combination of documents denoting both citizenship and identity when entering into the United States starting January 2008. Protecting our citizens and ensuring their safety and security is, as stated, of the utmost importance, but there remains a great deal of concern that WHTI's requirement could lead to significant problems at Detroit-Windsor and other land borders, including delays that will stifle trade and commerce across the northern border. We are talking about 174,000 Michigan jobs supported by

trade between the United States and Canada. Given what is at stake for our northern border States, I would urge DHS and the State Department to carefully review and map out all possible options before undertaking actions that are not necessary for security—that comes first—but may harm the flow of trade between our two countries. Thank you, Mr. Chairman.

Chairman SHAW. We have our first panel of witnesses. We are pleased to welcome the Honorable Ralph Basham, who is the Commissioner of the U.S. Customs and Border Protection, the U.S. Department of Homeland Security. Hon. Julie Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement, the U.S. Department of Homeland Security. We have your written statements, or I know we have Ms. Myers' written statements, which will be made a part of the record, and we invite you to proceed or summarize as you see fit. Mr. Basham.

**STATEMENT OF THE HONORABLE W. RALPH BASHAM, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. BASHAM. Thank you, Mr. Chairman, and the Members of the Subcommittee. I want to thank this Subcommittee for your continued support to ensure that CBP has the necessary funding and resources to carry out our dual missions of protecting our borders and ensuring the free flow of legitimate trade and travel. CBP's mission is a constant balancing act of protection and facilitation. For the sake of both our National security and our National economy, it is imperative that we strike the appropriate balance. It is imperative, too, that we understand that these dual missions are not necessarily mutually exclusive. They are, in fact, complementary.

The programs we have instituted to secure legitimate trade and travel also make us vastly more efficient at processing legitimate commerce and passengers. As you know, after 9/11, CBP developed a smart border strategy to accomplish our twin goals of security and facilitation. It is a strategy built on five interrelated initiatives: getting advanced information; using that information to target for terrorist risks; detection technology; and partnerships—partnerships with other countries through our Container Security Initiative (CSI); and partnerships with our private sector through the C-TPAT. These initiatives work together to secure America's ports and borders while also contributing to a safer, more efficient trade and travel.

While securing our borders is our first priority, I want to reassure the Subcommittee that we have taken steps to ensure that facilitating international trade, collecting revenue for the U.S. Treasury and protecting the American economy remain priorities for CBP. Last year, CBP processed almost 29 million entry summaries; that is a record high. Ninety-five percent were compliant with trade laws. This year, we expect to collect \$30 billion in duties, fees and taxes. At the same time, the value of the U.S. imports grew to \$1.7 trillion, and with this growth comes concern about violations of our trade laws.

To address the trade risk, CBP has implemented a national trade strategy that complements our strategy for securing and facili-

tating trade. The strategy is organized around priority trade issues and brings together the skills of many CBP employees, from international trade specialists and import specialists to attorneys and fines and penalty specialists, to protect American business from theft of intellectual property and unfair trade practices, enforce trade laws related to admissibility, including textiles, regulate trade practices to collect the appropriate revenue and protect American agriculture and the public from health and safety threats. In the area of intellectual property rights, for example, seizures of counterfeit goods have increased 125 percent from 2001. So, far this year, IPR seizures are up 72 percent over the same time last year. I recognize your concerns about the staffing levels dedicated to our revenue functions. I recognize, too, that CBP has not yet made the staffing mandates of the Homeland Security Act of 2002. Currently, of the 984 positions required, we have 897 on-board and another 40 are in the pipeline. Mr. Chairman, we will meet those mandate numbers and do so hopefully in a reasonable time. Once we meet those numbers, however, I would ask that we begin a dialog about what improved technology like ACE means to our staffing requirements and where some of the staffing needs might move in the future. In this new more automated environment, human resources are not the only way to measure success. We must also factor in advances in technology and infrastructure.

Nonetheless, this year CBP will spend over \$212 million on trade compliance staffing, this is \$36 million more than last year. Now, let me turn to the issue of data. Both our cargo security strategy and trade enforcement initiatives depend on the collection of commercial data. We are working closely with the private sector to determine the best way to approach the vast amount of data associated with the international trade and how that data can be used to improve supply chain security and trade enforcement. Our goal is to combine into a single set of data requirements that the trade reports to the U.S. Government. We have received tremendous support from the international trade community in the development of the automated commercial environment. We are already seeing the benefits of ACE through the collection of over \$5 billion of duties and fees using a new periodic monthly statement process.

Mr. Chairman, I assure you that while we work to secure our country against terrorist attacks, we have not forgotten our trade responsibilities. For the health of our economy and the security of our Nation, we must do both. We appreciate the support of this Committee for our dual missions, and again, I thank you for the opportunity to testify. Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Basham. For the record, we do have your full statement. Ms. Myers.

[The prepared statement of Mr. Basham follows:]

**Statement of The Honorable W. Ralph Basham, Commissioner, U.S. Customs and Border Protection, U.S. Department of Homeland Security**

Chairman Shaw, Ranking Member Cardin, and Members of the Subcommittee, it is a privilege and an honor to appear before you today to discuss the trade functions and enforcement efforts of U.S. Customs and Border Protection (CBP) of the Department of Homeland Security.

Let me begin by thanking this Committee for the interest and support you continue to provide to CBP as we pursue our "twin goals"—performing 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.

Your support has enabled CBP to make significant progress in securing our borders and protecting our country against transnational threats, and we look forward to working with you to build on our success.

In our three years of existence, CBP has made great strides toward securing America's borders, protecting trade and travel, and ensuring the vitality of our economy. CBP keeps our nation strong by guarding our borders, securing trade and our economy, protecting American businesses from theft of their intellectual property, regulating and facilitating international trade, collecting import duties, enforcing United States trade laws, protecting our food supply, and preventing illegal drugs from reaching our streets.

In Fiscal Year (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.

#### *A Balancing Act*

CBP's job is a constant balancing act of protection and facilitation. And, it is a mission that depends on our partnerships with others.

The challenges CBP faces are not unlike what the Secret Service encounters in protecting the President and the White House on a daily basis. Both CBP and the Secret Service must deal with the constant tension of maintaining a balance between security and facilitation. If the Secret Service let security become its one and only concern, then the President and his staff would not be able to do their jobs. Likewise, if CBP focuses solely on securing trade and travel at the expense of free movement, our liberty and economy will suffer.

For both our national security and our national economy, it is imperative that we find that appropriate balance.

#### **Strategy for Securing and Facilitating Trade**

Ensuring safety at our Nation's borders and efficiently and effectively processing international trade are inextricably linked.

CBP's priority mission is to protect the American public from terrorists and terrorist weapons. At the same time, CBP retains the traditional customs mission of protecting the revenue and facilitating the movement of legitimate trade. While these two missions may at first seem to be unrelated, they actually represent two sides of the same coin. Both CBP and U.S. Immigration and Enforcement (ICE) seek balance enforcement and facilitation with protecting national security and facilitating legitimate trade and travel.

Given the growth in trade, and the continued terrorist threat, CBP's challenge is clear: we must facilitate legitimate international trade, which is part of our economic lifeblood, while we protect the country from terrorists and their weapons. CBP has worked to develop—and implement—a “smart border” strategy to accomplish both objectives; a strategy that better secures the cross border movement of trade and people, but does so in ways that makes that movement more efficient; a strategy that accomplishes the “twin goals” of security and facilitation.

These twin goals, and CBP's strategy to achieve them, are built on five inter-related “pillars.” Both the security and trade missions use the five pillars as the key components to achieving our mission goals:

- Advance information about what is heading to the U.S. from abroad
- Automated targeting
- Sophisticated detection technology
- Partnering with other countries
- Partnering with the private sector

#### **Pillar One: Advance Information**

CBP requires advance electronic information on all cargo being shipped to the U.S. before it arrives at our ports of entry. For oceangoing cargo containers being shipped to the U.S., that means advance manifest data 24 hours before they are loaded at overseas seaports on board vessels headed for the U.S. That is the 24-Hour Rule, which has been in effect since 2002. The Trade Act rules extended the advance electronic information requirement to all modes of transportation, including truck, rail, and air.

This security approach also supports the CBP trade mission. Receiving this information in advance helps CBP determine whether goods being shipped to the United States are admissible for entry into the country, and also helps prioritize the agency's trade workload. Additional data, which is currently captured later in the import

process, could also be provided in advance. This would enable the agency to make many trade determinations before goods arrive, facilitating the low risk shipments and allowing CBP to focus trade resources on high-risk shipments.

#### Pillar Two: Automated Targeting

The second pillar is evaluating that advance information for risk of terrorism. To do this, CBP built the National Targeting Center (NTC), which stood up in October 2001. Using the Automated Targeting System (ATS), CBP has built in targeting or risk assessment rules and algorithms based upon strategic intelligence about the terrorist threat.

ATS and other targeting systems are used to target trade risks, as well. As it has been developed, new capabilities have been added in ATS that allow CBP personnel to identify anomalies relevant to the trade mission. For example, ATS is now being used to target shipments that may violate pharmaceutical and Intellectual Property Rights (IPR) import laws. Coupled with the receipt of advance information, automated targeting will enhance our ability to focus on priority trade issues.

#### Pillar Three: Technology

The third pillar is detection technology. CBP requires all high-risk containers arriving at U.S. ports of entry to be given security inspections, using NII and radiation detection devices. Non-intrusive inspection equipment has enabled CBP to do this, as has automated risk targeting for the terrorist threat.

Technology also helps advance our trade mission. By speeding the security review process and eliminating the need to physically examine high-security-risk containers, CBP's trade resources can focus their time on examining cargo for compliance with U.S. trade laws. And next-generation targeting tools, such as statistical risk modeling techniques, are also being developed in the Automated Commercial Environment (ACE) to provide greater depth to our modernization efforts.

#### Pillar Four: Partnering with other Countries

The fourth pillar, partnering with other countries, is best exemplified by the Container Security Initiative (CSI), a program which ICE participates in as well. Under CSI, high-risk containers receive a security inspection before being loaded onto a vessel destined for the U.S. Once high-risk containers are inspected at CSI ports, using the same ATS targeting rules used at U.S. ports, they are not ordinarily inspected again upon arrival in the U.S. This means that the containers inspected at CSI ports actually move faster and more predictably through U.S. seaports.

CBP also has a program for commercial trucks—FAST—Fast and Secure Trade—where importers, trucking companies, and truck drivers are vetted and pre-cleared to move through dedicated “FAST” lanes across the Canadian and/or Mexican border.

CBP and ICE have long partnered with other nations to enhance trade enforcement. These agencies have Customs Mutual Assistance Agreements with many countries. Their original intent was to enhance international cooperation in enforcing trade laws. CBP also participates in the negotiation of free trade agreements to assure adequate trade enforcement provisions. CBP and ICE conduct foreign factory visits to ensure compliance with textile import laws, and cooperate on joint initiatives to address mutual trade risks, such as in Intellectual Property protection.

#### Pillar Five: Partnering with Private Sector

Partnering with the private sector is the fifth pillar. For cargo security, that is C-TPAT, the Customs-Trade Partnership Against Terrorism, which began in November 2001 with just 7 companies. Today, more than 10,000 companies have applied to become C-TPAT members, and more than 6,000 companies have been certified as having implemented C-TPAT security criteria. Through its C-TPAT partnership with the private sector owners and operators of the supply chain, CBP has dramatically increased the security of the supply chain, from the foreign loading docks all the way to U.S. ports.

CBP's validation process 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 50 percent (3,039 validations completed) of the certified membership, up from 8 percent (403 validations) completed in January of 2005. Validations are underway on another 15 percent of certified members, and these validations will be completed by the end of this year, bringing the total percentage of validated certified members to 65 percent. The goal is to validate 100 percent of certified members by the end of 2007, and we will reach this goal.

C-TPAT is only one of the ways CBP has partnered with the private sector. The Commercial Operations Advisory Committee (COAC) is CBP's private sector advisory body that helps provide insight into our commercial operations. The Trade Sup-

port Network (TSN) is another body that ensures private sector needs are taken into account as CBP builds the Automated Commercial Environment. Participants in the Importer Self Assessment (ISA) program, once they have demonstrated a high-level of compliance, are allowed to be largely self-policing, which enables the agency to focus on higher-risk traders.

All of these initiatives help to extend the zone of security beyond our nation's actual borders—and they help CBP meet its “twin goals” of securing our Nation while maintaining the flow of legitimate trade. As they have been since the birth of the Nation, border security and trade facilitation are inextricably linked. must maintain and strengthen the programs developed since September 11 to meet these twin goals for the safety and economic security of the Nation and its citizens.

#### *Trade Security and Trade Compliance Programs with Facilitation Benefits*

Through its trade security programs, CBP works with the trade community and foreign governments to ensure secure borders and the Nation's physical security. And with over \$1.7 trillion in imported goods brought in by 823,000 consignees, maintaining a high level of compliance with trade laws and protecting the Nation's economic security requires strong cooperation with the trade community. Virtually all of our key trade security and compliance programs use facilitation benefits as a critical tool in the fight against terrorism while ensuring the free flow of legitimate trade.

Some of the key programs that use facilitation as a benefit to the trade community include:

#### **Advance Electronic Manifest Information (“24-Hour Rule”)**

CBP requires carriers to submit advance electronic cargo manifest information. Screening of this information enhances CBP's ability to identify and intercept high-risk cargo before it enters the U.S. or departs the U.S. and is unrecoverable. Early identification of high-risk cargo results in the faster movement of low-risk imports and exports. Advance electronic cargo manifest information must be transmitted to CBP within specific time frames that vary by mode of transportation.

#### **Customs-Trade Partnership Against Terrorism (C-TPAT)**

The largest public-private industry partnership to emerge after 9/11, C-TPAT is a voluntary, incentives-based partnership between CBP and industry that works to:

- 1) secure the international supply chain and prevent/deter introduction of a weapon of mass destruction, or illegal contraband or aliens, into a shipment destined for the United States, and
- 2) facilitate the movement of low-risk cargo through expedited processing, “Front of Line” inspections, and reduced examinations.

C-TPAT membership is open to all importers, cross-border air, sea, truck, and rail carriers, brokers, freight forwarders, consolidators, non-vessel operating common carriers, and U.S. marine and terminal operators. Certain foreign manufacturers are being enrolled in the C-TPAT program while CBP continues to develop ways to include this important element of the supply chain in the program.

Companies participating in C-TPAT leverage their corporate strength and influence to push security enhancements throughout the international supply chain, beyond the regulatory reach of the U.S. government. The intent is to increase point of origin to point of arrival security into the supply chain. C-TPAT importers secure supply chains from the foreign factory loading docks of their vendors to the port of arrival in the U.S. CBP's validation process confirms the effectiveness, efficiency and accuracy of a C-TPAT certified member's supply chain security. Companies that fail to honor C-TPAT commitments may be suspended or removed from the program, and lose program benefits.

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

FAST is an initiative between the United States, Mexico, and Canada designed to ensure security and safety while enhancing the economic prosperity of each country. FAST promotes free and secure trade by using common risk management principles, supply chain security, industry partnership, and advanced technology to screen and clear commercial traffic at our shared borders more efficiently. The initiative enables CBP to direct security efforts and inspections where they are most needed while providing for expedited movement of legitimate, low-risk commerce.

#### **Binding Rulings**

One of the keys to facilitation of trade is providing timely information to the trade community. CBP is a leader among the world's customs services in providing such information to enable the trade community to meet its legal obligations. This is done



through a variety of tools that we make available to the public. Principal among these is CBP's binding rulings system in which we provide advance decisions on tariff classification, valuation, marking, and eligibility under various Free Trade Agreements. These rulings are seen as vital for traders to plan their import transactions. CBP publishes dozens of Informed Compliance Publications on subjects ranging from reasonable care to classification and value, providing, in basic language, the legal requirements in a specific area of customs law and practice.

#### **Importer Self-Assessment**

The Importer Self-Assessment program (ISA) is a trade facilitation partnership program that recruits trade compliant companies in order to reduce both CBP and company resources required at the border and after the goods have been released. ISA candidates are selected only from C-TPAT participants and add a trade compliance component for importers that have demonstrated supply chain security. The program provides significant trade-related benefits that facilitate the movement of legitimate trade while improving compliance. ISA participants have a 97.4 percent compliance rate, higher than any other group in the importing community. Additionally, ICE is a voting member of the ISA membership board.

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

The five aforementioned pillars are embodied in one of my top priorities—ACE. ACE is the information technology that will help us accomplish our twin goals, providing the information to decide, before a shipment reaches U.S. borders, what cargo should be targeted because it poses a potential risk, and what cargo should be expedited because it complies with U.S. laws. ACE will consolidate or integrate seven different current systems—including ATS and FAST—and will serve as the single Government window for trade data that supports both cargo security and our trade enforcement and facilitation efforts.

Using the improved technologies inherent in ACE, CBP will have a significantly improved ability to obtain advance electronic trade data, including information on cargo, conveyance, and crew. This information will enable us to more effectively support risk-based targeting, and to better share and analyze information with other federal agencies that have border security responsibilities. When combined with C-TPAT and CSI and the international aspects of those programs, ACE is part of a formidable triad against terrorism, and an enabling technology to make the global supply chain more efficient and secure.

In coordination with our partners in the Trade Support Network, and with other federal agencies, we are identifying the capabilities that are being built into ACE, and enhancing the business processes that ACE will support. Today, 28 agencies are participating in ACE development and implementation, and more than half of those agencies are currently accessing real-time information through the ACE Secure Data Portal. Today, ACE is being used for national trade account management and monthly periodic payment of duties and fees. In addition, we have initial ACE cargo release capabilities operating at 44 land border ports.

#### **National Trade Strategy**

Along with its priority antiterrorism mission, CBP is responsible for traditional trade missions, including border enforcement of trade laws, regulations and agreements, and collecting revenues in the form of import duties, taxes and fees. To address trade risks and priority issues, CBP has implemented a multi-disciplinary National Trade Strategy that complements the agency's strategy for securing and facilitating trade.

The National Trade Strategy is designed 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 agency'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.
- **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.

- Prepare for Modernization—Consolidate technologies and systems, begin transfer of accountability for compliance to the trade community, and prepare for a broad organizational transformation.

By directing agency resources to trade issues posing significant risks, CBP's National Trade Strategy provides solutions to both trade enforcement and facilitation challenges. The strategy is organized around Priority Trade Issues (PTIs), 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. The PTIs integrate key trade risks from political, economic and resource perspectives while balancing the goals of trade facilitation and trade enforcement. Current PTIs include intellectual property rights, antidumping and countervailing duties, textiles and wearing apparel, revenue, and agriculture.

With a strategic approach to addressing trade risks, and with the appropriate level of resources, CBP can successfully facilitate legitimate trade while effectively protecting the American public and economy. The National Trade Strategy and its Priority Trade Issues bring together the skills of many CBP employees, including international trade specialists, import specialists, attorneys, and fines and penalties specialists in a coordinated, risk-driven strategy for enforcing trade laws while facilitating legitimate trade. 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.

#### **Compliance Measurement (CM)**

CBP conducts a Compliance Measurement (CM) annually to collect objective statistical data to determine the compliance of commercial imports with U.S. trade laws, regulations and agreements and with supply chain security issues, and to estimate the revenue gap, a statistically calculated estimate of potential revenue loss from noncompliance.

The success of CBP's integrated approach to trade security, facilitation and enforcement is evidenced by increasing rates of trade compliance. In FY 2005, the trade compliance rate, as measured by CM, was 95 percent, compared to 94 percent in FY 2004 and 93 percent in FY 2003. Trade compliance rates for CBP partnership programs are even higher than the overall rate, with a 97 percent trade compliance rate for both ISA and C-TPAT participants.

With overall compliance at a high level, CBP is able to focus on issues of significant trade risk. The FY 2005 revenue gap estimate is \$410 million or 1.8 percent of total actual collections, the highest gap since 1998. Compliance Measurement provides CBP with information on emerging trade issues, such as an increasing revenue gap, which the agency then addresses in the National Trade Strategy.

#### **Homeland Security Act and CBP Revenue Functions**

Under Sec. 412-417 of the Homeland Security Act of 2002 (HSA), authority related to customs revenue functions, while retained by the Treasury Department under the HSA, has been delegated to DHS from the Department of Treasury. DHS is instructed to maintain legacy customs revenue functions, which includes the assessment and collection of duties, enforcement of reciprocal trade agreements and trade restrictions, and the detection of fraudulent trade practices.

CBP performs the customs revenue functions required by the Homeland Security Act of 2002, as well as trade law enforcement through a variety of tools, techniques and enforcement remedies. The revenue functions include collecting revenues, determining compliance of imports with U.S. laws and regulations, determining admissibility of goods into the commerce of the United States, collecting data for trade statistics and enforcing trade agreements. These functions are integrated into the work of offices throughout CBP, and their accomplishment requires diverse employee skill sets and coordination among the various disciplines. Reviews and analysis of electronically filed import information and other documentation by CBP account managers, import specialists, auditors, fines and penalties specialists, international trade specialists and attorneys, along with physical examination of cargo, enables CBP to assess compliance with customs laws and regulations, and to assist in ensuring compliance with laws administered by other federal agencies.

#### **Conclusion**

Mr. Chairman, today I have briefly addressed CBP's critical initiatives that help us maintain a balance between our need to secure our nation against terrorist and terrorist weapons, with our need to facilitate legitimate trade and travel.

We appreciate the support of this Committee for CBP's mission, and I thank you for this opportunity to come before you today to discuss these issues that are so vital to both our security and our economy. I would now be happy to answer any questions you may have.

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**STATEMENT OF THE HONORABLE JULIE MYERS, ASSISTANT  
SECRETARY FOR U.S. IMMIGRATION AND CUSTOMS EN-  
FORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. MYERS. Thank you, Chairman Shaw, and distinguished members of the Subcommittee, I appreciate the opportunity to be here today with my colleague, Commissioner Basham, and to have the opportunity to share with you how Immigration and Custom Enforcement (ICE) is applying our expertise and authorities to protect the American people from economic, criminal and terrorist threats that arise from our borders. The lawful movement of goods across our border is critical to strengthening and ensuring the integrity of our economy, yet the growth of international trade is increasing the risk of border security vulnerabilities and transnational economic crimes. ICE continues to aggressively identify and combat these threats to the U.S. homeland and our economy without impeding legitimate international trade. We are very grateful for all the help that we have had from Congress to this end. For example, the reauthorization of the PATRIOT Act this year (P.L. 109-178) added a necessary statute that criminalizes smuggling from the United States. In addition, the potential sentence for smuggling into the United States was increased from 5 years to 20 years. As a result, Congress's act has strengthened ICE's ability to combat violent, criminal and terrorist organizations.

Let me summarize a few investigative areas that we are prioritizing. First, intellectual property: ICE diligently investigates violations of our Nation's commercial fraud and intellectual property rights laws. Our investigations really 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. This illegal trade presents a dangerous threat to our Nation's public health and safety, especially when unapproved counterfeit pharmaceuticals, tainted food stuffs, auto parts, hazardous materials and other items are illegally imported. Another investigative area we focus on involves fraudulent schemes and textile enforcement. Our investigators are targeting false invoicing, labeling and claims of origin as well as misclassification and smuggling. For example, this spring, ICE special agents in Los Angeles seized the equivalent of 45 cargo containers full of smuggled Chinese apparel. Through efforts like these, ICE and our partner agency, U.S. Customs and Border Protection, work to ensure that inadmissible goods are denied entry into the United States, the proper duties are paid, and that the trade complies with the free trade agreements and legislative initiatives.

We also really look at the nation's in-bond infrastructure. While the in-bond system allows merchandise not intended for entry into the United States, into U.S. commerce to transit the United States, we are finding it is often exploited for the purposes of smuggling restricted high duty and quota visa merchandise into the United States. Again, together working with CBP, we are aggressively investigating such criminal activity.

Cigarette smuggling is also another serious problem. In many cases, we are finding that traditional smuggling conspiracies are often linked, usually as a funding mechanism, to other more serious global criminal enterprises. The reauthorization of the U.S. PATRIOT Act (P.L. 109-177) and the lowering of the threshold of contraband cigarettes from 60,000 cigarettes to 10,000 cigarettes allows ICE to present more tobacco smuggling cases for prosecution.

In addition to stopping the smuggling of cigarettes, we vigorously enforce anti-dumping regulations. Some criminals engage in the predatory practice of evading anti-dumping duties through transshipment, re-marking, undervaluation, and false description. ICE is helping domestic producers to compete against these foreign suppliers engaged in or benefiting from the unfair trade practices of dumping and export subsidies. Finally, ICE has always been at the forefront of money laundering and bulk cash smuggling investigations. This includes the illegal smuggling of currency out of the United States, a preferred method of moving proceeds across our borders. We are really seeing criminal organizations turning to these non-traditional and riskier methods to gather and move their proceeds, such as bulk cash smuggling. One of the things that we have done recently to address these trends is establish a Trade Transparency Unit (TTU). Through the Data Analysis and Research For Trade Transparency System (DARTTS) system, it helps our special agents analyze foreign and domestic trade data and Bank Secrecy Act (International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Title III, P.L. 107-56) information. Through that, we can identify anomalies related to cross-border trade that are indicative of money laundering and trade fraud and foreign investigative leads to the field.

While ICE is focused on a wide array of criminal and other threats to our Nation that arise in the border environment, our mission is to safeguard the integrity of our nation's trade, commerce and customs system and infrastructure continues. On behalf of the men and women of ICE, I thank the Committee for your continued support of our important work, and I look forward to your questions.

[The prepared statement of Ms. Myers follows:]

**Statement of The Honorable Julie Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security**

#### **INTRODUCTION**

Chairman Shaw, Ranking Member Cardin and distinguished Members of the Ways and Means Trade Subcommittee, 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 or terrorist purposes. 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 violate our laws. ICE disrupts and dismantles organizations that smuggle drugs, persons, money and contraband into and out of the United States. 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 efficient and 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 aggressively apply 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 tools in the ICE arsenal of border security authorities, including those related to cross-border commercial fraud, was included in the recently passed reauthorization of the USA PATRIOT Act. The potential sentence for a violation of 18 U.S.C. 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 United States.

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 the Members of Congress for this important enhancement in 18 U.S.C. 545 and for your continuing support of the men and women of ICE—and our critical missions.

At ICE, trade enforcement investigations fall under the purview of the Office of Investigations, Financial and Trade Investigations (FTI) 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, within the FTI 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 56 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.

A 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 its interdiction and regulatory mission on the nation's physical borders, CBP provides many of the 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, anti-dumping, general revenue fraud violations, and international trade agreements such as the North American Free Trade Agreement (NAFTA). 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 of 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 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. The impact, however, affects more than just the business community. Counterfeit goods also pose 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. 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 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 also supports the Administration's "Strategy Targeting Organized Piracy (STOP!)" initiative by investigating, disrupting and dismantling the transnational organizations that smuggle and distribute goods that violate our IPR laws. ICE Attaches coordinate these actions with host governments to target the foreign manufacturers and distributors of these illegal goods. ICE also provides training to foreign law enforcement agencies, in conjunction with the Department of State.

ICE agents in the United States and abroad also 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.

- A case example of ICE's coordinated efforts in this area began 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 whereupon ICE arrested him. He pled guilty in January 2006 and forfeited more than \$800,000. In March 2006, GUTHRIE was sentenced to 60 months in prison and three years of supervised release, and was fined \$15,000.

- Another example arose in February 2005, when 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 pharmaceutical facilities were shut down. COWLEY was arrested in September 2005, and in February 2006, he pled guilty to importing counterfeit drugs and is awaiting sentencing.

#### **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, and more than \$1.4 million has been seized. The primary violator, Mark KOLOWICH, was sentenced in January 2005 to 51 months imprisonment. Another violator, who was a manager of an affiliated website, was arrested in October 2005 and pled guilty the next month. This individual is currently awaiting sentencing. Prosecution of other 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 other laws. 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 10 out of 13 planned country visits.

- A representative case example involved the SAC/Miami investigation of 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, 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. The TEX GROUP was sentenced to four years probation, and was issued a court fine of \$50,000.

#### *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 an increased detection of commercial fraud violations and the identification and removal of undocumented aliens with unauthorized access to secure areas.

- For example, 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.

- 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. Smugglers under-report shipment weights, undercount and undervalue shipments, and sometimes improperly mark the country of origin. 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 indictment of 11 individuals, and ten have been arrested and convicted, while the eleventh is a fugitive.
- 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 Dean 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 approxi-



mately \$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.

#### **ANTI-DUMPING AND COUNTERVAILING DUTIES**

The United States may impose anti-dumping and/or countervailing (subsidy) duties (AD/CVD duties) on certain imports as a means to address dumping and subsidies that result in injury to U.S. industry. CBP is responsible for collecting AD/CVD duties at the rate determined by the Department of Commerce for each import. Attempts to circumvent payment of AD/CVD duties by importers 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.

- One such investigation occurred in September 2003, SAC Los Angeles investigated an anti-dumping scheme involving crawfish tail meat from the People's Republic of China (PRC). Extensive documentary evidence found by ICE indicated that Young Sen LIN, the head of logistics of the U.S. importer and a Vice President of the BAOLONG GROUP, a PRC-based crawfish tail meat producer 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.

#### ***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 to conduct criminal and civil fraud investigations when potential violations are detected. Thus, ICE investigations are important tools used to insure NAFTA compliance.

- For example, 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 and six months in a halfway house, and was fined \$7,500. He was ordered to pay \$3.5 million in restitution. TRIUNFO-MEX, the corporation, was sentenced to five years probation and fined \$2.1 million.

#### ***BULK CASH SMUGGLING***

A number of the money laundering trends we have observed have developed in response to the robust anti-money laundering programs instituted by the U.S. financial industry in response to federal legislation and regulation. As the opportunity to exploit our traditional domestic financial institutions diminishes, criminal organizations are turning to non-traditional and riskier methods to gather and move their proceeds, such as bulk cash smuggling. The ability of criminal business enterprises to advance their business model rests directly upon their ability to take possession of the money they have earned through their criminal activities.

The smuggling of bulk currency out of the United States has become a preferred method of moving illicit proceeds across our borders, forcing criminal organizations to devise methods for avoiding detection during the movement of this bulk cash across our borders. In response to this trend, Congress criminalized the act of smuggling large amounts of cash into or out of the United States in the USA PATRIOT Act. Specifically, Title 31 U.S.C. 5332—Bulk Cash Smuggling—makes it a crime to smuggle or attempt to smuggle over \$10,000 in currency or monetary instruments into or out of the United States, with the specific intent to evade the U.S. currency-reporting requirements codified at 31 U.S.C. 5316. ICE Special Agents have used the Bulk Cash Smuggling statute with great effect, arresting over 400 individuals for Bulk Cash Smuggling violations. In addition to these arrests, ICE and CBP have worked together to seize over \$227 million in funds involved in these bulk cash smuggling violations. Whenever possible, these cases are developed into larger conspiracy cases to reach the highest levels of the smuggling organizations.

ICE's enforcement of the Bulk Cash Smuggling law does not end at our Nation's borders. In August 2005, ICE partnered with CBP and the State Department to initiate a joint training program for our Mexican counterparts on the methods used to smuggle bulk currency. As a direct result of this hands-on training, our Mexican counterparts seized over \$34 million in cash and negotiable instruments in violation of the Mexican currency-reporting laws, during operations conducted over a nine-month period. The day after this highly successful joint operation, known as Operation Firewall, was launched in August 2005, the single largest bulk cash seizure in Mexico—\$7.8 million—was successfully carried out. ICE has worked with our Mexican counterparts to tie these seizures to larger investigations conducted in Mexico, the United States, and other South American countries. In March 2006, building on the proven success of this initiative in Mexico, operations commenced again, resulting in two seizures totaling over \$7 million dollars within the first few days of the operation. The State Department continues to fund these international efforts and we are grateful for its support.

#### **TRADE-BASED MONEY LAUNDERING**

Because of ICE's experience and continuing expertise in customs matters, our special agents are highly effective in investigating and combating trade and trade-based money laundering. Criminal enterprises have long misused international trade mechanisms to avoid taxes, tariffs, and customs duties. Alternative remittance systems, such as *hawalas*, have also long utilized trade to balance payments between *hawaladars*. As both the formal international financial system and money services businesses become increasingly regulated, scrutinized, and transparent, criminal money launderers and potentially terrorist financiers are more likely to use fraudulent trade-based practices in international commerce to launder, earn, move, and integrate funds and assets.

Trade-based money laundering is defined as: the use of trade to legitimize, conceal, transfer, and convert large quantities of illicit cash into less conspicuous assets or commodities. In turn, the tangible assets or value are transferred worldwide in an effort to avoid financial transparency laws and regulations. The ICE Trade Transparency Unit (TTU) identifies anomalies related to cross-border trade that present indications of international trade-based money laundering. The TTU generates, initiates and supports investigations and prosecutions related to trade-based money laundering, the illegal movement of criminal proceeds across international borders, alternative money remittance systems, and other financial crimes. By sharing trade data with foreign governments, ICE and participating governments are able to see both the import and export side of commodities entering or leaving their countries. This truly makes trade transparent and will assist in the identification and investigation of international money launderers and money laundering organizations. Other benefits of trade transparency include: assisting developing nations in the potential identification of smuggling routes or public corruption, and the reduction of smuggling that feeds the Black Market Peso Exchange (BMPE) laundering system.

The Data Analysis and Research for Trade Transparency System (DARTTS) is a proprietary ICE system that helps our special agents analyze foreign and domestic trade data and Bank Secrecy Act information. ICE special agents employ DARTTS to identify discrepancies in trade and financial data that may indicate money laundering, customs fraud and other transnational crimes. The TTU develops investigative leads from analysis through DARTTS and facilitates the dissemination of investigative referrals to field entities.

ICE launched the first TTU in Colombia to share information, better assess risks, and conduct intelligence-based investigations. Using State Department funding from Plan Colombia, ICE provided support to Colombian authorities and initiated trade

based data exchanges. Under this program, U.S. investigative leads are vetted by the TTU and disseminated to ICE SAC offices for investigation. Colombian leads are disseminated to our Colombian counterparts for investigation. Recently, with funding from the State Department, ICE provided 215 computers and other equipment to Colombia's Customs Service to increase trade transparency and combat trade-based money laundering, drug trafficking, contraband smuggling, tax evasion and other crimes between Colombia and the United States.

Using the joint resources of ICE and Colombian TTUs, ICE implemented a BMPE initiative, involving the analysis of companies and/or subjects involved in BMPE schemes. This initiative allows U.S. and Colombian authorities to exchange information and data for ultimate criminal or civil action, and to target Colombian peso brokers, U.S. exporters, Colombian importers and financial accounts facilitating BMPE activity.

As part of U.S. efforts in the Tri-border area (TBA) of Paraguay, Brazil and Argentina, ICE is working with the U.S. Departments of State and Treasury and the governments of Argentina, Brazil and Paraguay to establish TTUs in those three countries. These initiatives are at various stages of development.

#### **CONCLUSION**

As the Department of Homeland Security's largest investigative agency with unified customs and immigration authorities, ICE is demonstrating its ability to aggressively combat threats to the American people and our economy that arise from our borders. By virtue of the integrity, determination, and commitment to excellence embraced by the men and women of ICE, we are continuing to strengthen this nation's ability to investigate and defeat threats to our nation that arise from our borders. The net result of ICE's efforts in this arena is a strong and growing contribution to our economic integrity and the protection of our border, homeland and national security.

On behalf of the men and women of ICE, I thank the distinguished members of the Ways and Means Committee—and the Trade Subcommittee—for your continued support of our work.

I would be pleased to answer your questions.

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Chairman SHAW. Thank you. I have a question that was just brought to my attention yesterday, Mr. Basham. It has recently come to my attention that your agency issued a binding ruling which would change the process by which human tissue enters the United States for lifesaving transplants. I have heard concerns that this ruling could lead to delays upon entry and endanger the success of these transplants. Knowing that this is a very new issue, I would like to submit to you—and I will in the future—some questions for the record and ask you to respond to the Subcommittee with your answers. With new transplant schedules at issue, it is obviously time-sensitive so I would ask you make your answers available as soon as possible. I also will leave the record open for submitting additional questions to any of our witnesses today.

Do you have any information you could give us on that at this time?

Mr. BASHAM. Mr. Chairman, I have to say that I am not familiar with that particular issue, but we will respond very quickly to your questions, and I apologize for not having—

Chairman SHAW. It just came to my attention. I would like to see this followed up. Mr. Levin?

Mr. LEVIN. Thanks very much. Thank you very much for being here. This is sometimes thought as kind of technical. It isn't the most publicized function, set of functions, but it is really clearly important. So, if you would, talk about this issue of personnel levels. There is a law mandating levels. They aren't there. You mention, Mr. Basham, you refer to technology. I am not sure if the implica-

tion of what you say is that the failure to meet the required personnel levels is not very important because technology has replaced it. You come before a Committee which acted to set in place certain levels that aren't being met. So, tell us about that, both of you.

Mr. BASHAM. Mr. Levin, I recognize that CBP has not met the mandates of the Homeland Security Act (P.L. 107-296) section 412(b) requires that specific staffing those levels be maintained for customs trade personnel. Since coming on board in June, I recognized that the failure to comply is unacceptable, and that we must meet the requirements of the Homeland Security Act. We are working toward meeting those numbers by the end of this calendar year or at least having the people in the queue to be hired back to those levels, the 984 that were onboard under the import specialists and on down the list. I recognize it is important, and I will work very hard to make sure that we meet those numbers.

Mr. LEVIN. Let me then ask you, so it isn't a matter of a lack of resources? So, I know this may—it goes back before your time, but what is the answer? Why was there the failure these years to meet a legislative requirement?

Mr. BASHAM. I can't respond to what the former commissioner's thoughts were on that issue. I do recognize that that is a requirement of the law, and I will work very hard to make sure we meet those, and why those numbers were not met in the past, I really can't address that. What I would like to do is to discuss with this Committee some of the benefits we are now seeing through technology, through the ACE and other technologies that I believe may very well be a better system to actually identify and target some of these violations. I am not suggesting that we have the complete answer right now, but I would like to have a discussion with you at some point about, once we reach those numbers, once we have met those requirements—we have actually had great improvements, and we are actually meeting the—in terms of the numbers of apprehension—not apprehensions, but stopping the flow of some of these illegal contraband, that we can certainly work with you hopefully in the future to come up with a better strategy.

Mr. LEVIN. Ms. Myers, your turn.

Ms. MYERS. Thank you, Congressman Levin. First, let me just say that ICE is fully committed to carrying out our responsibilities in the commercial fraud area. As a prosecutor, those are some of the cases that I enjoyed the most, and I look forward to increasing our work in this area. As a technical matter, then, I will go to the numbers. As a technical matter, it is my understanding that special agents are not covered under the preservation clause of the Homeland Security Act. I realize that doesn't answer your question of whether or not we are doing enough customs-related work. So, let me get to that. When I came into the agency and I was informed about the differences in the FTEs or hours equivalent, I asked my folks to kind of go back and look at that and see what they would find. We looked at not only 2003, 2004 and 2005, but we also looked at 2001 and 2002. In 2001 and 2002, we have the equivalent of 255 special agents who work on customs matters, and then there was a spike-up in 2004 and 2005—excuse me 2003 and 2004, and then, in 2005, it was back to 255 agents again.

Then 2006, of course, is a partial year. So, I asked them to look at that spike and find out why that was there, and it is our belief that in part that was there because there were new agents who were coming in who didn't understand the coding system so in part there was some kind of document fraud that was improperly classified in 2003 and 2004 as commercial fraud, but it really wasn't, and that is confirmed to me by the fact that 2005—the 2005 staffing level actually matched 2001 and 2002. With respect to 2006, it is very important that we make sure that we are continuing on in a positive manner. So, I have taken several steps to address this. One step that I have taken is we have had advanced commercial fraud training at the Federal Law Enforcement Training Center (FLETC) for the first time since ICE became an agency in both June and agency August. Some of these cases are difficult to do, and, so, we want to make sure that the agents who are assigned in this area know how to do them and know how to bring them successfully to the U.S. attorneys. Another thing I have done is I met with Commissioner Basham as recently as yesterday and talked with how we could partner together to get more referrals and work together on more joint initiatives, including initiatives using the automated targeted system.

Mr. LEVIN. So, let me just ask you—my time is up.

Ms. MYERS. Sorry.

Mr. LEVIN. You are saying that, in terms of the law, that your staffing levels are at the same point as they were as required by the Homeland Security Act of 2002?

Ms. MYERS. Congressman, I am saying, in 2005, our staffing level was that. We are evaluating. We are at the third quarter point in 2006. This is a concern to me. I am addressing this to make sure that we are going to do sufficient customs investigations. One good measure that we have is, we already have 235 arrests as of June 30 for this fiscal year. That was more than we had in 2001, where we had 167; or in 2002, where we only had 188.

Mr. LEVIN. Okay, but the law talks about staffing levels.

Ms. MYERS. Congressman, it is my understanding that, as a technical matter, that our special agents are not covered under that provision, but I realize that doesn't answer your concern or the Committee's concern about making sure we do that work. I am committed to ensuring that we have the equivalent agent hours as we had in 2001 and 2002, and I am taking steps to make sure that we are moving up toward that.

Chairman SHAW. I would like to follow up just very briefly on Mr. Levin's question with regard, you say staffing hours. How much of that is overtime?

Ms. MYERS. For the special agents, it is not overtime hours. So, they are—they are subject—they get regular pay plus the Law Enforcement Available Pay (LEAP) which they receive. So, this is not overtime hours. In 2001, 2002, we averaged 433,000 hours. Then, in 2005, we actually also had 433,000 hours worked by our agents on these cases. That does not include time that we spend doing training overseas and working with our foreign counterparts to help them avoid IPR violations, customs violations and the like.

Chairman SHAW. Okay. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman, Madam Secretary and Mr. Commissioner, welcome. Good to have you here. Commissioner, if the Department of Commerce imposes anti-dumping duties, is your agency responsible for collecting those?

Mr. BASHAM. Yes.

Mr. WELLER. Let me begin by being parochial here. I have a company in my district, Carus Chemical, which is in the LaSalle/Peru area. It is a long-time employer in my district, and they have had several occasions since 2001 with problems due to Chinese dumping of potassium permanganate on the U.S. market and fraudulent conduct by Chinese firms involving dumping, including mislabeling shipments of this potentially hazardous chemical so as to deceive U.S. inspectors. My constituent company was pleased that the Department of Commerce responded by imposing anti-dumping duties on the Chinese companies that dump this product in the U.S. market. I would note that the Department of Commerce noted that it was inconsistent, inaccurate, incomplete information; and they are reviewing the information withheld from the department. The concern that Carus Chemical, which is a constituent of mine, has is that there are \$634,000 in uncollected duties from this 2004 Department of Commerce order on permanganate based on records that they have obtained from your agency. Carus has made several additional attempts to inquire about the status of this collection and without getting any response. I was wondering if you can tell me what the status of this particular collection is and if there are any problems in collecting it. Are you familiar with this particular case?

Mr. BASHAM. I am not familiar with—Harris Chemicals, is that—

Mr. WELLER. Carus, C-A-R-U-S, Chemical.

Mr. BASHAM. We will look into this matter, and we will get back to you, and if you wish, get back to the company and give the current status on the matter.

Mr. WELLER. I would appreciate a status report of the collection and also if you can share with us perhaps a person on your staff that my office is going to work with directly to ensure that we look out for the interests of my constituent. Obviously, I am a free trader, but I also believe that we need to enforce our trade agreements, and clearly, here is a case where the U.S. Department of Commerce imposed duties, and I want to make sure they are collected as they should be in the interest of my constituents.

Separately, can you share with me, Commissioner, how customs identifies and eliminates illegal activities that undermine anti-dumping countervailing duty orders, such as fraud, product misclassifications, undervaluation and bogus bonds? What initiatives do you have in your agency to identify and eliminate those illegal activities?

Mr. BASHAM. In terms of the anti-dumping?

Mr. WELLER. Yes.

Mr. BASHAM. Well, just through our process of reviewing through manifests that are submitted to CBP to review what kinds of products and materials are coming in, to ensure that those products and materials do in fact meet trade agreements and regula-

tions, and that is reviewed prior to those products actually entering the United States.

Mr. WELLER. Do you have any examples of where you have successfully identified fraud? I gave you an example affecting a company that I represent as a constituent with potassium permanganate.

Mr. BASHAM. I know that we are currently in the process and the World Trade Organization is looking at a case that involves Thailand and dumping shrimp, and we are imposing anti-dumping duties on Thailand.

Mr. WELLER. Can you share with the Subcommittee a listing of the—what you would consider to be the positive success stories where you have identified these sort of illegal activities and how you have responded in the way of what we consider enforcement, which is an important part of the responsibility of your agency?

One of the initiatives I know in 2004, you put forward an entry bond policy on some agricultural products, in response to this effort. Our Committee has had some concerns about the administration of this program. Despite some clarifications to the bond policy that was worked out last year, your agency admitted that the burdensome bonding requirement has not been reduced for established and recognized importers that can show that they are not at risk for non-collections. Many of us feel it is important that the bonding rate requirements be fair and targeted at that risk. How are you looking at modifying the bonding burden for legitimate U.S. companies that demonstrate that they are paying their bills?

Mr. BASHAM. Well, I know you are familiar with some of the difficulties in collecting some of these bonds once they have been liquidated by the Department of Commerce, and sometimes that can be years in the process. What we are looking at, at this point, is putting a process in place where we are able to identify companies, importers that will, in fact, be in existence in the next, in 2 or 3 years, to which sometimes that is how long it takes. One of the problems is that, when we try to collect the bonds, the money, the company is out of existence. I think we are something in the neighborhood of \$100 million in losses just because we have not been able to get in touch with that company. We are looking at a way of determining whether there is stability within that company, so that we know when we come back to collect the money, that the company is going to be there. We know that it can be onerous at times on smaller businesses, and so we are looking to see—looking at the stability and then setting that bond, at the beginning to better cover the final liquidation.

Mr. WELLER. Thank you. I realize my time has expired, and Mr. Commissioner, I am looking forward to your report on the enforcement action affecting my constituent, Carus Chemical.

Chairman SHAW. Mr. Pomeroy?

Mr. POMEROY. Mr. Chairman, thank you for the courtesy of being allowed to ask a question at this hearing, and I very much appreciate my colleagues for letting me get my question before my conflicting 11:00. Representing a border State, the cross-border traffic is not just economically important to us; it is really a way of life up our way. We have—North Dakota and 39 other States have Canada as its leading export market. In 2005, Canadians

made 37.8 million trips to the United States, including 22.3 million same-day auto trips. We are seeing, with the realignment of the dollar versus the Canadian dollar, a significant uptick in same-day cross-border shopping traffic. This has been something that is very beneficial to the economy in my State and something we have long hoped for, but what we are scared to death about is this Western Hemisphere Travel Initiative (WHTI) really slamming the door effectively on a lot of this same-day casual traffic, Winnipeg/Grand Forks, just as is replicated across communities all across the border. The General Accountability Office (GAO) has indicated an economic analysis of WHTI is vital to fully understanding what we are going into as well as evaluating the various alternative cards that may achieve the security dimension needed without unduly disrupting the economic integration of our countries. Yet, I am informed that an economic analysis has effectively not even begun, and I am wondering what the status of that is. How can we possibly get the technology right without looking at the consequential impact of it on the economies of the northern-tier States?

Mr. BASHAM. I know that the Department of Homeland Security and State Department have been working together. I am not at this point familiar with exactly where the economic analysis is in the process, and I will have to, if I could, get back to you on that in short order.

Mr. POMEROY. I am informed it hasn't even started. I am really alarmed maybe because we have got this 2008 implementation date, and as of yet, not an informed analysis on the likely economic impact that we will see. We have found it doesn't go over very well when you go stomping into an area without fully anticipating the consequences that may result, and I can just see this whole thing coming into tremendous public uproar in early 2008 without really this economic analysis to guide our decisions between now and that time. Did you receive information? Has this started?

Mr. BASHAM. I am not familiar with an economic analysis that is currently underway, but I will look into that. As you know, we are trying to meet the congressional requirement that we have, WHTI, in place, you know. In January 2008—and I know all of these factors are being looked into. I just cannot address the economic analysis, whether it has started or what the plans are to get an analysis underway.

Mr. POMEROY. I would say—and I yield back the balance of my time. I am frankly alarmed by that. I don't hold you personally responsible, but I do think it is a system failure to be moving at such a dramatic new requirement for cross-border traffic along the northern border without fully understanding what might result by way of economic impact to the northern-tier communities, a small wonder in the initial visit with the Canadian Prime Minister, and he was concerned about this and raised this with the President. I believe the United States owes much more to the citizens along the northern tier as well as, for that matter, our friends to the north to fully understand what we are getting into from an economic standpoint.

Mr. BASHAM. I believe the thinking is, if we simplify the type of identification required, that it will facilitate the flow of the traf-



fic, cross-border traffic due to the number of types of documents—that is the goal.

Mr. POMEROY. I have been in a number of discussions where, the various—we are all thinking, we are guessing. We need this economic analysis so we have a better handle on what is likely to be the consequence of our movement here. I yield back, Mr. Chairman.

Chairman SHAW. Okay. Mr. Basham, the concern expressed by Mr. Pomeroy is also shared by Members on this side of the aisle also. So, we would like to see that become as smooth a transition as possible. Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman. I appreciate the Commissioner and the Assistant Secretary being with us today. Sort of following the same theme, more comment than question, I think it is difficult for customs to be able to follow the—play that dual role of security and commerce. I don't think your resources have increased enough. I don't think technology has moved fast enough, and I believe that, in that balance, that, rightly, we are putting priority on security. I think the commercial trade side of this is falling far short. My worry, too, is that, obviously, it is easier to tackle as we deal with trade and security needs in solutions for the top 50 because it is easier to getting your hand around the larger exporters. Texas is the largest exporting State in America. It is important throughout the country that we have, as Mr. Pomeroy pointed out, that seamless flow of commerce.

I worry that as we focus on that, that the little guys are getting lost in the shuffle, that they don't have the resources to do some of the programs, the third-party verification, some of those programs that customs has put in place, and my only comment to you is please place more—I urge you to place more emphasis on the commercial side and on the smaller businesses who—who create jobs, are doing more and more exports and imports, probably have fewer resources to handle the paperwork, the verifications and those issues. I don't know if you have someone in your agency who does direct liaison with those small exporters/importers, but I would just like to hear, both of you, your comments on that.

Mr. BASHAM. Well, first off, Congressman, we work very closely with the trade community, via the Commercial Operators Advisory Council as well as the Trade Support Network. To make sure—and we understand that one size does not fit all—that there are capabilities of some of the larger organizations that cannot be met by the smaller organizations, and so we are trying to put a strategy together that does exactly what you suggest. By that I mean that we look at them as individual organizations and not just in totality and try to make one of those formulas fit every one of them. I hope that you will hear with the next panel that we are working very closely with them to try to come up with a strategy using our ACE to ensure that that is being utilized to its maximum capacity, making sure it is accessible to every company regardless of their size.

So, we are very aware of the need to do that, and I assure you that that is our goal, to continue to try to balance this strategy of facilitation and security. We know that they are both equally important.

Mr. BRADY. Thank you, Commissioner.

Ms. MYERS. Certainly, this is an area where CBP kind of plays the primary role in serving as a conduit to trade, but as the enforcement arm, what we are trying to do is make sure we put as much information out there for small and large companies who want to do the right thing, but need more information and, frankly, often need to be able to get it cheaply, to be able to go on the Web and learn and look on it themselves. So, we have several programs, such as a cornerstone where we work with the trade community and helping them avoid violations in the area of financial fraud, and Project Shield America, where we do education and outreach to the export community, and we have other sorts of kind of tips and best practices on our Website where we try to provide them information so the business community can avoid doing the wrong thing when they don't want to.

Mr. BRADY. Thank you, Ms. Myers. Mr. Chairman, yield back. Chairman SHAW. Thank you, Mr. Brady. Mr. Tanner?

Mr. TANNER. Thank you very much, Mr. Chairman, and I want to thank you for calling this hearing. For far too long it seems, we haven't had the kind of oversight, that I believe is necessary for this government to function, at least in a semi-efficient way, and for this chance to bring to light some of the problems that we have in this area is a very welcome, and I think a service to our country. I want to thank you very much for having this hearing.

Commissioner, I am going to follow up on what Mr. Levin said. Most of us on this Committee believe that trade and engagement with the rest of the world is a good thing, and we think that the more competent and the more efficient we can make that interchange occur, both in and out of our country, the better off everybody is, including the people who engage in international trade, which we try to foster and promote in terms of our exports every day here with our public policy. Do you have any plausible explanation as to why this department has been unable to comply with the law in Homeland Security, section 412? Why can't you comply with what—do you have an explanation as to why it hasn't been complied with?

Mr. BASHAM. Mr. Congressman, I don't have a plausible explanation as to why it has not been met. I can assure you, it can be met, and it will be met. I will assure this Committee that, by the end of this calendar year, we will either have onboard or in the process of bringing onboard the numbers of specialists that are identified in section 412(b) of the Homeland Security Act to meet those numbers by the end of this calendar year. I can't answer your question as to why in the past they have not been met. I can only give you my assurances they will be met.

Mr. TANNER. Do you have any comment, Ms. Myers?

Ms. MYERS. Well, in terms of our full time equivalents (FTE), they are all kind of equivalent based on the hours worked. I am concerned that that we keep our hours up. This is something we are monitoring, and we are taking a number of steps to aggressively increase them. I will tell you that, for fiscal year 2005, we had the equivalent number of FTEs as we did in 2001 and 2002 in terms of hours worked by the agents. That is my goal. That is where I think we should be. We are continuing to monitor through 2006, and I am taking some corrective to make sure—for example,

some of the initiatives that we have done, frankly, weren't producing results. So, maybe we were spending time and doing things which weren't producing results in the commercial fraud area. We need to do some things, partner up better with CBP and Department of Commerce. We are finding success in some areas. For example, in anti-dumping investigations, we initiated 107 in fiscal year 2005. That was a 184 percent increase over fiscal year 2004. So, there are some pockets where we are really showing some increase, but I agree we need to continue to monitor it and step it up.

Mr. TANNER. Well, this affects the citizens of this country who are trying to help our country with respect to exporting goods and, for that matter, importing as well. When you say you don't have a plausible explanation, can you find out? Is the problem with funding? Is the problem with—what is it? Just to say, I have no plausible explanation, it is a little hard for us to understand.

Mr. BASHAM. If you will permit me to get back to you on that point, Mr. Congressman, to give, to the best of our ability your, an answer to your question.

Mr. TANNER. Or if you would, respond to the Committee because when you have a law, and you have—people come up and say, well, we just haven't been able to get around to that yet, that is a little bit hard, particularly in some areas—

On another point very quickly, does that staffing level lead to the lag time in the program, the C-TPAT program, where you partner basically with the private enterprise to facilitate these matters? I am told that you have validated or expect to validate 65 percent of the companies that are required by 2006, but to date, you have only validated about 30 percent of them. Why is that?

Mr. BASHAM. Well, first of all, Mr. Congressman, those positions that you referred to do not have interaction with the customs and trade partnership against—

Mr. TANNER. No. I didn't mean the link in them. I am asking you about a different program. What is going on with it?

Mr. BASHAM. Well, I believe, right now, we have validated 49—I think there are 6,000-plus companies participating right now in the C-TPAT program, and 49 percent—actually 50 percent of the validations have been completed. We are projecting 52 percent by September and 65 percent completed by the end of 2006 with the remaining 35 percent completed in 2007. After 2007 and then we will start the revalidation process.

Mr. TANNER. Are there any problems going on? Is there anything we can help you with in that regard? Because I think this is an important program to reach all of our desired goals.

Mr. BASHAM. I would agree. It is a very important program. It is a wonderful partnership between government and the private sector. We and they are working very closely to better define the types of data that would be needed to strengthen the security, plus to strengthen the facilitation. At this point, I don't know that there are any particular requests that I would have of this Committee with respect to the C-TPAT initiative.

Mr. TANNER. Thank you very much, Mr. Chairman.

Chairman SHAW. Thank you. Mr. Basham, I will follow up with, actually both of you, with the line of questioning that was started

by Mr. Levin and continued by Mr. Tanner; 412 is, I think, is a pretty unique section in the Code. I can't think of any other place where we would have that restriction as to providing or mandating certain levels of employees. In your statement, you mention technology and how that was closing the gap up for us. I would invite you, either of you or both of you, to request a workshop with this Committee if you make a determination that there is a more efficient way to go because we would like to hear from you, and we would like to make good legislation where perhaps we have made errors, and anything we can do to update the Code to recognize technology and the value of the productivity of your workers, we would be glad to participate, participate with you in that, and perhaps out of that could come some some new legislation that would be corrected in nature. Mr. Foley?

Mr. FOLEY. Thank you, Mr. Chairman. If I could ask, following the two recent decisions of the Court of International Trade (CIT) against the Continued Dumping and Subsidy Offset Act or the Byrd Amendment (P.L. 106-387), particularly the decision that the Byrd amendment is unconstitutional because it is a governmental restriction on free speech, does Customs and Border Protection plan to suspend all future disbursements pending court appeals? Also, what happens to the money sitting in special accounts?

Mr. BASHAM. I am familiar with the issue, and as you said, the World Trade Organization (WTO) is in the process right now of reviewing the bonding issue, if that is what we are discussing, sir, and pending the results of that. Review CBP will react accordingly. In terms of what is happening to the current money that—we are holding, what is going to happen to that dispersal of those funds, I am not totally conversant on exactly how those funds are going to be dispersed. I would have to ask if I could get back to you and to answer that question to the Committee.

Mr. FOLEY. If you would, please. Should Floridians feel vulnerable based on our borders and our shorelines? All of the emphasis recently, the political dynamic has shifted to the southwest border. We have talked about building fences, enhanced technology. We have talked about putting more agents there. We seem preoccupied with the southwest sector. Knowing drug smugglers, human smugglers and others, they are not going to continue to persist as we fortify those strategic borders. My concern is the coast of Florida. Obviously, we are a source of a large influx of illegal immigration, yet I don't see much emphasis on adding to personnel, conversations about technology; how are we going to protect Floridians based on the new potential patterns of displacement that occur because of our emphasis on the southwest border?

Mr. BASHAM. Well, I would say that I think we all would consider not only Florida but other parts of the country to be vulnerable, and that is why we are looking at the Secure Border Initiative (SBI). Please note that SBI is not just going to focus on the southwest border. It is going to focus on the entire border of the United States. I can tell you we are working very closely with ICE; we are working very closely with the Coast Guard, with other State and local officials there in Florida to come up with the proper balance of security there to protect Florida and the rest of the United States.

So, once the SBI is phased in, once we have the proper balance of technology, infrastructure and staffing, those components will be applied to Florida as well as Texas, and New Mexico, and Arizona. We have a request out right now for information. We hope to award an integrator program in the fall to take a look at all of these challenges and to come up with a strategy to protect not just Florida but the whole United States.

Mr. FOLEY. What is the agency doing to more rapidly put in place detention facilities? One of the great concerns we have, people are stopped they find to be illegal, there is no place to put them, so we give them a hearing notice—which they seldom appear for—and they disappear quietly into the night. Can you give me a status report on detention facilities and other means of processing these individuals?

Ms. MYERS. Absolutely. Congressman, what we are doing is really a three-part strategy. First, in the President's budget we have been seeking more beds; but second, we have been seeking to use those beds more efficiently. Through things like the Secretary's SBI, we have reduced the average amount of time that an individual spends in a bed from 90 days down to 19 days. So, that really facilitates our end game, which is removing individuals from this country as soon as possible. With respect to the interior where ICE plays a large role, the interior of central Florida as well as the rest of the United States, we have been aggressively seeking to consolidate and find beds throughout the country, so that there is not a bed that is open if there is an individual that needs to be detained.

Just in the last 2 weeks we set up a detention operation coordination center which allows our special agent in charge (SAC) in a particular area. If they have too many individuals who would properly be detained but there are not local beds, he or she can call up to Washington and we can see if we make some movements how we can make sure that this individual is detained. Of course, we will always have limitations placed, for example, by immigration judges who might decide in some instances that individuals should not be detained while they are going through their 240 proceedings, but it is a very high priority of our agency to make sure that as many individuals as we find, we can remove those individuals. I think we are making some great steps. With respect to your first point, what we are doing to protect Florida, we do have under the SBI, interior enforcement strategy. A core part of that is dismantling the infrastructure that supports illegal aliens, such as the smuggling groups and others that come up from south Florida and other areas.

Mr. FOLEY. Thank you.

Chairman SHAW. Mr. Larson.

Mr. LARSON. Thank you, Mr. Chairman. Let me join with my colleagues in giving you appropriate applause for holding these hearings and getting to the important oversight and review that the Committee needs to have done. I just wanted to follow up on a point that both Mr. Levin and Mr. Tanner have made and just point out to Mr. Basham—Are you familiar with the letter sent by Mr. Rangel and Mr. Thomas to you with respect to the same—well, sent to Mr. Bonner with regard to the same compliance issues that Mr. Tanner raised?

Mr. BASHAM. With respect to section 412(b) of the Homeland Security Act?

Mr. LARSON. Right.

Mr. BASHAM. I am not familiar with that particular letter, but I am certainly familiar with the issue. I intend to comply with the requirements of the Homeland Security Act, and we are in the process of getting those levels of staffing back to the pre-reorganization levels. As I have said, CBP, by the end of the calendar year of 2006, will either have on board or in process those new hires to bring CBP into compliance with those original levels.

Mr. LARSON. So, with regard to the specifics of this letter—and the reason I point it out is a matter of timeliness. This was issued on March 17, 2006 and obviously, we haven't had a response to date. So, my question would be, in lieu of getting the information back to us, as both Mr. Tanner and the Chairman have requested, when can we expect to receive a response to his query and the letter of March the 17th, 2006?

Mr. BASHAM. Today, I will look into this matter and I will have an answer for you, where it is, and when—the expectation of you receiving it by the end of the day.

Mr. LARSON. Receiving a response by the end of the day.

Mr. BASHAM. No. I am saying that I will have an answer as to where the response is and when you can expect to get you that response. I don't know whether the letter is with the CBP or whether it is at DHS for clearance, so I can't answer you specifically, but I will try my best to make sure that that answer is forthcoming.

Mr. LARSON. Is 48 hours, 72 hours too much to expect? Or is it—

Mr. BASHAM. I don't believe that is too much to expect and I will work very hard with the Department to get that letter out and up to the Committee, as requested.

Mr. LARSON. Are you familiar with the inspector general of the Department of Homeland Security's report with regard to the lack of cooperation between CBP and ICE?

Mr. BASHAM. I am familiar with it, Mr. Congressman, and I don't agree with all of the inspector general's findings. I think the Assistant Secretary and I have been working very hard to better collaborate, perhaps there are some areas that we can do a better job, but I believe that we are working together. As the Assistant Secretary mentioned just a few minutes ago, we met as late as yesterday, and we meet regularly to talk about the coordination, cooperation between our two agencies.

Mr. LARSON. Can you give us any specific examples where you are improving these efforts? I think a number of questions have been raised by other Committee Members with regard to that. It is alarming to see that the left hand doesn't know what the right hand is doing; that we are not sharing information, specifically as it relates to intelligence with respect to our ports, which makes the questions that were raised by other Members that much more pointed. Is there any specific area that you can cite?

Mr. BASHAM. Well, I can refer back to the Assistant Secretary, but in terms of the policies of catch and release versus the policy of catch and remove, I think has been one very good example of

how we have worked very closely together on the southwest border to deal with illegal immigration.

Ms. MYERS. Congressman, I think we have made substantial steps in addressing the 14 recommendations in the inspector general's report, including better sharing of intelligence, daily interaction on the intelligence briefing, the Secretary's SBI, where the Secretary gathers together the leadership each week to discuss border strategy, an ICE-CBP coordination council.

In the area of commercial fraud, we have been working particularly well together. We have developed a process called the Commercial Enforcement and Analysis Response Process, which allows us to make sure that cases are passed and that we get CBP's view. We have joined textile verification teams that travel countries around the world—last year we went to 11, this year we went to 13—ICE and CBP teams working jointly together to inspect factories around the world.

Also, in the in-bond warehouse problem, we have the FIST, or the Fraud Investigative Strike Teams, where we go together to in-bonded warehouses in various cities, work together on joint vulnerabilities. One thing that we have just developed in the last couple of weeks is looking at some of the vulnerabilities of things that are being sent via mail, and so we are working very closely with CBP, who is passing on the information to our fraudulent—forensic document laboratory and ensuring that we get fraudulent documents and other sorts of things. So, from my point of view the relationship has never been better, and I am very pleased to be working with Commissioner Basham.

Mr. LARSON. Do you believe that all of the statements by the inspector general (IG)—Mr. Basham says he disagrees with some of their assessments. Do you believe some of those assessments to be true, and do you see an effort coming forth to say this is how we responded to those? When can we expect to hear from both of you about that?

Ms. MYERS. Well, certainly, Congressman, we have responded within the Department to the status of each and every one of the IG's recommendations. As Commissioner Basham said, some we agree with, some we don't. We do agree with the general principle that we should be working very closely, not only with our partner agency, CBP, but also with our partner immigration agency, Citizenship and Immigration Services, as well as Coast Guard that has a big role, and migrant smuggling in south Florida and the like. With respect to any public dissemination, that is something that we will have to check with the Department on that, but it is certainly our view that—

Mr. LARSON. It would be nice to know where you disagree with the inspector general and why.

Ms. MYERS. Well, Congressman, we certainly disagree that the agencies should be merged. The Secretary, through Second Stage Review (2SR), had a comprehensive review of the two agencies, how they could be most effective, and determined they could be most effective as is. I think that is our core area of disagreement with the report.

Mr. BASHAM. I would agree, I think we can work very effectively together without being merged. We are working more closely,

as the Assistant Secretary pointed out, in many, many areas. We are looking for more opportunities to work more closely together and coordinate our efforts because we know it is important what ICE brings to CBP's mission and what CBP brings to ICE's mission, and that is something that we are committed to doing.

Mr. LARSON. The lack of sharing intelligence is very troubling inasmuch as that kind of stove-piping led to a number of the problematic concerns that have been put forth by the 9/11 Commission and others. I sincerely hope that we anxiously await your response and how you are going to rectify that. Thank you.

Chairman SHAW. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. Mr. Chairman, following up on a line of inquiry by Mr. Weller, I would like to further explore the issue of the abuses relative to new shippers. As the Commissioner is well aware, this past July the House of Representatives passed legislation that I had authored with the Chairman of the full Committee that, among other things, would have directly addressed the ongoing and unacceptable problem of collecting duties from new shippers. Our provision suspended for 3 years the availability of bonds for new shippers in antidumping cases, and instead required cash deposits so as to avoid situations where such shippers default on their obligations. Could you very briefly update the Committee on Customs's efforts to halt this practice, ensure that the duties are collected, and does a collection problem still exist? On that point, Customs in the past has indicated, in hearings similar to this, that Customs would not be opposed to legislation altering and streamlining the law relative to new shippers; and is that your position currently, Mr. Commissioner?

Mr. BASHAM. That is my position currently. Collection of these duties continues to be a challenge. Trying to develop a process by which we can better identify legitimate shippers—are we talking about import, Mr. —

Mr. ENGLISH. Yes.

Mr. BASHAM. —where we can better identify those individual companies that are legitimate and will be around at the time that, once the final determinations are made, that we are able to collect those duties that are actually identified at the time of liquidation. We also are developing a process by which we are trying to give some credit to those companies that have demonstrated their reliability. We are looking at a process right now to be able to identify the kinds of information we need to verify that.

Mr. ENGLISH. Very good. On an entirely different matter, Commissioner, in January 2004, Congress passed the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (P.L. 108-429), providing President Bush the authority to include Iraq as a covered nation under the Convention on Cultural Property Implementation Act ( P.L. 97-446). Nevertheless, I noticed that in the most recent Customs advisory on works of art, collection pieces, antiques and other cultural property, dated May of 2006, Iraq is not listed as a covered nation.

It is also my understanding that Afghanistan ratified the 1970 the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention last year with the clear expectation of gaining protection for their cultural artifacts, and yet Afghanistan



is also not listed among the nations covered under the Cultural Property Implementation Act. On that point, Commissioner, why are neither of these nations listed? Can you describe for us the process within the Administration for initiating a request for the President to exercise his authority under section 304 of the Convention on Cultural Property Implementation Act?

Mr. BASHAM. Mr. Congressman, I have to admit that in my limited time here at CBP, I am not familiar with this particular issue and I am not familiar with that particular rule, so I am going to ask if I can get back to you with a written response.

Mr. ENGLISH. I would like a written response. I also want the Commissioner and the Department to know that on this Committee there is at least one Member who follows this very closely and is very concerned about how we handle antiquities coming across our border, how we crack down on the black market for cultural antiquities and artifacts. I will be back to you on a regular basis until we get this right. Thank you, Commissioner. I yield back the balance of my time.

Chairman SHAW. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I am sorry that I was not here for your testimony, I was on the floor. So, I want to ask a question I hope that you have not answered already. That is, when we put the Customs operation into the Homeland Security, there were some of us very concerned that we would wind up with it becoming a law enforcement agency and lose its sort of expertise and value as a part of the commerce of this country; that the indication might be that all the effort was going into security and very little into the facilitating trade.

I have heard anecdotal things from Seattle, being the second largest port on the west coast with plenty of stuff going through there, we have got 4 million containers a year. I wonder if you could tell me, who is in charge of facilitating things for businesses? If we have a complaint, to whom do we call in your agency to help facilitate some problem among the Customs brokers and those who are always trying to move stuff through the port?

Mr. BASHAM. Well, we have several—we can provide you with a list of those—but primarily Office of Strategic Trade, and the Office of International Trade Relations. I believe that it is fairly well known among the trade industry—and I think you are going to have an opportunity to have comments from the panel—we work very, very hard to make sure that what we are doing and how we are doing it has been communicated and coordinated with the trade community. We have great assistance from the Commercial Operators Advisory Committee. There is the trade support network. Within our agency we have the Office of Trade Relations, which has been an ombudsman function.

So, there are a number of avenues that can be pursued by the trade community to ask questions, and not only to ask questions, but we welcome their input and their advice and their counsel as we move forward to better balance the facilitation of trade and the need for security.

Mr. MCDERMOTT. The reason I asked the question, in reading the testimony of people who will follow you, one of the problems with these hearings is that sometimes we can't get a back-and-

forth going, so I would like to try one. The Customs brokers say, despite its promise, the truth is that the CBP is not balancing its true responsibilities for security and commercial operations. Resourcing for trade facilitation has dramatically diminished as the Agency has scrambled to meet the criticisms of its performance in the security realm.

If you are a business that is having trouble getting something out of Customs or whatever, who do you call? What do you look for? I mean, is there someone who advocates for the business interests against the security interests?

Mr. BASHAM. Yes. As I say, the Office of Trade Relations, that is their primary focus, to make sure that there is a vehicle, there is an avenue for the trade community to express their concerns, to ask their questions, to provide advice, provide information. Certainly that is on our website, which is accessible by the trade community. If we are not doing a good enough job in terms of making sure that the trade community knows where to go and we need to revisit that, and this conversation—

Mr. MCDERMOTT. Does each port have a point person that people know about and can find?

Mr. BASHAM. I am sorry, sir?

Mr. MCDERMOTT. Does each port have a point person? If I have a Customs problem, who do—I don't just go down to the Customs office and say, I have got a problem; who do I talk to? Who do I look for?

Mr. BASHAM. The port director—

Mr. MCDERMOTT. Will direct you to somebody who will deal with the Customs issue, not the security issue?

Mr. BASHAM. The port director. If the port director cannot address the issue, then the port director certainly knows who to refer that individual or company to to get their questions addressed. If they are not at the port, then the best approach would be to come directly to CBP headquarters and ask for that particular department, which is the Office of Trade Relations. I would have to go back and review what is said on the web in terms of how people get these addressed, but I do believe it is made fairly clear where to go on whatever issues the trade community may have.

Mr. MCDERMOTT. I hope those people who are on the second panel sitting behind you will give me examples that we can work with you on. Thank you.

Mr. BASHAM. I would very much look forward to working with the Committee to improve that process.

Chairman SHAW. Is the gentleman complete? I want to thank this panel. I have just a couple questions or a couple comments I want to make before you leave. The next panel is going to include the President of the International Council of Cruise Lines, Mr. Crye, and he is going to talk to us about certain delays that the cruise industry is experiencing with regard to the passengers. They have raised these concerns about delays caused by multiple screenings of U.S. citizens on short cruises. What specifically can you do to ensure that the screening of passengers is done efficiently and preserves our National security while reducing the delays that can harm legitimate travelers and business?

Mr. BASHAM. Mr. Chairman, our Office of Field Operations is aware of the concerns of the cruise industry with respect to delays, and we are looking at ways of streamlining that process and using automation and other tools and, again, looking at using the SBI to make sure that that is taken into consideration when whatever strategy is put together that we are trying to deal with these delays and those concerns with the cruise line.

Chairman SHAW. Who has prime responsibility for that? Do you or does Ms. Myers?

Mr. BASHAM. Well, we would have responsibility for clearances. We also work closely with the Coast Guard and the port operators there in Florida and in the Caribbean areas. So, we will be working together working with the cruise lines to come up with ways of streamlining that process and improving the time.

Chairman SHAW. Can that be combined with immigration in some way that—it seems that you go through, and then they say go to this desk, go to that desk.

Mr. BASHAM. Well, by the merger of CBP—when merging of Legacy Customs, Legacy Immigration and Agriculture, the idea was to make that a more streamlined one-stop type of approach. We feel that it is starting to have an effect, it is starting to improve the processing of incoming passengers.

Chairman SHAW. The personnel that stamps your passport when you come back into the United States, who do they work for?

Mr. BASHAM. That would be Customs and Border Protection.

Chairman SHAW. So, that is you.

Mr. BASHAM. Yes.

Chairman SHAW. Just a suggestion. Some of them, you come in and you think that you feel like a criminal, and others will smile at you and say, welcome home. I would suggest that the latter is a much better way, and it would certainly, I think, reflect very well on your Bureau, your Customs people, to do that and include that in the job training. I think that would be, I think, quite helpful. I think all of us that have left the country and come back have found that sometimes that courtesy is missing, and it certainly would be appreciated. One further thing. Mr. Levin, in his opening comments, was talking about only 6 percent of screening on these containers coming into the United States—or physical inspection, I should say. As I understand, there is 100 percent screening. Can you describe that process to us?

Mr. BASHAM. Well, with respect to the 100 percent screening, what that refers to is the review of electronic manifests that are provided to our National Targeting Center, and then there is a score applied to that particular shipment.

Chairman SHAW. Is that initial screening before the container is even loaded on the ship?

Mr. BASHAM. Twenty-four hours prior to the container being loaded on the ship, that manifest is provided to our national Targeting Center, and then depending on where that shipment is coming from, the shipper, the location, or the type of material that is supposed to be in that container, that is all reviewed, and then there is a score applied to that particular container. A decision is then made as to whether or not we are going to ask the host country to do an inspection, whether it is the non-intrusive inspection,

which is the x-ray machines, to determine whether or not there are anomalies in that particular container. If it is determined that there is, then there would be a physical inspection of the container. If that happens, then there is a notice sent that that container is not to be loaded until such time as the anomaly has been cleared.

Chairman SHAW. The physical inspection, would you describe that to us? How long does it take?

Mr. BASHAM. It depends on the type of shipment it is, it depends on the type of material it is. Some are more difficult to physically inspect if it has to be unloaded and opened and literally viewed. One of the issues—and I know Mr. Levin suggested the 6 percent is unacceptable—I think that is what your feeling is, but actually, we are trying to reduce the number of physical inspections because it does in fact impede the flow. So, the more information, the more data that we can gather, and the more inspections that we can do without the physical inspection, we feel that that is going to improve the flow of trade versus having to actually stop those shipments and physically inspect them. So, a lesser number of physical inspections would be the target.

Chairman SHAW. Of the official or the actual physical inspections that you make, what percentage of them show some type of violation?

Mr. BASHAM. We will have to get back to you on that. I don't have that number.

Chairman SHAW. I would like the statistics to include in the hearing. Again, I want to restate my invitation to both of you that this Committee is anxious to work with you in a workshop pattern—not us sitting up here and you sitting down there, but I mean sitting around a table—if we can effect legislation that would create better efficiency, and do it in a very bipartisan way, I might add.

Mr. LEVIN. Mr. Chairman, as they leave—I hope you don't leave with the implication that today we have a fully adequate system for the inspection of goods that are coming into the United States. I hope that isn't the implication of what you have just said.

Mr. BASHAM. I did not mean to infer that we are at a point where we can put our flag in the ground and declare victory. We do have a lot of work to do. We still are working very closely with the trade community, the international trade community, other host governments and countries. We know there is a lot of improvement that needs to be made and can continue to be made, and we are working every day to try to improve trade facilitation. We are expanding the container security initiatives around the world, we are working with other countries on capacity-building to assist them in making this a more secure, more efficient process. So, no, we are not at a point where I feel that we can sit back and cross our arms and say we have been successful. I agree with you.

Chairman SHAW. Thank you very much. You are excused. We appreciate your testimony, and we look forward to working with you on any efficiencies we can help facilitate next year. Our next panel, we have Mary Joe Muoio, who is President of Barco Trade Consultants in Boonton, New Jersey. She is here on behalf of the National Customs Brokers and Forwarders Association of America. Michael Crye who is President, International Council of Cruise

Lines. Charlene Stocker, who is a Senior International Services Manager, Procter and Gamble Company, in Cincinnati, Ohio. She is here on behalf of the American Association of Exporters and Importers. Brian Gill, who is a senior Regulatory Affairs Advisor of FedEx Express from Memphis, Tennessee. We have Colleen Kelley, who is the National President of the National Treasury Employees Union. Mario Vicente, who is the President of Fresca Farms in Miami, Florida; on behalf of the Association of Floral Importers of Florida. Welcome to all of you. We have a copy of your full testimony, which will be made a part of the record. We would invite you to proceed or summarize as you feel comfortable.

Chairman SHAW. Ms. Muoio, you may proceed, please.

**STATEMENT OF MARY JOE MUOIO, PRESIDENT, BARTHCO INTERNATIONAL, INC., A DIVISION OF OZBURN HESSEY, NEWARK, NEW JERSEY; ON BEHALF OF NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA**

Ms. MUOIO. Thank you. Good morning, Mr. Chairman. I am Mary Joe Muoio of Barthco International, and President 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 Ways and Means 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 House, 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. Despite its promise, the truth is that CBP is not balancing its twin responsibilities of security and commercial operations. Resources for trade facilitation have dramatically diminished as the Agency has scrambled to meet criticisms of its performance in the security realm.

When the GAO pointed to disappointing output in 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. We experience 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. 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.

Small- and medium-sized businesses encounter an uneven playingfield when CBP focuses almost exclusively on the needs of

the top 50 largest importers. We constantly hear that the top 50 represent approximately 50 percent 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 the most, and in many circumstance it only takes one inefficient shipment to back up the entire flow of goods.

Customs demands and incentives are geared to the largest of companies. Companies must require their overseas suppliers to meet best practices. Who but the largest 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 opportunity? The latest challenge to small business has been the concept of third-party validations. At the start, we questioned who exactly can provide this function reasonably at low cost. We fear that this expanded resourcing provided by third-party validators will come at the expense of the C-TPAT participants who must pay the tab.

The weight of this will surely fall on small businesses, the least able to afford this added cost. 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 (ITDS). Customs has promised the reward for low-risk 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, even if CBP clears products quickly for C-TPAT members, the entire shipment can be brought to a dead stop if it is not cleared by Food and Drug Administration (FDA) or United State Department of Agriculture (USDA), for example.

The ITDS is to become the front end of ACE, routing data to all 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 has no authority over agencies and other departments. How can this impasse be solved? National Customs Brokers and Forwarders Association of America (NCBFAA) believes that the OMB, which has previously had a significant role in Federal data management, has the capability to overcome this stove-pipe problem.

We believe that Congress should designate OMB as chair of the multi-agency board that directs the ITDS project. 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. Finally,

we must ensure that these agencies have the wherewithal to pay for connecting to ACE. Mr. Chairman, this concludes my remarks.

[The prepared statement of Ms. Muoio follows:]

**Statement of Mary Joe Muoio, President, Barthco International, Inc., Boonton, New Jersey, on behalf of National Customs Brokers and Forwarders Association of America**

Mr. Chairman, I am Mary Jo Muoio. Senior Vice President of Barthco International, Inc. and President 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 Ways and Means 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 House, 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 keep its promise to 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?

The latest challenge to small businesses has been the concept of 3rd party validation. Criticism has been leveled at Customs for failing to conduct sufficient C-TPAT validations at a fast enough pace. This in turn has generated the proposed solution of turning to private sector companies, a solution that has appealed to those who want the validations to be far more exhaustive. Rather than spot-checking various points along multiple supply chains, the critics want a complete audit of every supply chain. First, we question who exactly can provide this function reliably, at low cost. We know that this expanded resourcing, provided by 3rd party validation, will come at the expense of the C-TPAT participants who must pay the tab. The weight of this requirement will surely fall on small and medium-sized companies who can least afford this added cost, yet must be forever agile in seeking new and different sources of supply to reduce their margins.

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 straightjacket 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. One emerging concept, termed "Secure Freight," would establish a private sector inter-



mediary, which would draw unlimited amounts of data from importers and then manipulate that information, on demand, as CBP revises ATS ad infinitum. This comes at a huge price and exposes importers to the risk of exposing its most competition-sensitive data. Instead, CBP must be held into account to determine exactly what information it needs for ATS and provide a reliable, secure path for its transmission.

**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. Adequate resourcing must be made available to these agencies to absorb the costs of “connecting” to ACE, and **all** agencies that are involved in the cargo clearance process must be ready to participate in time for the completion of ACE in 2010. ITDS has profound security and commercial benefits for America. It needs the Ways and Means 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 through 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.

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Chairman SHAW. Thank you. Mr. Crye.

**STATEMENT OF MICHAEL CRYE, PRESIDENT, INTERNATIONAL COUNCIL OF CRUISE LINES, ARLINGTON, VIRGINIA**

Mr. CRYE. Good morning, Mr. Chairman. My name is Michael Crye. I am the President of the International Council of Cruise Lines (ICCL). Thank you for the opportunity to appear today and present our testimony. The ICCL represents 16 leading cruise lines and 100 companies who provide goods and services to the cruise industry. ICCL members carry approximately 90 percent of the passengers in the North American market. Leisure cruises are an extremely popular vacation enjoyed by over 11 million worldwide guests in 2005, and over 9 million of these were North Americans.

Over the past 20 years, the cruise industry has grown at a rate of approximately 8 percent per year while continuing to be rated as one of the highest vacation options with outstanding guest approval ratings. The industry is a significant economic engine in the United States. In 2005, the industry generated \$32.4 billion to the U.S. economy, an increase of 8 percent from the previous year, and this benefit reached into every State economy. Our passengers came from every State and supported nearly 330,000 jobs nationwide and paid a total of more than 13.5 billion in wages and salaries.

Florida is the center of cruising in the United States, with 61 percent of cruise embarkations representing over 5 million passengers. Our mission is to participate in the regulatory and policy development process and promote all measures that foster a safe, secure and healthy cruise ship environment. We have had longstanding working relationships with CBP, the Coast Guard, Immigration and Naturalization Service (INS), and other legacy agencies of the Department of Homeland Security. We hold four meetings a year with the CBP Office of Field Operations, which includes attendance from CBP port directors from cruise ship home ports around the country. This forum is an excellent example of the successful government/industry partnership that works to find practical solutions to today's security challenges.

Contrary to what may be publicly perceived, the operation and itineraries of cruise vacations are very different from the airline industry. In the majority of cases in the United States, cruise

itineraries begin and end at the same port and do not pick up enroute passengers. So, the same passengers who began their cruise in a U.S. port will return 7 days later to the same port. There are two categories. There are foreign port of origin cruises, wherein it is very similar to an airline scenario where you are starting foreign and arriving in the United States. Then there is the round-trip voyages that begin in the United States and end in the United States, and there may be multiple U.S. port calls.

The cruise lines currently submit a multitude of information to the government and must file passenger and crew manifests electronically prior to departure and before arrival at a U.S. port. Before arrival, it is generally filed 96 hours in advance with the Coast Guard and CBP. These manifests provide detailed information on the passenger, including their name, their date of birth, nationality, passport or other identification (ID) number, point of embarkation and the position or duties for each passenger or crew member. When CBP receives the manifest, they check the information against numerous law enforcement databases to ensure that all passengers are cleared for departure or arrival to the United States. The advance transmission of passenger manifests provides the CBP ample opportunity to review and identify those persons requiring the face-to-face interview. While underway, cruise ships follow comprehensive security measures designed to ensure that all passengers and crew are accounted for at all times while at sea. No one may embark or disembark until they pass through security. Each person is issued a security identification card that includes biometric data that they must show when entering or leaving a ship, and every time it is recorded electronically on the ship's computer system.

Once the ship is underway, access is limited strictly to documented employees and passengers. Cruise lines guard very vigorously against any unauthorized person boarding the vessel. Despite these comprehensive security procedures, cruise passengers are significantly delayed from leaving a vessel at the end of a cruise, as the CBP is required by law to inspect each and every passenger face to face. This antiquated law does not recognize today's automated security procedures, and it unnecessarily burdens CBP with an inflexible requirement, particularly when passengers have already been screened for departure and possibly already screened for arrival into the United States.

The ICCL recommends that Congress amend the law to provide an electronic equivalency as an alternative for the CBP instead of an in-person interview. This simple change would allow CBP inspectors the flexibility to determine, based upon risk assessments, which passenger or crew would require an inspection upon entering the country. CBP could reduce the number of resources according to their determination of the threat. For in-transit ports of call, the ICCL recommends that CBP grant a waiver of inspection for U.S. in-transit ports to alleviate the unnecessary and redundant inspection process. The ICCL commends the CBP for its willingness to leverage its limited assets by partnering with this industry. There is a huge workload at CBP due to the many additional security requirements put in effect post 9/11. The CBP should have the flexibility to focus its resources on high-threat environments and dele-

gate duties in lower-threat environments to its industry partners who share precisely the same goal. The cruise industry stands ready to work with CBP in furthering our common goal of secure borders, while at the same time facilitating trade and commerce. Thank you, sir.

[The prepared statement of Mr. Crye follows:]

**Statement of Michael Crye, President, International Council of Cruise Lines, Arlington, Virginia**

**INTRODUCTION**

Good morning Mr. Chairman and members of the Subcommittee. My name is Michael Crye; I am the President of the International Council of Cruise Lines. Thank you for the opportunity to present testimony on behalf of the cruise industry.

The ICCL is the cruise industry trade association representing 16 leading cruise lines and approximately 100 companies who provide goods and services to the member cruise lines. ICCL members carry approximately 90% of the passengers in the North American vacation market. Leisure cruises are an extremely popular vacation choice enjoyed by over 11 million worldwide guests in 2005, and over 9 million of these were North Americans. Over the past 20 years, the cruise industry has grown at a rate of approximately 8 percent per year while continuing to be rated as one of the highest vacation options with outstanding guest approval ratings. An estimated 9.7 million of these guests originate from the U.S and Canada.

The cruise industry is a significant contributor to the U.S. economy. Through direct and indirect spending from the cruise lines, in 2005, the industry generated \$32.4 billion to the U.S. economy, an increase of 8% from the previous year. In addition, Business Research and Economic Advisors (BREA) found that the cruise industry supported nearly 330,000 jobs nationwide and paid a total of more than \$13.5 billion in wages and salaries in 2005. The economic impact reached into every state economy. Cruise passengers originated from every state and the cruise lines made purchases in support of their operations. The biggest economic impact occurs in the State of Florida with the industry contributing \$5.5 billion in direct spending; creating 128,042 jobs that paid \$4.8 billion in wages. Florida is also the home for several of the cruise line corporate and administrative offices.

The strength of the industry also benefited U.S. ports through the increase in cruise passengers and continued trend of home porting. Florida remains the center of cruising in the United States, accounting for over 4.7 million passengers and 61% of all U.S. embarkations, with most of the travelers departing out of the Ports of Miami, Everglades and Canaveral.

The mission of the ICCL is to participate in the regulatory and policy development process and promote all measures that foster a safe, secure and healthy cruise ship environment. The ICCL advocates industry positions, actively monitors international shipping policy, and helps to formulate, review and update best industry practices for and among its membership on a wide variety of issues. ICCL regularly attends meetings at the International Maritime Organization (IMO) where we have a seat as a non-governmental consultative organization, and we represent our membership at the International Labor Organization. ICCL vessels operate around the globe and call at more than 800 ports worldwide.

The ICCL has a long standing and very positive working relationship with agencies at the Department of Homeland Security, which include Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG). ICCL regularly participates in federal committees or working groups such as the Data Management Improvement Act (DMIA) Task Force, the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee, and the Department of State Shipping Coordinating Committee. ICCL has a formal partnership with the USCG, holding meetings every 60 day to share security information. Further, quarterly meetings are held with the CBP Office of Field Operations which includes attendance from the CBP Port Directors from cruise ship home ports around the country. This forum is an excellent example of a successful government/industry partnership that works to find practical solutions to today's security challenges.

In 2000, Congress created a temporary government/industry body known as the Data Management Improvement Act (DMIA) Task Force, whose purpose was to evaluate and make recommendations on how the flow of traffic at U.S. airports, seaports and land border Ports-of-Entry (POE) could be improved, while enhancing security. DMIA's primary focus was to:

- streamline the inspection process of both U.S. and non-U.S. citizens entering and exiting the United States,
- integrate new security measures, and
- facilitate commerce and promote collaboration between several federal agencies.

As the cruise industry representative of DMIA, I was intimately involved with developing the evaluations and recommendations on:

- an electronic entry/exit system;
- enhancing information technology (IT) systems and data collection/sharing;
- facilities and infrastructure issues; and,
- how to increase cooperation between public and private sectors, among federal and state/local agencies and with affected foreign governments.

There is a huge workload at CBP, due to the many additional security requirements put in effect post 9/11. The potential security threats presented by cruise passengers who are well established U.S. citizens are much less than at virtually any other port of entry. The CBP should have the flexibility to focus its resources on high threat environments and delegate duties in lower threat environments to its industry partners who share the government's goal of strong border security. The CBP must utilize its human resources effectively to meet this challenge and use technology to facilitate its work.

According to the Travel Industry Association of America, international tourism is one of the bright spots in this country's balance of payments deficit, and travel is the largest service export sector in the U.S. This positive impact is threatened. As a result of difficult and cumbersome border crossing policies, the U.S. share of international tourism declined 36 percent between 1992 and 2004 while world tourism was growing by 52 percent. In 1992, the U.S. received 9.4 percent of worldwide travelers, today the U.S. receives 6 percent.<sup>1</sup>

#### **CURRENT CRUISE OPERATIONS**

The categories of cruise ship itineraries are classified as follows:

1. Foreign port of origin cruise
2. Domestic port of origin-to-noncontiguous territory cruise
3. Domestic port of origin-to-contiguous territory cruise

#### **Foreign Port of Origin Cruise**

This type of cruise itinerary represents the most basic conditions for a foreign ship arrival to the United States. Cruises depart from a foreign seaport and arrive at a U.S. seaport. Cruises in this scenario may come from Europe, Asia, Canada or the Caribbean islands.

#### **Domestic Port of Origin-to-Noncontiguous (Adjacent Islands) or Contiguous Territory Cruise (Mexico or Canada)**

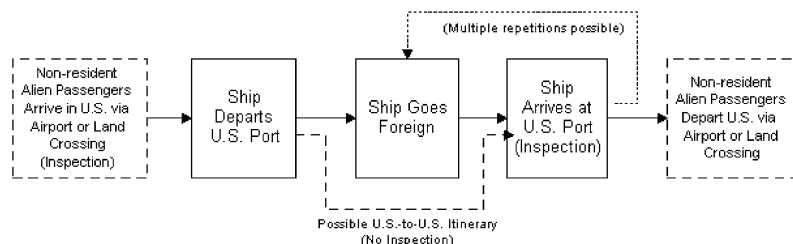
These cruises occur within the Western Hemisphere, and account for 75% of all cruise ship visits and itineraries. In 2005, there were 4,455 cruise ship visits to the entire region with a total of 8.36 million passengers. For the noncontiguous cruise itinerary, passengers and crew undergo an inspection each time the ship returns to a U.S. port from a foreign port. Typically, cruises begin in the U.S., go to a foreign island, return to a U.S. port (such as Puerto Rico), go to another foreign port, and return again to a U.S. port. Cruises of this type occur most often in the Caribbean region and involve the U.S. seaports of Miami, Port Everglades, San Juan, and St. Thomas.

For the contiguous cruise itinerary, passengers who take a cruise from the United States to contiguous territory most likely have been inspected recently at an international airport or a land border POE when they originally entered the United States.

Cruise Itinerary Schematic—Domestic Port of Origin-to-Noncontiguous Territory

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<sup>1</sup>Travel Industry Association (TIA), *The Power of Travel 2006*.



## ICCL RECOMMENDATIONS

### Cruise Passenger Processing

Cruise lines currently submit a multitude of information with the U.S. government and must file electronically passenger and crew manifests prior to departure and before arrival at a U.S. port. Before arrival, it is filed 96 hours in advance with the USCG and CBP. Additionally, on July 14, 2006, CBP published a proposed rule-making that would require the submission of passenger and crew manifests 60 minutes prior to departure of the vessel from a U.S. port.

These manifests provide detailed information including the passenger's name, date of birth, nationality, passport or other ID number, point of embarkation, and the position or duties for each passenger or crew member. Upon receipt of the manifests, CBP checks the information against numerous law enforcement databases to ensure that all passengers are cleared for departure and return to the U.S. The advance transmission of passenger manifests provides the CBP ample opportunity to review and identify those persons requiring a face-to-face interview.

While outside the U.S., cruise ships follow comprehensive security measures designed to ensure that all passengers and crew are accounted for at all times while at sea. Passengers and crew may embark or disembark only after passing through security. For example, each passenger is issued a security identification card that includes biometric data that he/she must show when entering or leaving the ship. Each time a passenger leaves or enters the vessel, it is recorded electronically on the ship's computer system. Once the ship is underway, access is limited strictly to documented employees and fare-paying passengers. The cruise lines vigorously guard against any unauthorized persons boarding the vessel.

Despite these very comprehensive security procedures, cruise passengers are significantly delayed from leaving the vessel at the end of a cruise as the CBP/ICE is required by law to inspect each and every passenger face-to-face. Under the Immigration and Nationality Act, each person's application to enter the United States "shall be made in person to an immigration officer at a U.S. port-of-entry," 8 U.S.C. § 235.1. This inspection usually is conducted in a one-on-one interview with each individual passenger, regardless of their nationality, age or gender. This antiquated requirement does not recognize the modern security practices in place and unnecessarily burdens CBP with an inflexible requirement, particularly when passengers have already been screened for departure and possibly also recently screened for arrival into the U.S.

#### **ICCL Recommendation:**

**Congress should amend 8 U.S.C. § 235.1 to provide an "electronic equivalency" as an alternative to an "in person" interview, that would be applicable to submissions under 8 CFR.<sup>2</sup> This simple change would allow CBP inspectors the flexibility to determine, based upon risk assessments, which passengers or crew would require an inspection upon entering the country.**

#### **U.S. In-transit Port of Calls**

Currently, all cruise ship passengers and crew must be re-inspected at all U.S., in-transit ports. Depending on the cruise itinerary, this re-inspection can occur several times on a single cruise and is a waste of vital CBP time and resources. Consider a ship traveling on the following itinerary: Miami to Nassau (Bahamas), then

<sup>2</sup>8 CFR Parts 217, 231 and 251, and 19 CFR Parts 4, 122 and 178 require each foreign or domestic vessel to provide an electronic transmission of passenger and crew member manifest information to a CBP officer in advance of an aircraft or vessel arrival to, or departure from the United States.

to St. Thomas (U.S. Virgin Islands), then St. Maarten and back to Miami. On this scenario, a non-U.S. passenger will have already passed through a CBP immigration inspection at the airport of entry to the United States before they embarked on a cruise. All passengers will be re-inspected when the ship arrives at St. Thomas, even though each passenger was inspected only days earlier in the United States. Moreover, all U.S. citizens also have to be inspected at St. Thomas and all other U.S., in-transit ports, which significantly delays the vessel clearance and the enjoyment of the port visit by the guests. This inspection reduces the guests' already brief visit, thus limiting touring and the ability to boost the local economy. Finally, upon arrival back in Miami, all the passengers must be inspected once again. Requiring passengers to be inspected multiple times in a short voyage is a waste of CBP resources when we know they are the same persons who were previously inspected.

***ICCL Recommendation:***

**A waiver for U.S., in-transit ports is needed to alleviate this unnecessary and redundant inspection and should be granted for all cruise ship passengers arriving at a U.S. in-transit port. Inspections for U.S., in-transit ports should not be automatically required.**

**NSEERS**

The National Security Entry Exit Registration System (NSEERS) was introduced at all ports of entry on October 1, 2002. NSEERS requires all males born on or before November 15, 1986, who are nationals of specially designated countries, to register at the U.S. port of entry. The process includes an interview by a CBP inspector and the collection of fingerprints and photograph. The list of countries required to register include Indonesia, the country of origin for a large number of cruise ship crew members. Although it appears that NSEERS was introduced to address the Indonesian traveler arriving in the United States for either business or vacation reasons, the procedure has been applied more broadly where it can affect the vast majority of crew members on a cruise ship.

Most cruise lines have 3, 4, 5 or 7 day cruise itineraries, which mean Indonesian passengers and crew have to register with NSEERS each and every time they enter or leave the United States. The process of registration can take up to several hours depending on the port of call. CBP has initiated a process which allows a waiver of this requirement, but depending on the port of entry, the process of obtaining the waiver varies. This additional registration creates a major inconvenience for crew members and the companies that employ them. Recently, CBP has streamlined the process, which has reduced the total number of inspections, but CBP still requires the registration and the waiver process.

Moreover, the broad application of NSEERS to Indonesian crew members is an unnecessary use of CBP resources given the additional security measures in place. The existing State Department visa application process is comprehensive. Each person must first visit the embassy in his/her home country with an employment letter that he/she has received from the cruise line. The process of obtaining the visa takes some time, and the visa section of the U.S. Consulate screens each crew member before the visa is issued. Once the crew member receives the visa, he/she then enters through an airport in the United States, where, again, he/she is automatically sent to a secondary inspection and is again screened by CBP. Once onboard the ship, if he/she is on a three or four day cruise itinerary, he/she is inspected twice a week for up to two months, in some cases, until he/she is approved for a waiver.

***ICCL Recommendation:***

**An NSEERS exemption should be granted for all seafarers with U.S. visas. All passenger vessel crew members, regardless of their nationality and who possess valid visas, should be exempt from having to re-register each time they enter or leave the United States because there is already an inherent checks and balances in place when crew members enter and exit the country.**

**Duty Collection by Third Parties**

Currently, as many as six CBP officers are responsible for collecting Customs duties from the passengers onboard the cruise ship upon arrival. Even though the total amount of duties collected is small, the process of querying passengers can take up to two hours. In comparison, when an aircraft lands in the U.S., there is no such process. Aviation passengers undergo CBP processing by choosing whether or not to declare inside the terminal and not aboard the aircraft. As a solution, the ICCL recommends centralizing and delegating Customs duty collection to the onboard Purser's office, so that the CBP would not be burdened with questioning each cruise

passenger and could rely upon the representations of the purser based on the information the purser collected from the passengers.

**ICCL Recommendation:**

**CBP should delegate Customs duty collection to the cruise lines' Purser's Office.**

**En-Route Inspections**

Today, passenger and crew manifests are transmitted to the USCG and CBP through the Electronic Notice of Arrival/Departure program (E-NOA/D). Currently, the cruise industry utilizes E-NOA/D to provide all available data from the vessel to the port of call 96 hours before the vessel arrives in port, at which time a traditional CBP inspection occurs of all passengers. In many instances, an en-route inspection by the CBP prior to the ship's arrival would be a more viable and better use of resources. En-route inspections occur when a CBP inspector travels with the ship from the last foreign port of call and completes an on board inspection prior to the ship arriving in the United States. Although this alternative would be a better use of CBP time and resources, these en-route inspections are seldom granted, despite there being no prohibition against them.

**ICCL Recommendation:**

**CBP should utilize en-route inspections for cruise ships.**

**CONCLUSION**

In conclusion, the ICCL commends the CBP for its willingness to leverage its limited assets by partnering with the cruise industry. It should further do so by fulfilling utilizing electronic tools and focus its human resources on higher security risks. The cruise industry stands ready to apply its resources in furthering our common goal of secure borders while facilitating commerce.

- **CBP should consider impact of decisions on U.S. commerce.**

The cruise line industry has indicated that they would contemplate arranging cruise itineraries to include more U.S. ports if the inspections process is streamlined.

- **Uniformly applied inspection policy that is consistent in its application of inspection procedures at every U.S. port.**
- **CBP should invest in technology to ensure they have access to the data they require during the course of inspection. With the accessibility and affordability of portable communications, including wireless database access, delays in processing should be kept to an absolute minimum.**

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**STATEMENT OF CHARLENE STOCKER, SENIOR INTERNATIONAL SERVICES MANAGER, PROCTER AND GAMBLE COMPANY, CINCINNATI, OHIO; ON BEHALF OF AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS**

Ms. Stocker. Good morning, Chairman Shaw, Mr. Levin, Members of the Committee. I am Charlene Stocker, Senior International Service Manager for Procter and Gamble. I am honored to be here today representing the American Association of Exporters and Importers and as Chair of the Board of Governors.

With our longstanding history of working with your Committee on multiple trade industry concerns, AAEI greatly appreciates the opportunity to offer these comments on budget authorizations for CBP and ICE, as well as other Customs issues.

In this statement we will touch upon five principle points, but underlying all of our comments is one fundamental belief; and that is, the time is now for CBP to reestablish a productive balance between trade security and trade facilitation. In arguing for the balance between security and facilitation, we do not suggest that the security efforts should or even can be reduced. Indeed, we are all



working hard on multiple fronts to increase homeland security nationwide and worldwide. However, we firmly believe that without an equal and parallel focus on increased facilitation and trade operations, the impact upon the U.S. economy would become a more serious problem.

The five areas which we wish to comment on are, first, the development and evolution of C-TPAT; second, the U.S. business data confidentiality; third, ITDSs; fourth, improving coordination between the Federal agencies; and fifth, paying for trade security and trade facilitation.

In looking at the first of these, the development of the C-TPAT program, we recognize that businesses are not yet required to participate in C-TPAT, but that it is a virtual requirement for much of the industry already. We have been outspoken in our appreciation of CBP's extraordinary sense of commitment in attempting to incorporate multiple commercial realities, retaining the program's voluntary nature, and avoiding the fundamental error in posing a "one-size-fits-all" mandate on the supply chain of U.S. industry. In this we believe that the Committee can explore ways of ensuring that C-TPAT membership will provide U.S. businesses with a measurable return on investment. Otherwise, U.S. businesses may be reluctant to take on additional expenses to exceed CBP's minimum security standards.

Now, our second point is the issue of U.S. business data confidentiality. Here our concerns are driven by both the private sector competitive issues and international business and ownership management. We would ask that the Committee carefully examine the concerns we raise today and support further study.

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 more detailed trade data is alarming to the U.S. trade community when such data may be exchanged without adequate protection with other Federal agencies as well as foreign governments. Moreover, apparent lack of controls and restrictions upon these foreign governments underscores AAEI's concerns.

United States businesses must have a better assurance 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 propriety trade data is secure. AAEI is very concerned about the idea of "secure freight" where a central nonprofit agency may collect data and supply it to government agencies.

Our third concern is the ITDS which the AAEI strongly supports to improve ACE. We believe that participation with full funding is necessary for all of the approximately 79 Federal agencies that depend upon electronic data for international commerce. ACE-ITDS window promotes information-sharing within a single system between all levels of government which will accelerate border clearance times will reduce costs and cut down on inefficient paper-based systems. By eliminating redundancies and increasing efficiencies, ACE-ITDS is taxpayer friendly.

AAEI believes that Federal agencies will have a much better time—easier to spot anomalies in trends in an electronic environ-

ment than it is ever possible to do in a paper-based approach. ACE-ITDS will also ensure that the United States remains a leader and maintains its worldwide competitive advantage in global trade.

Our fourth point is improvement of the coordination between the Federal agencies. As 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, Importer Self-Assessment Program and others. Our member companies tell us that they do not receive full benefit from these programs and partnerships because they are regulated by Federal agencies that neither recognize nor accept the risk-based programs of CBP. This is the kind of problem which is truly unacceptable at the Federal level. We urge you to help the agencies find a better way to work together for the Nation's benefit.

Finally, our fifth area of substantial interest is the development of a financial policy initiative which would provide tax incentives to the privacy sector for investments in security. Our initiative is twofold: first, to bring to the Committee's attention the type of expenses that the companies are incurring for homeland security. Among these are additional personnel and outside resources to conduct security assessments as well as security systems purchased to fortify both physical and systems security.

The second initiative is to bring to your attention the variety of options for your review. Neither I nor AAEI are considered tax experts, but we are asking the Committee to study this issue and determine whether temporary amendments of chapter 99 of the Tariff Code, accelerated depreciation, or tax credits are the most appropriate method to help the private sector make badly needed investments in homeland security.

Finally, I want to thank the Committee for this opportunity, and we very much look forward to a dialog on future inquiries. Thank you.

[The prepared statement of Ms. Stocker follows:]

**Statement of Charlene Stocker, Senior International Services Manager, Procter and Gamble Company, Cincinnati, Ohio, on behalf of American Association of Exporters and Importers**

*A. Introduction and Overview:*

Chairman Shaw, Ranking Member Cardin and Members of the Committee, my name is Charlene Stocker and I am Senior International Services Manager for The Procter and Gamble Company. 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 Bureau of Customs and Border Protection (CBP) of the U.S. Department of Homeland Security (DHS) and the Bureau of Immigration and Customs Enforcement (ICE) of DHS, and on other Customs issues.

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. AAEI believes that it is vital for CBP and ICE to work closely together and coordinate both their security and trade functions for the United States to reestablish that critical balance between the free flow of legitimate trade and robust supply chain security.

It is a privilege to appear before you today at this hearing. AAEI greatly appreciates the Committee's invitation to provide our observations, comments, and suggestions about CBP and ICE trade security related matters, as well as trade facilitation and operational issues. Today's testimony echoes many of the themes which your distinguished Committee and AAEI have jointly considered for a number of years. In fact we have been honored that this committee has chosen to address a number of these in legislative proposals which regrettably did not or at least have not yet become law. We hope that we can assist you in your efforts to advance trade operations and improve vital public/private sector security and facilitation efforts through today's testimony.

We know that the Committee is keenly aware that when the Department of Homeland Security (DHS) was created almost four years ago, this Committee thoroughly examined and considered the implications of transferring all of those functions that were the domain of the U.S. Customs Service (Customs) to the new Department of Homeland Security.

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. Regrettably this concern has proven well founded.

Yet, 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 after four years the time has come to revisit this approach. AAEI recognizes and strongly supports the trade security efforts and initiatives undertaken by CBP as part of the vital DHS mission. Nevertheless, AAEI believes that CBP must now be given resources and direction necessary to re-establish balance between its trade security and trade facilitation functions and responsibilities.

AAEI's member companies appreciate that the House Ways and Means 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 asserted the Congressional interests of trade as well as advocating the leadership of both DHS and 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 consideration of H.R. 4954—The SAFE Port Act of 2006. Frankly, despite the continued vigilance of your Committee and your colleagues in the other body, a great deal needs to be done to achieve a more 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 many within CBP have worked very hard to do so thus far. We are confident that our testimony can assist the Committee in its endeavor to reauthorize CBP and ICE 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. It grows from the rich history of private public cooperation which this Committee has strongly supported. As in past efforts, 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 6,092 have been certified. Approximately, 2,959 validations have been completed as of July 2006 and another 1,700 are underway. CBP currently employs 125 Supply Chain Security Specialists, but expects to have 156 hired by late summer or early fall 2006. AAEI has significant concerns regarding the use of third parties to validate supply chain security practices of C-TPAT participants both because of serious cost benefit concerns as the program grows ever more extensive and first and foremost 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 set of 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—like the C-TPAT Internet and Communications Portal.

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. The cost of such programs, well beyond the extent of CTPAT industry coverage, has been substantial and with multiple future initiatives needed to achieve homeland security objectives are not likely to decrease. We would suggest to the Committee that these often substantive costs borne by individual corporations as well as entire industries appear are indeed likely to expand if efforts to provide supply chain security and end-to-end transparency are not managed with extensive consultation and coordination among all the principle Federal players. And, if this is the case, the Committee could well examine necessary future coordination.

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. One vital step is the WCO Security Framework which we referred to in previous discussion with the Committee as "A successful American experiment going global".

## 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. We would urge that sufficient resources be devoted by DHS through CBP to advance and implement this vital program.

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.

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 former 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. AAETI members, however, are concerned about the sustainability of CBP's effort and its commitment to a multilateral approach.

AAETI recognizes and understands that among the countries whose Customs authorities participate in the WCO, none matches both CBP's level of sophistication of operations and 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.

AAETI believes that CBP should meet with the trade at regular intervals 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.

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

Among the emotionally charged issues that the U.S. trade community and AAETI'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. From discussions with your House colleagues, you know that DHS has what is reported to be a dismal record of compliance with the Federal Information Security Management Act (FISMA). We would ask that the Committee carefully examine the concerns we convey today and support further study of this area.

One primary concern of AAETI'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. In addition we would suggest that the Committee may wish to be fully informed

In today's environment, we are, as has been the committee, quite 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 in-

vested 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.

Although the development of new technologies which enable collection and dissemination of cargo data is being particularly diligently pursued here by DHS and CBP and may have dramatic practical implications for U.S. trade operations and logistics, their international application may be particularly problematic and require Committee monitoring. Whether we are discussing high end Container Security Device CSD methodologies or proactive monitoring technologies, of which the ICIS program is but one, the cost benefit and data security/competitiveness concerns are very much in need of careful review.

#### 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 the Committee may wish to carefully examine the overall pattern of interaction and assist CBP in continuing and its badly needed efforts 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 realizes that various Congressional committees have oversight jurisdiction over trade matters and we hope that the Committee considers our strong recommendation that it study how the export process can be made as efficient as the import process for seamless global trade as it is a vital enterprise encompassing concerns ranging from tax policy to international transportation requirements.

#### 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. This must, of necessity, reach well beyond CBP or even DHS to include the DOT and DOD among other agencies vital to its success. 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/DHS’s security preparedness and trade

continuity plans. These must be incorporated into the National Infrastructure Protection Program (NIPP) recently announced by DHS.

#### 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.

To be clear, AAEI supports CBP's screening of all high-risk cargo through ATS and the enhancement of ATS in business friendly initiatives but believes that the collection of data simply to have same without foreknowledge of its utility places upon commerce burdens which must be avoided in our highly competitive international environment. We suggest that in the current multilayer system, 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.

#### 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 Statue; 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.

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 Sep-

tember 2001, a large number of importers/exporters have, of necessity, been more focused on the high-priority CBP supply chain security initiatives rather than the TSN process and the facilitation improvements that might be possible when ACE is rolled out. Also, while we are highly supportive of the AA EI company TSN members who have devoted such time and energy, we need to also recognize that multiple perspectives on matters which may be sensitive competitively may not be represented on the TSN due to the inability of various industry participants to volunteer such substantial resources. We would also ask that the Committee maintain its traditional focus of encouraging the creation of new and expanded trade consultation opportunities.

AAEI particularly 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.

The ACE/ITDS window promotes information sharing within a single system between all levels of government, which 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. 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.

We urge the Committee to carefully explore the most effective method of guaranteeing full support and resources government wide. In particular the financial and personnel resources required by multiplier agencies in implementation may require vigilance. In this, AA EI strongly recommends that the Committee consider a clarion call to the Administration, which could in turn direct OMB to mandate participation in ITDS from *all* of the 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 inefficiencies and undercommitment of badly needed resources can persist and our Nation's competitive edge in the global marketplace could diminish.

ACE/ITDS will also help in efforts to 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 AA EI 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 AA EI 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 AA EI 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 worked closely with this Committee and has spearheaded private sector efforts to initiate and develop a dialogue and working relationship with these other federal agencies. AAEI is particularly pleased that industry dialogue with FDA has resulted in some recent initial 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.

In the same vein, as we discussed with the Committee in earlier testimony, we are also working with FDA concerning possible adoption of risk-based methodologies. One which we believe is worthy of consideration is ISA where the foundation of the 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 pro-active 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 and making ISAs mandatory for CBP or OGA program participation is unwise.

#### 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 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.

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 developed such study to 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 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.

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. The experienced cus-

toms 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. Although AAEI encourages the coordination and integration of trade facilitation among federal agencies, we believe that mandating participation in ISA either through CBP or other government agency programs is counter productive to either increasing compliance or reducing risk.

#### 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 recognizes that CBP cannot realistically 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.

As the Committee is well aware, AAEI's members have worked as part of an exemplary TSN effort 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.

The product which has emerged and been submitted to this Committee for consideration meets these requirements. It, proposes the following:

1. Substitution would be based on the Harmonized Tariff Schedule of the United States (HTSUS) to eight digits.
2. The drawback claimant could be any party in the chain from import to export as long as the required permissions were obtained from the responsible parties.
3. The time frame for drawback would be simplified to five years from date of import to date of filing the claim.
4. Drawback would be paid based upon the average duty per quantity for the designated line item on an import entry.
5. Proof of export for drawback would be based on an automated export system.
6. Drawback on items that are destroyed instead of exported would be limited to direct identification only.
7. NAFTA drawback would remain the same since it is part of the NAFTA treaty.

With the above as core elements, the revised proposed 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 suc-

cessful 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, 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). Frankly, 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. However, to assist in this effort, we suggest that an annual report of all such revenue collected from the spectrum of Federal Customs related fees and their allocation in the Budget would be of value to the Committee.

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.

#### a) AAET'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 complexities 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.

In exploring how to provide tax incentives, AAEI has begun reach out to its members to understand what kinds of security-related expenditures companies spend money on. During our preliminary discussions, AAEI has discovered that companies do indeed spend substantial sums of money on discrete security systems and measures. These items range from high quality camera systems, additional security guards, lighting systems, to access control systems. Many companies which are critical to the surety of the supply chain may not be covered by CBP’s partnership programs or face security risks unique to the nature of their business. AAEI’s purpose in providing this information in our testimony is to make the Committee aware of a wide range of security-related costs that it may want to consider as part of an effort to craft tax incentives meaningful to the private sector.

In the years since 9/11, the U.S. trade community has responded energetically to a wide variety of homeland security driven needs and requirements. Multiple sectors have undertaken significant expenditures despite limited prospects of direct business benefit/ROI. Clearly, the funds invested in homeland security driven initiatives would otherwise be available for direct product or service improvement.

What has become clear is that “securitization” is a process which may have great benefits to society and meet the company’s corporate responsibilities, but often has little real-world ROI. Multiple homeland security initiatives are underway and some have been considered within DHS—we will address CTPAT as just one as an example. C-TPAT is a process-oriented program that is, broadly stated designed to encourage companies to adopt good security practices throughout the global supply chain.

In CTPAT companies perform an initial security assessment of their companies’ policies and procedures utilizing both internal and external personnel and processes. Among the largest and often quite substantial expenditures that companies incur in implementing C-TPAT are the entity-wide dedication of internal personnel and resources to implement good security practices, which typically involve: conducting the security assessment (including travel to multiple facilities), adjusting current security practices, communicating security policies and procedures to suppliers and service providers, and preparing the company’s security profile (covering multiple business units and supply chains) for the C-TPAT application submitted to CBP, and security awareness training for employees. Other internal resources that companies often redirect toward security are technology related, such as reprogramming existing computer systems to improve access control (both to the physical locations of the company and its IT systems) and increased trade data communications with suppliers and service providers. These expenditures are difficult for most companies to individually quantify because these tasks are often necessarily undertaken by existing company personnel.

It is critical for the Committee to understand that when a company decides to join C-TPAT, it undertakes a long-term commitment and views C-TPAT as a “sustaining program” requiring company resources for the foreseeable future. “Sustaining programs” are expensive for companies to administer because they require ongoing review, assessment, staffing, and management commitment. For example, the time between becoming a certified C-TPAT member and validation could be years, requiring periodic review and making adjustments to the company’s security practices. In today’s competitive international environment, conforming to new C-TPAT requirements (i.e., filing updated security profile through CBP’s internet-based C-TPAT Portal), make it difficult for companies to support “sustaining programs” like C-TPAT without a return on investment—which could be realized through tax incentives.

#### **i) Incentives**

In looking at how Congress could structure such financial incentives, AAEI has done a preliminary review of the types of costs that could be covered. We would suggest to the Committee that there are at least three methods you may wish explore by which Congress could incentivize homeland security expenditures made by companies: 1) Chapter 99 temporary amendments to the Harmonized Tariff Schedule; 2) accelerated tax depreciation; and 3) targeted tax credits. We note that, from the trade community’s perspective, there are benefits and downsides to each of these methods.

#### a) HTS Chapter 99 Temporary Amendments

As the Committee is well aware, Chapter 99 of Section XXII of the Harmonized Tariff Schedule of the United States (2006) (Revision 2) (HTSUS) provides for temporary duty modifications of several varieties. It incorporates both simple temporary modifications in the schedule as well as import restrictions and modifications pursuant to other trade legislation.

Chapter 99 is a traditional legislative vehicle for trade law changes intended to impact targeted societal behavior. For instance, the Miscellaneous Tariff Act of 2004 incorporated over 200 individual Chapter 99 provisions. In addition, the administration of Chapter 99 provisions is well understood and easily managed by CBP. There are currently 15 subchapters incorporated in Chapter 99.

AAEI proposes that, for a limited period of time, in response to pressing national requirements, the Committee should consider a plan studying items which are not being fulfilled sufficiently under current laws and programs. We suggest that the Congress incentivize qualified homeland security initiatives which fall beyond normal business related expenditures. To accomplish this most simply, the HTSUS code would be modified to permit duty relief for U.S. importers based specifically upon the degree to which they are actively participating in efforts to invest in U.S. homeland security.

One option would be that the triggering act for offering incentives for homeland security initiatives would be participation and validation in the C-TPAT program. Duty reductions could be granted for articles imported by or for the account of participants in the program. These could be granted for permissible articles against a schedule based upon level of current validation, at the time of article import. The duty relief could occur on a quarterly basis (requiring post-entry claim) so as to permit confirmation of C-TPAT validation level claimed throughout the covered period.

In general, any and all items imported by those companies demonstrating the extraordinary commitment required to reach C-TPAT validation could then receive reduced tariff duties. However those which are clearly inappropriate, such as those under a dumping order, quota and/or subject to safeguard measures would be excluded.

The level of reduction required to stimulate innovation beyond otherwise ROI-driven business expenditures is believed to be substantial. AAEI proposes that the Committee may wish to consider the following schedule: 0.1% for C-TPAT Tier 1 participants, 0.2% for Tier 2 participants, and 0.3% for Tier 3 participants. If this should prove cumbersome, the Committee could consider reduction of the total duty to be reduced by a dollar figure per entry.

The level of equity or economic fairplay garnered by such a system could be a prime benefit. First, the duty relief would be both based upon the level of security validation and proportional to the number of entries filed and value of those entries. Thus the cost of protecting those very actions which create risk to homeland security (i.e. the import of the goods) and relief are directly linked. Secondly, no direct cash or grant payment is required as the compensation for significant expenditures required to reach validation are simply offsets of the amount to be contributed.

In addition to the initial advantages of a simple HTSUS Chapter 99 modification, which requires no appropriations or other authorization efforts, the actual administration of such a program is relatively simple. In short, it would not require special claims filings, additional audit practices, additional accounting records or the creation and administration of complicated legal formulas. Best of all, it falls directly, through existing importer of record identification numbers, within the operations of CBP's current ACS as well as the emerging ACE and can be tracked and monitored in real time electronically.

#### b) Accelerated Tax Depreciation

As the Committee knows well, prior to 9/11, American companies engaged in international trade primarily had security systems in place to minimize risk of loss, damage and theft of their product. Such devices generally related to packaging and safe transport of goods. Since C-TPAT was launched in November 2001, importers, carriers and customs brokers have joined C-TPAT in order to strengthen supply chain security from a terrorism risk perspective.

Companies typically already have the "building blocks" to implement business systems for a supply chain security program, but the risk assessment process reorients how those systems may be used to enhance security. For example, most companies have employee databases, but may need to reprogram the database to add information, such as security codes for card key access system to enter a secure loading/unloading area. As noted above, items that could be depreciated do not include the largest cost that many company companies incur—the cost of company per-

sonnel or outside resources to implement the business process and systems to enhance security in the supply chain.

AAEI has conferred with its members and have identified a number of items, which are discrete security systems highlighted in CBP's *Supply Chain Security Best Practices Catalog*. They are items that many companies would not normally have invested in them as part of their corporate systems. In particular, the majority of these security enhancements would be purchased by carriers for driver monitoring or cargo tracking, but not importers or exporters.

The benefit of accelerated depreciation is that the tax benefits are targeted to clearly identifiable (and quantifiable) security-related expenditures. The downside of this approach is that it does not cover the biggest costs associated with supply chain security—outside resources and internal corporate personnel and resources. Additionally, this method does not provide ROI for companies constantly improving their security beyond the initial purchase of equipment.

### iii) Tax Credits

AAEI encourages this Committee to consider structuring tax credits specifically targeted to provide companies with ROI on internal resources redirected and dedicated homeland security. As noted above, the largest costs for many companies is deploying the human capital to implement good supply chain security practices, and we believe such a tax credit could be fashioned to sufficiently quantify such costs to ensure that the tax credit only benefits security-related expenditures while at the same time providing an appropriate level of tax incentive for companies to continue to improve their supply chain security as a “sustaining program.”

### 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 commend this Committee for its extraordinary efforts during last week's consideration of the Oman Free Trade Agreement. 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 extremely 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 COAC in the development of vital Executive and Legislative branch coordination and direction regarding our Nation's critical import, export and security policies and programs.

*D. Conclusion*

In conclusion, we wish to thank the House Ways and Means Subcommittee on Trade 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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Chairman SHAW. Thank you. Mr. Gill.

**STATEMENT OF BRIAN GILL, SENIOR REGULATORY AFFAIRS  
ADVISOR, FEDEX EXPRESS, MEMPHIS, TENNESSEE**

Mr. GILL. Mr. Chairman, Mr. Levin, Members of the Committee, good morning. My name is Brian Gill, and I am a Senior Regulatory Affairs Advisor for FedEx Express and Chairman of the Express Delivery and Logistics Association, XLA, the government Affairs Committee. XLA is the trade association representing the U.S. express industry.

FedEx and XLA are pleased that the Committee is holding this Customs budget authorization hearing today to address important Customs issues. Customs and the industry have some very long-term issues to grapple with, such as the need to balance trade facilitation and security and the development of automated programs to handle all of these needs. However, there are also issues that we believe are somewhat simpler that can and should be addressed quickly and would result in savings for the industry, shipping public, and for Customs.

In today's reality, Customs faces difficult challenges in balancing the needs of security and trade facilitation. However, we must not tip the scales too far in either direction without recognizing the direct impact on trade or our economy. Further, we believe it is critical to the country that Customs develop detailed plans for restoring trade flow for each transportation mode in the event of a terrorism incident or natural disaster.

FedEx and XLA fully support Customs development of its next-generation automated system, ACE. In creating the system, Customs should adhere to the following principle: one, create a single window for processing all government requirements for trade data; two, require all government agencies to work through ACE, ensuring that the entire trading process is automated; three, work closely with industry and provide sufficient lead time for industry to make necessary programming changes. Such changes result in significant cost, time and rework for companies such as FedEx and other members of XLA.

Turning to the Customs Trade Partnership Against Terrorism, known as C-TPAT, we applaud Customs for developing the program. We urge Customs and Congress to ensure that the program remains voluntarily. We also urge Customs to work more closely with XLA and other industry groups to ensure fair and effective guidelines that take into account the needs, issues and rec-



ommendations of industry as true partners with Customs against the real enemy, terrorism.

To date, the express transportation industry has received limited benefit from C-TPAT. We would encourage Customs to enhance benefits to our C-TPAT members in line with the significant cost and commitment made by our industry.

I will now speak to a few issues that Customs and this Committee could easily address that would result in real savings to both Customs and the industry.

Customs must update the Formal Entry List and remove from it textiles and wearing apparel, no longer subject to visa/quotas. Today, formal entry is still required for commodities on this list 18 months after elimination of quota and visa requirements for WTO countries, and even for items valued as low as \$5. This is a waste of Customs resources and effort.

In 1994, as part of the Customs Modernization Act (Mod Act) Congress authorized Customs to raise the informal entry limit from \$1,250 to \$2,500. Customs did not act on this authority until 1998, when it increased the informal entry limit to \$2,000, where it remains today.

Customs should certainly increase informal entry to 2,500, as authorized under current law. This Mod Act provision was part of the effort to streamline Customs operations and improve productivity. Fewer shipments would be subject to the more laborious and time-consuming processes of formal entry. In addition, the Bureau of Labor Statistics inflation calculator shows that \$2,000 in 1994 is valued at \$2,738 today.

We believe, however, that this Committee and Congress should go even further than requiring Customs to increase the informal entry to 2,500 and should pass legislation increasing the informal industry ceiling to \$5,000.

As global trade and U.S. imports continue to grow, a new higher limit will provide flexibility to allow entry and release of imported merchandise through simpler entry processes, thereby allowing Customs to devote valuable resources to supply chain security and post-entry trade compliance.

Increasing the section 321 limit from its current \$200 to \$500 would again streamline the entry process and free Customs resources to focus on more important security-related issues. This section 321 limit was raised by the Mod Act in 1994 from \$100 to \$200 as recognition of the need to adjust for inflation. I would like to point out that \$200 is the minimum value of the current statutory provision. Increasing the amount again would allow for more flexibility as well as providing appropriate inflation relief.

In conclusion, Customs has a difficult and challenging job before it. We believe that by following the recommendations we have outlined today, Customs can achieve significant savings and can improve its ability to accomplish both its security and its trade facilitation missions.

FedEx and XLA look forward to working in partnership with CBP to achieve these goals. Thank you. I will be pleased to answer any questions you may have.

[The prepared statement of Mr. Gill follows:]

**Statement of Brian Gill, Senior Regulatory Affairs Advisor, FedEx Express, Memphis, Tennessee**

Mr. Chairman, Mr. Cardin, Members of the Committee,

Good Morning. My name is Brian Gill and I am the Senior Regulatory Affairs Advisor for FedEx Express and Chairman of the Express Delivery and Logistics Association (XLA), Government Affairs Committee.

Both FedEx and XLA are pleased that the Committee is holding this Customs Budget authorization hearing today to address important Customs issues. Customs and the industry have some very long-term, difficult issues to grapple with, such as the need to balance trade and security, and the development of automated programs to handle all of these needs, which I will briefly address. However, I would like to focus most of my comments today on issues that we believe are somewhat simpler, that can and should be addressed quickly, and that would result in savings for the industry, the shipping public and for Customs. I would first like to speak to the need for Customs and this Committee to consider raising the informal entry value, increasing the value limit of the administrative exemptions best known as "Section 321," and updating the requirements for low value formal entries.

**Raise the Informal Entry Value**

In 1994, as part of the Customs Modernization Act, Congress Authorized Customs to raise the informal entry value from \$1,250 to \$2,500. Customs did not act on this authority until 1998 when it increased the informal entry limit to \$2,000, where it remains today.

Customs should certainly increase the informal entry to \$2,500 as authorized under current law. The increase to \$2,500 as part of the Mod Act was part of the effort to streamline Customs operations and improve productivity. Fewer shipments would be subject to the more laborious and time consuming processes of formal entry. In addition, the Bureau of Labor Statistics Inflation Calculator shows that \$2,000 in 1994 is valued at \$2,738 today. As a result, in many cases, imported goods which in 1994 would have been entered and released under less stringent informal entry process are today subject to formal entry merely because Customs has not increased the informal entry ceiling in pace with inflation.

We believe, however, that this Committee and Congress should go even further than requiring Customs to increase the informal entry to \$2,500 and should pass legislation increasing the informal entry ceiling to \$5,000. As global trade and U.S. imports continue to grow, a new, higher limit will provide flexibility to allow entry and release of imported merchandise through simpler entry processes, thereby allowing Customs to divert valuable resources to supply chain security and post-entry trade compliance.

**Increase the Section 321 Limit**

Increasing the Section 321 limit from its current \$200 to \$500 would again streamline the entry process and free needed Customs resources to focus on more important, security related issues. The Section 321 limit was raised by the Mod Act in 1994 from \$100 to \$200 as recognition of the need to adjust for inflation. I would point out that \$200 is the minimum value of the current statutory provision and that the Secretary of the Treasury may increase the amount by regulation. Increasing the amount would avoid expenses and inconvenience to Customs, provide additional flexibility, and ensure relief from inflationary pressures.

**Update the Formal Entry List (Harmonized Fact Sheet 30)**

The Formal Entry List, originally issued in its current form in 1989, is rooted in concerns regarding textile and wearing apparel visa/quotas. Formal entry is required for commodities on this list even when valued as low as \$5. These provisions include commodities that may have textile components such as footwear, luggage, and flat goods. And yet, when WTO trading rules covering textile and apparel commodities became effective on January 1, 2005, eliminating quota limitations and visa requirements for U.S. imports from WTO countries except China, the requirement for formal entry remained.

The Formal Entry List remains unchanged more than 18 months after elimination of quota and visa requirements for WTO countries. We ask the Committee to help us work with Customs to eliminate the unnecessary formal entry requirements that add time, cost and burden on both Customs and importers. This can be done in such a manner that would not prevent data collection important to Customs' continued monitoring of transshipment concerns or other legitimate enforcement needs.

Further, Free Trade Agreements implemented in the past several years include broad provisions for duty-free entry based on country of origin (e.g., Singapore, Chile, DR-CAFTA). With duty-free status granted on such a simple basis, regard-

less of high or low value, there is no longer a broad need for formal entry for low value shipments of those commodities.

**Longer-term Issues**

Regarding some of the longer-term issues, we applaud Customs for developing the Customs and Border Protection's Customs-Trade Partnership Against Terrorism, known as C-TPAT, to improve security within the supply chain. We would, however, continue to emphasize the need for Customs to work more closely with XLA and other industry groups to ensure fair and effective regulations that take into account the needs, issues and recommendations of industry as true partners with Customs against the true enemy, terrorism.

We have submitted our comments to Customs on its most recent criteria for air carriers which we believe fails to establish a proper balance between trade and security and does not include proper perspective on Customs' mandate for facilitation. We want to continue our partnership with Customs on this issue and hopefully Customs will understand that a one size fits all approach is not appropriate in an express environment. For instance, we do not believe that it is appropriate or possible for all of the many retail customers of XLA members to be subject to the same rules and screening that would apply to a company providing services to a C-TPAT company, but that is the effect of the Customs criteria as currently stated.

Regarding the Automated Commercial Environment or ACE, we encourage Customs to again work more closely with industry as it continues to develop and expand ACE. Changes in programming systems can result in significant costs and time on companies such as FedEx and other members of XLA. When Customs then makes additional changes, companies such as ours must reallocate valuable programmer time away from business needs and towards new or revised government requirements. This is in essence a new tax that cannot be paid overnight.

More and better coordination and cooperation between Customs and industry will help to limit these costly changes and rework.

**Conclusion**

Customs has a difficult and challenging job before it. Increasing the informal dollar limit, especially for C-TPAT compliant companies is one way to improve productivity and redirect Customs resources to higher risk areas. Further, by having Customs work more closely with the trade, significant savings and reduced rework can be achieved.

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Chairman SHAW. Mr. Vicente.

**STATEMENT OF MARIO VICENTE, PRESIDENT, FRESCA FARMS, MIAMI, FLORIDA; ON BEHALF OF THE ASSOCIATION OF FLORAL IMPORTERS OF FLORIDA, MIAMI, FLORIDA**

Mr. VINCENTE. Good morning, Chairman Shaw and distinguished Members of the Subcommittee. Thank you for allowing me to speak to you today. My name is Mario Vicente and I am President of Fresca Farms and elected President of the Association of Floral Importers of Florida. My business is located about 2 miles from Miami International Airport in which 86 percent of all fresh-cut flowers are imported. The Association of Floral Importers was formed 25 years ago to give the Miami flower-importing business one voice to ensure the free flow of flowers and help us expedite the processing of our perishable product.

Due to the tremendous volume of products that enter through Miami, about 40,000 boxes per day, which daily require thousands of boxes to be inspected, we continue to negotiate ways to help expedite our product through the inspection process with the USDA and Customs and Border Protection. The Association meets regularly with CBP officers, supervisors and the assistant port director to voice our concerns. So, what we are discussing today are things that we have talked about in our local CBP context. Since the for-

mation of the Department of Homeland Security and the changes that occurred between the USDA and CBP, it seems that the process of inspecting our flowers has declined. We are fully aware that our borders need to be protected, but CBP does not have enough resources to keep up with our increasing volumes. Due to the full plane loads of flowers that arrive daily, the airlines are responsible for calling CBP to initiate the inspection process, but because there are not enough inspectors on staff of all types, we are waiting longer and longer to receive our flowers.

We have a few comments for this Committee to consider. One, in order for us to continue and increase the volume of flowers that we are importing into the United States we need to ensure the industry that CBP will have enough officers to inspect our product in a timely manner. In the past, we were able to pick up our flowers from the airlines in about 4 to 6 hours after the plane lands, but now the average is more like 8 to 12 hours. We need more inspectors available 7 days per week to cut down the time it takes the officers to respond to calls and complete the inspections.

Two, after 9/11, the Department of Homeland Security required all import information be entered into the Automated Manifest System (AMS) prior to leaving the country of origin so CBP has a notification of our products arrival, how much is coming, where it is coming from, and so forth. The information is required by CBP to allow the entry to be cleared. Why cannot the Agriculture inspectors have access to this information so they can preview the paperwork to cut down on the inspection time and officers needed in the field? We then wouldn't have to wait hours for officers to review the paperwork before they even start physical inspection. Aren't we in the age of technology? Then why cannot the government agencies use technology to make the process more efficient?

Third, prior to 2005, each Agriculture officer had an inspection stamp that was unique to that officer. Once an inspection was concluded, the officer stamped the papers of the entry, releasing the product, and he just had to initial and/or sign under the stamp. In 2005, all officers were given a new stamp which is generic, and now the officers have to fill out several blanks on each sheet that they stamp, including their name, badge number, and so forth. It can now take an officer up to 45 minutes to stamp and fill out the stamp areas. This seems counterproductive. Isn't it better to have stamps that are specific to officers instead of a generic stamp?

Fourth, in the past, the Agriculture inspectors worked for USDA, and now they work for CBP and DHS. Since the crossover, there seems to be problems with communications between the Agency with some systems. CBP officers are responsible for conducting the inspections of our products, but if there is a pest or disease found, then it is turned over to USDA for a determination of what could happen to those flowers.

Because there are two agencies involved in the process, it takes longer than with one. We are supposed to receive a pest ID report five times per day from CBP. They have realtime information, but if there is a problem with the software, then we have to wait for USDA to correct the problem. Why is there an issue with agencies having total access to systems they both use? Our industry suffers if there is a delay in getting information to clear the flowers. Fifth,

there needs to be a way for CBP to have meetings at multiple times of the day instead of pulling all officers, inspectors and supervisors out of the field at the same time. When morning meetings occur, it can make the inspections back up, up to 5 hours. Most businesses that have a large staff have meetings more than one time to accommodate the different shifts and do not disrupt the jobs that need to be done. We would just ask for some thought in having times for meetings so there is no disruption in the business environment. Once again, thank you for allowing me to speak about issues affecting the flower industry on a daily basis. Thank you.

[The prepared statement of Mr. Vicente follows:]

**Statement of Mario Vicente, President, Fresca Farms, Miami, Florida, on behalf of Association of Floral Importers of Florida, Miami, Florida**

Hello, thank you for allowing me to speak to you today. My name is Mario Vicente and I am president of Fresca Farms and President of the Association of Floral Importers of Florida. My business is located about 2 miles from the Miami International Airport in which 86% of all fresh cut flowers are imported.

The Association of Floral Importers was formed 25 years ago to give the Miami importing business one voice to ensure the free flow of flowers and help us expedite the processing of our perishable product. Through the years, due to the tremendous volume of flowers that enter through Miami, about 40,000 boxes per day with some days having thousands of boxes that are required to be inspected, we continue to negotiate ways to help expedite our product through the inspection process with USDA and Customs and Border Protection. The Association staff meets regularly with CBP Officers, Supervisors and Assistant Port Directors to voice our problems and concerns about the inspection processes so what we are discussing today are things that we discuss monthly with our local CBP contacts.

Since the formation of the Department of Homeland Security and the changes that occurred with USDA and CBP it seems that the process of inspecting our perishable products has declined. We are fully aware that our borders need to be protected, but CBP does not have enough resources to continue with the current system that we are relying on for our businesses. We already have the airlines calling for the Plant and Protection Quarantine (PPQ) inspections that are now conducted by CBP inspectors because of the full plane loads of products that they receive to cut down on the number of "individual" inspections needed, but because there are not enough inspectors on staff at all times, we are waiting longer and longer to receive our products.

We have a few comments for this committee to consider:

One, in order for us to continue bringing in the volumes of flowers that we are, and we would like to increase volumes, including flowers from other countries like Australia, New Zealand and Africa we need to assure the industry that CBP will have the officers available to inspect our products in a timely manner. In this industry we used to be able to pick up our flowers, on average, about 8 hours after the plane lands, but now the average is more like 12 hours. We need more inspectors available 7 days per week to cut down on the time the inspectors take to respond to the calls and complete the inspections. The officers that conduct the inspections are always stating that they do not have enough staff to have the inspectors come any quicker.

Two, after 9/11 Department of Homeland Security required all import information to be input into the AMS system prior to it leaving the country of origin, therefore, CBP should have notification of our product, how much is coming, where it's coming from, etc. This information is required for CBP to allow the "entry to be cleared". Why can't the agricultural inspectors have access to this information and have notification so that they can "preview" the manifests so that the inspection process time and number of officers needed can be decreased? We then wouldn't have to wait sometimes hours and hours for the officers to review all of the paperwork before they even start the physical inspection. Aren't we in the age of technology? Then why can't the government agencies use technology to make processes quicker?

Three, prior to 2005 each agricultural officer had an "inspection stamp" that was unique to that officer. The stamp had the officer's information including his badge number. Once an inspection was concluded, the officer stamps all pages of the entry that the agricultural product is released, and the inspector just had to initial and/

or sign under the stamp. In 2005, all officers were given a “new stamp” which is “generic” and now the officers have to fill out several “blanks” on each sheet that they stamp including their names, badge numbers, date, etc. Now it can take an officer up to 45 minutes to stamp and “fill out the stamp area”. This seems to be counterproductive—isn’t it better to have stamps that are specific and only that officer has it in their possession and only that officer can use it instead of a “generic” stamp?

Fourth, because the USDA used to be the agency that the PPQ inspectors worked for and now work for CBP and DHS there seems to be problems with communication between the agencies because they cannot both have access to some systems. CBP officers are responsible for conducting the inspections of our products, but if a pest or disease is found, then it is turned over to USDA for determination of what should happen with that product. So, now we have to wait for the CBP inspectors to turn the paperwork over to USDA, then USDA needs to make a determination (that can be in hours or days) of what should happen with that product. We are supposed to be able to receive a Pest ID report 5 times per day so that we can have real time information, that is, unless there is a problem with the system. The system belongs to USDA, the CBP inspectors enter the information and send out the emails, but if something goes wrong CBP cannot do anything it has to be turned over to USDA. Why is there such a problem with agencies having access to systems that they both use? Our industry is the one who suffers, because now we cannot get the information we need to conduct our jobs.

Fifth, there needs to be a way for CBP to have meetings at multiple times instead of pulling ALL officers, inspectors and supervisors out of the field to have a meeting. When meetings occur on a Thursday morning it can back up inspections as much as 5 or more hours. Most “companies” that have large staffs have and have businesses that cannot be “shut down,” have more than one time for meetings to occur so that the “public” is not affected by internal meetings, why should this be different in the government? Why should our business have to suffer because there’s only one time that they want to have a staff meeting and everyone has to attend? We would just ask for some courtesy in having a meeting in the morning for the staff who is leaving and have another at the end of the day for the daytime staff that is leaving, then there is no disruption in the “business environment”.

Again, thank you for letting me speak about an issues that affects my company’s business on a daily basis.

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**STATEMENT OF COLLEEN M. KELLEY, NATIONAL PRESIDENT,  
NATIONAL TREASURY EMPLOYEES UNION**

Ms. KELLEY. Good afternoon. Thank you, Mr. Chairman Shaw, Mr. Levin, for the opportunity to testify today. As the President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 Federal employees, 15,000 of whom are Customs and Border Protection employees at Homeland Security. I had intended to read section 412(b) of the Homeland Security Act into the record, but based on all of the questions given to the prior panel, it is clear to me that 412(b) is on the record. It is also clear to me that CBP recognizes their failure to maintain the staffing levels as required under the Homeland Security Act.

I was very pleased to hear Commissioner Basham’s recognition of the problem and his commitment to restore the trade staffing levels, and I look forward to CBP’s expedited implementation of that commitment. Now, the problem will be what positions and at what staffing levels. For example, former CBP Commissioner Robert Bonner stated in a letter to Congress that CBP employed 1,080 non-supervisory import specialists in fiscal year 2001 and 1,011 in fiscal year 2002. CBP’s most recent data shows there are only 870 import specialists employed. Now, these same staffing shortages exist for other trade occupations, eight of them, in fact, that are specified in section 412(b) of the Homeland Security Act. DHS is

clearly not in compliance with the section that mandated no reductions in trade functions and staffing levels. This highlights the overall problem with CBP staffing.

The former U.S. Customs Service last did an internal review of their staffing for fiscal years 2000 and 2002. This report was dated February 25, 2000, and is known as RAM, Resource Allocation Model. This RAM shows that the Custom Service at that time needed over 14,776 new hires just to fulfill its basic mission, and that was before September 11. According to the GAO, CBP has not increased staffing levels since June of 2003.

In addition to the significant reduction in trade function staff in violation of section 412(b), there is also a current staffing shortage of frontline, armed, uniformed Customs and Border Protection Officers (CBPOs) at the 317 ports of entry. It is my understanding that an import specialist redesign model that is currently being considered by CBP proposes to officially change the day-to-day operations of import specialists by migrating the physical examination of cargo from Customs and Border Protection Officers to the import specialists. NTEU opposes CBP's plan to transfer CBPOs' cargo exam duties to the import specialists as proposed without a thorough review of CBP's staffing needs. Additional CBPOs and trade compliance specialists are needed at the 317 ports of entry to meet CBP's mission at Homeland Security.

C-TPAT has also been discussed this morning, which of course offers an established, trade-related businesses' expedited review of imported cargo and, of course, of the large backlog that there is. The only way to speed up the validation process for the C-TPAT program is to commit more financial and human resources to it. 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 that are funded by current and already insufficient CBP appropriations. NTEU believes that C-TPAT validations should be done by CBP employees. If Congress, however, decides to allow third-party validations, the applicants, not CBP, should pay the costs; but CBP must maintain final review and approval of the validation, which is an inherently governmental function.

In light of the huge consolidation of agencies into the Department of Homeland Security and the continuing concern of the Department's commitment to regulating and facilitating international trade, collecting import duties and enforcing U.S. trade laws, NTEU believes it may be time to reestablish the Office of the Assistant Commissioner of Commercial Operations within CBP. It is vitally important to put someone in charge of this area with a substantive trade background and to ensure that the focus on trade, as required by the Homeland Security Act, is enforced. Now all of the commercial operations personnel report through the Office of Field Operations that also oversees 15,000 armed, uniformed CBPOs.

It is clear that support for an emphasis on CBP's trade function has diminished since the creation of the Department of Homeland Security. To have a separate trade chain of command directly reporting to Commissioner Basham would help correct this deficiency. Thank you for the opportunity to testify on behalf of the

dedicated men and women who safeguard the integrity of trade and travel throughout the 317 U.S. ports of entry, and I look forward to answering any questions you might have.

[The prepared statement of Ms. Kelley follows:]

**Statement of Colleen Kelley, National President, National Treasury Employees Union**

Chairman Shaw, Ranking Member Cardin, 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 about 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 law. 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—a total of only 913 import specialists. This is a clear reduction in staffing and violation of the law.

On March 30, 2006, legislation was introduced in the House and Senate, H.R. 5069 and S. 2481, to 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 uses this revenue source to fund other federal priority programs. The Committee should be concerned as to how much DHS non-compliance with Section 412(b) of the Homeland Security Act costs in terms of revenue loss to the U.S. Treasury.

I would urge the Committee to inquire about CBP's plans to become compliant with Section 412(b) and ask for a timeline demonstrating compliance.



### **CBP's Lack of Optimal Staffing Model**

According to the Government Accountability Office (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. . . .”

Further, GAO observes that “not identifying optimal staffing levels prevents CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests.” However, 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. The report goes on to say that, “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 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 extremely 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. Congress must have information from CBP that justifies its budget and staffing request while enabling Congress to adequately address its authorization, oversight and appropriations responsibilities.

### **Import Specialist Redesign Model**

It has come to NTEU’s attention that Customs 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; however, 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 to other locations 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 U.S. 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 air-

ports. The processes, procedures and skills are very different at land, sea and air ports, as are the training and skill 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 the hiring of additional staff by CBP 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 through private sector contracts, 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 to 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 should make 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 the landmark Sarbanes-Oxley Act of 2002.

#### **Study of Dedicated Funding**

In 2006, 25 million containers came into the United States, including 11 million through our seaports. 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 perform higher graded work in the course of their daily duties since their position has evolved from one that was more transaction-based to one that is account-based. This transition 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.

#### **Reestablish an Office of Assistant Commissioner of Commercial Operations with Direct Report to CBP Commissioner**

The former U.S. Customs Service chain of command had separate offices for Inspection and Control and Commercial Operations. With the move to the Department of Homeland Security and the dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also one of regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws, it may be time to reestablish the office of Assistant Commissioner of Commercial Operations within CBP. It is vitally important to put someone in charge of this area who has a substantive trade background.

Now all Commercial Operations personnel report through the Office of Field Operations that oversees 15,000 armed, uniformed Customs and Border Protection Officers and a small cadre of non-uniformed entry, import and related trade specialists. It is clear that support and emphasis on CBP's trade function has diminished since creation of DHS. To have separate trade chain of command and reporting to Commissioner Basham would help correct this deficiency.

#### **Reestablish a Meaningful Customs Presence In New York City**

Shortly, the nation will mark the 5th anniversary of the September 11, terrorist attack on the World Trade Center. NTEU believes it is time for the Committee to reestablish a full Custom and Border Protection presence in Lower Manhattan. Since September 11, 2001, an overwhelming share of the work has been transferred to Newark, New Jersey.

NTEU believes, however, that moving the New York area Customs and Border Protection operations to Newark is contrary to the spirit of the national response to 9/11, contrary to good business practices, and unfair to the dozens of CBP employees.

Clearly, it is the intent of the Federal government to support the revitalization of Lower Manhattan. Customs has been located in Lower Manhattan for 213 years. It is tragically ironic that the greatest attack on the integrity of the mainland of the nation should result in the need of this tradition that is almost as old as the nation.

It is our understanding that the move out of Manhattan has actually reduced the efficiency of the commercial operations and trade enforcement processes for many of those who must interact with the CBP. Many of the customs brokers and importers located in Manhattan have found it very difficult to serve their clients because they now must go to Newark to complete paperwork that before September 11 required just a subway ride or inexpensive message service to complete. Albeit, there may be some CBP employees formerly located in Manhattan who must do most of their work at the ports in Elizabeth and Newark and it is probably more efficient to locate these people in Newark, as they represent a minority of those previously in Manhattan.

The splintering of the World Trade Center employees to the three locations in New York and New Jersey has been difficult to CBP personnel. It has been particu-

larly difficult for those personnel who are New York residents now temporarily working in New Jersey. They face increased taxes, daycare and commuting costs.

For all these reasons, NTEU asks CBP not to end its two centuries of effective presence in Manhattan.

#### **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 compliance 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 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.

Chairman SHAW. Thank you, Ms. Kelley. Mr. Levin?

Mr. LEVIN. Thank you very much, and thank you for your testimony. I think Mr. Shaw, maybe something was accomplished at this hearing. I do. I think some issues have been brought out that clearly need to be addressed. The hour is late. Let me just say one thing about the testimony. I do think we need to, as we look at these functions, determine the impact on small- and middle-sized businesses. We have been talking about this for a number of years on this Subcommittee and on the full Committee. I mention this because, as we look at trade expansion, for years one of the issues has been, how do we stimulate a broad array of entities that get involved in these efforts? This takes me back many years when—after I left the foreign aid agency, became involved in just that issue.

So, I think, in addition to the discussion of 412 and other issues, that as we look at how these agencies function, we do need to figure out how our regulations and our structures can make it easier for the full array of businesses to participate, always keeping in mind the basic security functions. So, I would like to thank all of you, and some of your testimony has a lot of detail. Ms. Stocker, it will take us I think some time to digest all this, but we will try. As Mr. Shaw has mentioned, we look forward to more and more interaction between all of you and all of us.

Again I want to say, I hope this hearing has lit some fire under the agencies. There is clearly a lack of adequate resources, and I think that is also true regarding our security. It is true as to how we respond to expanding trade and we make sure that it works out the way it was designed in terms of its outflow, but watching over the inflow to be certain that that inflow meets the tests and the requirements that we established in law. So, thank you very much for all of your participation.

Chairman SHAW. Thank you. I do have a few questions. Ms. Kelley, you have heard one of the—I don't know where it came up here, or from one of the witnesses, but the talk of, I think it was the inspector general's report of the merger of the agencies, of CBP and ICE. What was your thought with regard to that?

Ms. KELLEY. From the very beginning when Homeland Security was created by merging the 22 agencies, we had serious concerns about what would be fixed by doing that, and whether or not more problems would be caused. When it comes specifically to the question of CBP and ICE, what—everything we see cited is a communication issue, and we have not seen communication issues resolved by reorganization, so I think there are issues to be dealt with between them. We have not seen anything in working with all of the employees who I represent that would lean to the side of a merger. I think they have problems from the creation of the Department that still need to be addressed, whether it is the reorganization they are trying to do just within CBP on this one phase of the border initiative. This is an initiative that employees will tell you is not working, and it has to do with the merger of legacy Customs, legacy Agriculture and legacy Immigration employees. It is really diluting the expertise that these employees brought to those specific jobs and to the body of law that each of them is required to know to be able to implement to do their jobs.

So, I guess that is a long explanation to say that I think the problems between CBP and ICE are communication issues, and they will not be solved by a reorganization. I think they need to focus on the structures as they exist to support the employees who are trying to do their frontline jobs every day, and move obstacles out of the way of those employees and not create initiatives like One Face At the Border that doesn't help the taxpayers and surely is an obstacle to employees doing the job they are trying to do.

Chairman SHAW. You mention the Department of Agriculture. Mr. Vicente has a problem with that. I have long wondered why you have to have this many people creating that many stamps on that many pieces of paper. The Department of Agriculture, of course, performs a very important service, but it appears that they just kind of show up, and whenever they show up, they put the stamp on this thing and move on. Obviously, with some of these various exotic species that come into the country, we want to stop that; and we have to be sure to keep an eye on this, but it seems—it seems to me that Customs should be able to have a waiver in some of these regards where it is very obvious that the carnations you are bringing in from Colombia are not going to in any way jeopardize the environment here in the United States.

It wasn't too long ago, back about 23, 25 years ago when I first came to Congress, the big problem was no refrigeration at the Miami Airport, and the flowers would lie on the tarmac sometimes; and of course with the problem of drugs coming in from Colombia, we had to have inspections, but we were able to get refrigeration at least, which certainly—certainly helped out. I think this is—this calls attention to the fact that we—I think the Congress needs to get more involved in rolling up its sleeves and actually listening to the folks and trying to put together greater efficiencies whether it be through mergers, whether it be through waivers or whatever it

is. There is a lot of work that I think Congress needs to do, and they need to do it in a workshop setting. This setting, we talk at each other, not with each other, and I think we need a less formal setting in order to work our way through much of this.

Mr. Crye, I have a question for you. Let's set up a situation where we use Port Everglades this time, where a cruise ship leaves Port Everglades in Fort Lauderdale, it goes over to the Bahamas, then it goes down to the Virgin Islands and then it comes back to the United States. At what point would you see the screening as necessary and at what points would it not be necessary?

Mr. CRYE. Sir, upon departure, the people are, in fact, screened. There is a department manifest filed with the CBP. So, ostensibly, all of those people are cleared to depart—to travel from the United States and possibly to arrive back in the United States. Those people are exactly the same people who get off in Nassau and get back on in Nassau; they are all completely screened in Nassau by the ship's personnel, as well as possibly in the terminal, to get back on the vessel through biometric identification cards. We know who they are; we know they are the same people. So, therefore, the subsequent port call in St. Thomas does not seem to be a necessary face-to-face interview requirement. We have provided them with a notice of arrival as well as the manifest. They are the same people who departed and got cleared to go on board. Then, the next foreign port call, they are again screened properly. They are the same people who got off and got on. Then, when they arrive in the United States, they are again the same people who were screened. The electronic information is verified throughout that chain.

Chairman SHAW. Let me—let me slow you down there and get a little explanation here. Now, when they depart in the Bahamas or in Nassau, we could be talking about the Bahamas, we could be talking about Jamaica, Haiti, Dominican Republic, any of those foreign entities down there, they go through whatever type of customs is required by those particular countries. They go in, they shop, they do various other things, they all get some kind of strange types of rum, which they finally throw out 20 years later. then they go on and they have to be screened again when they get down to St. Thomas by American Customs. Is that a whole, full-blown procedure just as they would get when they return to port in Fort Lauderdale?

Mr. CRYE. Yes, it is. With the exception it is an in-transit port. So, the full-blown Customs examination of their luggage is not done because their luggage doesn't depart the ship. It is essentially what is an immigration interview, but they do the legacy Immigration check in St. Thomas.

Chairman SHAW. Now, your position is that the screening that was made by the employees of the cruise line should be accepted by the Customs people in St. Thomas as being correct?

Mr. CRYE. That, plus the electronic manifests, all of that information; they are, indeed, the same people.

Chairman SHAW. Customs would be dependent on your employees to have done an adequate job?

Mr. CRYE. They would be dependent on our employees for the person-to-person check, for the going through the metal detectors

and going through the systems whereby the cards are validated. Yes, they would be, just as they are today.

Chairman SHAW. We are talking about the cards. These are the cards the cruise line issues to the passengers that they use anytime when they depart or come back to the ship; is that correct?

Mr. CRYE. Yes, sir.

Chairman SHAW. It is your thought—what happens when they get back to Fort Lauderdale?

Mr. CRYE. When they arrive back in Fort Lauderdale, we have also provided an electronic manifest that is supplemented by 24-hour electronic manifest that, again, validates that those people are exactly the same people who departed the United States.

Chairman SHAW. Now, under the laws—that is, today—they have to fill out the Customs forms, declare whatever they have over so many dollars, depending on wherever they have been. Then their luggage and all is subject to screening; I guess it departs the ship and is put in a particular area for them to go back and claim it.

Mr. CRYE. Yes, sir.

Chairman SHAW. Now, when this is done, they would have to go through some type of Customs procedure in order to turn in their immigration forms that they have filled out; is that correct?

Mr. CRYE. That is the case, that is the case today. We also believe that because there is so little revenue generated from this particular process, that the Customs could delegate to the purser's office the ability to collect that money, and could save a certain amount of personnel and resources that are stationed at the port of entry to collect very little revenue.

Chairman SHAW. Well, the money that is collected is primarily to defray the expense of going through the process that you are complaining about?

Mr. CRYE. Yes, sir.

Chairman SHAW. So, you are suggesting we get the money and not go through the process?

Mr. CRYE. I am suggesting they could save resources by focusing them on higher—

Chairman SHAW. Now, wouldn't it be fair to say, though, that these people should go through some type of Customs process with regard to making their declarations?

Mr. CRYE. Yes, sir.

Chairman SHAW. How could that be expedited without interfering with the security that we are charging the Customs with, protecting us?

Mr. CRYE. The CBP would still have the ability, the reasons—they would still have the ability to inspect those people that they consider to be people that need a face-to-face interview, and only those people that they consider to be no threat or very low threat would they delegate to us the ability to perform some of these functions. Those people that they have identified as somebody they want to see, they would still have the resources there to see those people.

Chairman SHAW. Sort of a watch list, somebody who tried to sneak something into the country before and got caught?

Mr. CRYE. Or somebody that has an outstanding warrant or somebody who has a questionable name; those people can be singled out for physical face-to-face interviews.

Chairman SHAW. That is an interesting concept. Thank you all for being with us today. We very much appreciate it. There are a lot of things going on here in the Capitol today, which the other members of this panel up here, the members of the Congress, are busy at; we always have to split our time between our various responsibilities. Your testimony will be made a part of the record of this meeting, and thank you, and we are now concluded.

[Whereupon, at 12:24 p.m., the hearing was adjourned.]

[Questions submitted from Members to Witnesses, and their responses follow.]

#### Questions from Chairman Shaw to Mr. Basham

**Question:** As I stated in the July 25 Ways and Means Trade Subcommittee hearing, it has recently come to my attention that in late May your agency issued a binding ruling which placed a valuation on human tissue and required the tissue to pass through formal entry. I have heard concerns that this ruling could lead to entry delays and endanger the success of these transplants. As such, I submit the following questions for your review and look forward to your response.

**It is my understanding that prior to a May 18th ruling, the National Marrow Program (NMDP) had never interpreted the Harmonization Tariff Act to apply to cord blood and bone marrow for transplant. The Transplants amendment Act prohibits any person to "knowingly acquire, receive, or otherwise transfer any human organ specifically bone marrow and other human tissue for valuable consideration for use in human transplantation if the transfer affects interstate commerce."**

**Given this situation, why has Customs interpreted that the human tissue being carried by couriers does in fact have value?**

**Answer:** While the Transplants amendment Act prohibits the transfer of human organs and tissue for valuable consideration, it does not except such articles from the application of the Customs laws with regard to entry, classification and appraisement of imported goods. Under General Note 1 of the Harmonized Tariff Schedule of the United States (HTSUS), all, "goods provided for in [the HTSUS] and imported into the customs territory of the United States . . . are subject to duty or exempt there from as prescribed in general notes 3 through 18, inclusive."

Although certain enumerated products are not subject to the provisions of the tariff schedule under General Note 3(e), HTSUS, human tissue is not among the listed products. Therefore when it is imported it must be entered, classified and appraised. Appraisement is made under the value law, 19 U.S.C. 1401a.

Goods that are not the subject of a sales transaction are still subject to appraisement. In fact, the value law provides several alternative bases of appraisement for merchandise when there is no sales transaction. Using this analysis, U.S. Customs and Border Protection (CBP) ruled that the appraised value of the tissue should be determined on the basis of the fee paid by the foreign medical facility for the cost of the extraction procedure, which was over \$200. According to CBP regulations, only goods imported by one person valued not over \$200 are eligible for the informal entry procedures.

I have also been informed that, in order to ensure timely delivery, NMDP utilizes trained volunteer couriers using the most time-effective commercial flights at all hours of the day and night, every day of the week. These products typically need to be delivered to the transplant center within 24 hours of collection and infused within 48 hours. Because of this ruling, these products will need to pass through formal entry, and it has been estimated that this process could result in up to 10-20% of the products not getting to the patients on time.

**Question:** I have also been informed that, in order to ensure timely delivery, NMDP utilizes trained volunteer couriers using the most time-effective commercial flights at all hours of the day and night, every day of the week. These products typically need to be delivered to the transplant center within 24 hours of collection and infused within 48 hours. Because of this



**ruling, these products will need to pass through formal entry, and it has been estimated that this process could result in up to 10-20% of the products not getting to the patients on time.**

**Is it possible to amend the existing regulatory system to exempt these products from the Customs entry requirements, or is a statutory change required?**

**Answer:** Given the specific and limited language of the tariff, it is not possible to exempt these products through existing administrative procedures. Therefore, a statutory change will be required to ensure human tissue products are not subject to the provisions of the tariff schedule.

**Question: If this change cannot be made administratively, can Customs expedite the entry of these goods to ensure the continuation of successful transplants?**

**Answer:** In order to expedite the formal entry process for these shipments, CBP would need specific arrival information along with entry information in advance of the arrival. Additionally, these shipments are subject to Centers of Disease Control (CDC) and Food and Drug Administration (FDA) screening. FDA and CBP have been working with NMDP to help NMDP understand how FDA-regulated imports are handled by CBP and FDA. Both FDA and CPB understand the critical need for these products to reach the recipient quickly.

**Question: It is important that personnel entering the United States be appropriately screened to protect our National security. However, many businesses, including the cruise industry, have raised concerns about delays caused by multiple screening of U.S. citizens on short cruises. What specifically can you do to ensure that screening of passengers is done efficiently and preserves our national security while reducing the delays that can harm legitimate travelers and businesses?**

**Answer:** The Advance Passenger Information System (APIS) Final Rule (AFR) was published on April 7, 2005 and took effect on June 6, 2005. The AFR was promulgated to implement the legislative requirements set forth by the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002. The AFR consolidated the inbound vessel passenger information requirements for both CBP and the U.S. Coast Guard, allowing vessel carriers to meet the requirements of both agencies with one electronic manifest submission. This unification of requirements was intended to help alleviate instances of duplicative screening.

The AFR requires all commercial carriers, regardless of size, to electronically transmit an advance passenger manifest to CBP at pre-determined times. In general, commercial vessels are required to transmit a Notice of Arrival (NOA) and a complete APIS manifest as early as 96 hours, and not later than 24 hours, prior to the vessel's arrival at the first port (or place) within the United States. Commercial vessels departing from the United States are required to transmit a Notice of Departure (NOD) no later than fifteen minutes prior to departure from the United States.

CBP uses APIS data to facilitate the entry and flow of legitimate travelers into and out of the United States. APIS data are screened against the Treasury Enforcement Communications System (TECS) databases, including the Terrorist Screening Center watch list.

Immediately after the regulation took effect, CBP realized a need to provide an exception for the small, commercial service, charter and cruise boat industries that operate 'short-turn' voyages within and around the Gulf of Mexico, Great Lakes, Southern Florida, Puget Sound and the U.S. Virgin Islands.

On August 26, 2005, CBP authorized its Field Offices to exercise discretionary authority to waive the twenty-four-hour NOA period to allow this industry to electronically transmit a complete passenger and crew APIS message no later than sixty minutes prior to a vessel's departure from any foreign location. The sixty-minute time frame is the minimum amount of time necessary to screen passenger and crew manifests for high-risk travelers.

While this exception does not fully exempt this industry from transmitting a full and complete manifest, it does significantly lessen the economic impact and burden on the industry. In order for CBP to fulfill its primary mission of safeguarding the American homeland at and beyond our Nation's borders, continuation of this requirement is necessary. Additionally, the APIS regulation applies only to commercial vessels, and 19 CFR 4.7b defines that term to include any civilian vessel being used to transport persons or property for hire. A private yacht that employs its own

captain and staff is not deemed to be 'for hire' and is therefore exempt from the APIS requirement.

**Question: In what percentage of the cargo that CBP physically inspects does CBP find security problems or violations of U.S. law?**

**Answer:** In the past few years, CBP has had a tremendous amount of success with partnership programs that strive to achieve high levels of compliance with security standards and compliance with trade laws. During FY 2006 through June, CBP has performed over 2.3 million physical cargo exams. On average, we find security problems or trade law violations at a rate of 1.2 percent.

**Question: What is your current estimated deadline for the full implementation of the Automated Commercial Environment (ACE) system? Is the current funding level adequate to stay on schedule?**

**Answer:** U.S. Customs and Border Protection continues to manage to the approved Acquisition Program Baseline (APB), which reflects a \$3.3 billion program that will attain full operational capability by August 2011. The current funding level (\$316.8 million as released by Congress on April 4, 2006, through approval of the Fiscal Year 2006 Modernization Expenditure Plan) is enabling CBP to maintain the schedule set forth in the APB. Continued funding of ACE/International Trade Data System (ITDS) efforts (via the President's Fiscal Year 2007 budget request of \$316.8 million for ACE/ITDS) will enable CBP to continue maintaining the ACE/ITDS program within the APB.

**Question: While the International Trade Data System (ITDS) has been in development for several years, several key agencies are still not participating in the program. Do you think that it is important for this system to incorporate all the major U.S. agencies involved in collecting trade data, and what can be done to ensure that key agencies participate? Is there appropriate funding to ensure the deployment of the ITDS system and should centralized funding for this goal be authorized?**

**Answer:** Rather than an information technology system, the International Trade Data System (ITDS) is an e-Government initiative that provides the mechanism for coordinating interagency participation in the Automated Commercial Environment (ACE), the new computer system that is being developed by CBP. In 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 fifty-six 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. However, many—if not most—of these agencies may most effectively meet their requirements as customers of the Census Bureau or other data agencies, rather than as recipients of raw data from CBP. 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 Participating government Agencies (PGAs). The State Department's Office of Foreign Missions is another recent addition to the list of PGAs.

Future ACE capabilities, including Entry Summary, Accounts, and Revenue (Release 5) and e-Manifests: All Modes and Cargo Release (Release 6) will effectively 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.

Congress most recently provided centralized funding in the amount of \$15.8 million for ITDS integration efforts via approval of the Fiscal Year 2006 CBP Modernization Expenditure Plan on April 4, 2006. Continued support and funding by Congress for ITDS integration efforts has enabled CBP and the ITDS Board of Directors to add twenty-one Federal agencies to the original roster of eight ITDS PGAs during the past two and a half years, continue efforts to integrate PGA requirements within 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 (IT) projects might be required to maximize the benefits of their integration with ACE. As CBP and the ITDS Board of Directors assist PGAs in assessing the scope and costs of such PGA-specific IT projects, CBP anticipates that PGAs will include funding requests, as appropriate, in future budget requests of their respective agencies.

**Question: The U.S.-China Business Council estimated that U.S. companies suffered \$30.7 billion in financial impact between July 2002 and March 2004 due to denials or delays in processing business visas. What programs or proposals is the Administration considering to improve the facilitation of legitimate business travel to the United States?**

**Answer:** The U.S. Citizenship and Immigration Services (USCIS) suspects that the delays referenced in this question may be primarily related to the Department of State's responsibility for processing visa applications and issuing visas for business purposes. USCIS defers to the Department of State for answers regarding any delays which result after such time as an employment-based immigrant or non-immigrant petition is approved by USCIS, or for information relating to business visa processing (in particular, all "B" nonimmigrant business visitors) that does not involve any petition filed with USCIS. With regard to processing times for employment-based nonimmigrant visa petitions, USCIS notes that the agency has reduced the processing time for Form I-129, Petition for Nonimmigrant Worker, from an average processing time of 2.55 months in October 2003 to an average processing time of 1.38 months in April 2006.

Furthermore, USCIS is in the process of expanding the availability of its Premium Processing Service to include additional forms (e.g. Form I-140, Immigrant Petition for Alien Worker) to help facilitate efforts by American businesses to obtain foreign labor quickly. When an entity pays the required fee for Premium Processing Service, USCIS will process the petition or application within 15 calendar days. See 8 C.F.R. § 103.2(f). The Premium Processing Service is beneficial to American businesses by providing these businesses with the opportunity to obtain faster processing of petitions and applications to meet their need for foreign workers.

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**Question from Chairman Shaw and Mr. Pomeroy to Mr. Basham**

**Question: Please provide information on the status of the economic analysis of the impact of the proposed Western Hemisphere Travel Initiative, which was recommended in the May 25, 2006 GAO report #GAO-06-741R, including a summary of information that the economic assessment will include and the issues that will be addressed. Specifically, please provide information on whether the analysis will address the effect of WHTI implementation on tourism, trade, and commerce for border states and the United States as a whole, whether the analysis will address the costs and benefits of alternative identification cards considered or decided upon by State and DHS, and the specific anticipated timelines for the both the air and sea, and land border economic analyses—including start and completion dates. Please also provide these analyses when they are completed.**

**Answer:** The Notice of Proposed Rulemaking (NPRM) for air and sea was published on August 11, 2006 (71 FR 46155). As stated in this NPRM, the proposed effective date for the final rule is January 2007. The economic analysis for the NPRM that addresses the air and sea portion of WHTI is complete and available for public review and comment in the public docket for this rulemaking (USCBP-2006-0097). This analysis, which was reviewed by OMB and met the requirements of Executive Order 12886 and Circular A-4 for rulemakings that have a significant economic impact, contained the following: an estimate of the costs for individuals to obtain passports to travel by air and sea in the Western Hemisphere; an estimate of the number of travelers that may modify their behavior as a result of the passport requirement; a summary of results from a preliminary Monte Carlo simulation designed to more formally test assumptions and sensitivities; a short discussion of the reduction in consumer surplus that is expected as a result of this rule; and an overview of the industries that may be indirectly affected by the rule. A copy of this document is provided.

CBP is presently not able to provide specific information regarding the economic analysis of the WHTI land rule because this analysis—which is being prepared pursuant to Executive Order 12866, which gives OMB the authority to review and approve economic analysis—is still ongoing and therefore not yet complete. After the analysis is drafted, it will be considered pre-decisional until cleared by OMB. However, DHS, CBP, and DOS will ensure that the economic analysis conducted for the land portion of WHTI will meet the requirements for economic analysis set forth in EO 12866 and OMB Circular A-4. The Departments intend to complete the rule-making process for the land portion by the statutory deadline of January 2008.

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**Questions from Mr. Weller to Mr. Basham**

**Question:** Carus Chemical Company, a small chemical producer in Peru, Illinois, has faced problems regarding the collection of antidumping duties (ADDs) imposed pursuant to the ADD order in Potassium Permanganate from China (Case No. A-570-001). Carus estimates that CBP must still collect in excess of \$600,000 in duties under this ADD order. Despite numerous inquiries and FOIA requests, Carus still does not have a clear idea of the status of CBP's efforts to collect these duties. Please provide a full report on CBP's efforts to collect outstanding ADDs under the ADD order in Potassium Permanganate from China, including the status and expected schedule of any proceedings, the amounts involved, any defenses raised in opposition to collection efforts and any other reasons for delays in collections. (To the extent that CBP is precluded from identifying the parties involved, please describe these issues without reference to the parties.) In addition, please identify a CBP official who may be contacted for further inquiries regarding these matters.

**Answer:** There are two underlying causes for the uncollected duties on Potassium Permanganate from China (Case No. A-570-001). The first is a rate fluctuation from 39.63 percent to 128.94 percent. CBP issued bills to collect the difference between the estimated AD duty deposited (39.63%) and the actual AD duty owed (128.94%) as a result of a review conducted by the Department of Commerce. One of the importers filed for bankruptcy and is no longer active. The other is a Canadian importer who halted operations as an importer of record, so there is little recourse for CBP to collect the AD duties owed. The second issue is importations by a new shipper. This case involves a U.S. subsidiary of a Chinese corporation who failed to file a Single Entry Bond (SEB) and who went out of business once bills were issued for the collection of lawfully owed AD duties. CBP has since instituted a monitoring program to ensure that a SEB is filed on all applicable entries.

The importers in these cases are in sanction status and are therefore required to pay all estimated duties before release of future entries, and under review by our Counsel office. Counsel is pursuing further collection action, including the evaluation of litigation risks against the importers and any sureties.

**Question:** This Committee has several times expressed concern about CBP's continuous entry bond policy announced in July 2004. Despite the clarifications to the bond policy worked out last year, CBP admits that the burdensome bonding requirement has not been reduced for established importers that can show they are not a risk for noncollections. It is important that the bonding requirements are fair and targeted at the risk. How is Customs modifying the bonding burden for legitimate U.S. companies that demonstrate they can pay their bills?

**Answer:** CBP's continuous bond guidelines contain provisions to determine the appropriateness of bonding requirements as well as to ensure that honest importers with a good record of paying duties are not unfairly burdened. These provisions include an appeal process for companies who believe they should not be subject to the revised continuous bond guidelines, with particular attention given to companies who have a history of making timely payment of duties, taxes and charges and of honoring bond commitments. CBP is developing a process to identify low-risk importers, such as those that have a history of compliance with Customs laws and regulations and a demonstrated ability to pay financial liabilities, in order to reduce the burden on legitimate companies.

**Question:** In response to a question regarding CBP's efforts to reduce the burden of its continuous entry bond policy on legitimate importers, Commissioner Basham said CBP is trying to develop criteria to identify whether companies will be in existence in 2-3 years. What criteria is CBP considering?

**Answer:** CBP is considering a number of criteria to identify whether an importer will be in existence in two to 3 years, including the length of time the importer have been in operation, the length of time the importer has been importing the subject merchandise, and the ability of the importer to pay financial liabilities.

**Question:** Separately, how does Customs identify and eliminate illegal activities that undermine antidumping and countervailing duty orders such as fraud, product misclassifications, undervaluation, and bogus bonds?

**Answer:** CBP continually analyzes import trends and data to detect illegal import activity. CBP investigates allegations from the importing community, domestic companies and the Department of Commerce. Using the results of the investigations,

CBP will conduct both cargo examinations and document review to identify goods subject to ADD/CVD. CBP verifies both bond data and bond sufficiency.

CBP further monitors importations subject to AD/CVD orders in order to identify possible circumvention issues such as transshipment of products through third countries and the willful misclassification of product to avoid the full payment of AD duties. CBP also monitors the valuation of imports subject to AD/CVD orders to identify potential undervaluation issues. When suspicious activity is identified CBP takes steps such as targeted reviews and on-site audits to eliminate the illegal activity.

To detect bogus bonds, single entry bonds are verified for proper signatory parties such as the authorizing surety. While there have been issues with bogus single entry bonds in the past, CBP has since changed its field policy to prevent the acceptance of potentially bogus single entry bonds.

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#### Questions from Mr. English to Mr. Basham

**Question: In January 2004, Congress passed the “Emergency Protection for Iraqi Cultural Antiquities Act of 2004” providing President Bush the authority to include Iraq as a covered nation under the Convention on Cultural Property Implementation Act. Nevertheless, I notice the most recent Customs advisory on “Works of Art, Collector’s Pieces, Antiques, and other Cultural Property” (May 2006) does not list Iraq as a covered nation. It is also my understanding that Afghanistan ratified the 1970 UNESCO Convention last year with the clear expectation of gaining protection for their cultural artifacts. Yet it is also not listed among nations covered by Cultural Property Implementation Act.**

**Why is neither of these nations listed in the Customs advisory?**

**Answer:** The CBP advisory “Works of Art, Collector’s Pieces, Antiques, and other Cultural Property (May 2006)” is an Informed Compliance Publication (ICP). This ICP is produced by CBP’s Office of Regulations and Rulings pursuant to Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), also known as the Customs Modernization Act. By their terms, ICP’s are published for guidance, for informational purposes only, and do not replace or supplant the regulations and statutes that comprise the customs laws.

Iraq and Afghanistan are not listed in the ICP because the list provided contains the names of countries with which the United States has entered into bilateral agreements concerning cultural property, not countries which are subject of emergency legislation. The ICP list is taken from 19 CFR 12.104g. No reference is made to Iraq or Afghanistan because no bilateral agreement exists between the United States and those countries. That is, there are no current bilateral agreements between the U.S. and Iraq or between the U.S. and Afghanistan imposing import restrictions on cultural property from these countries pursuant to the Convention on Cultural Property at 19 U.S.C. 2601 *et seq.* Therefore, neither country is listed at 19 CFR 12.104g, or in the “Works of Art, Collector’s Pieces, Antiques, and other Cultural Property (May 2006)” ICP. However, the State Department has informed CBP that a bilateral agreement is currently being negotiated with Iraq. Therefore, Iraq will be included in 19 CFR 12.104g when the Department of State notifies CBP to amend the regulations. Although Afghanistan is a signatory to the 1970 UNESCO Convention, Afghanistan has not requested, pursuant to the Convention of Cultural Property (19 U.S.C. 2601 *et seq.*) to enter into a bilateral agreement imposing import restrictions on its cultural property. As such 19 CFR 12.104g is accurate.

We note that while the cultural property of Iraq and Afghanistan are not included at 19 CFR 12.104g, the importation of stolen cultural property from Iraq is covered by the National Stolen Property Act which is enforced by DHS and laws enforced by the Office of Foreign Assets Control.

**Question: What is the process within the administration for initiating a request for the President to exercise his authority under section 304 of the Convention on Cultural Property Implementation Act?**

**Answer:** Generally, a State Party may seek action concerning cultural property by making a request to the Secretary of State. The State Department can provide further information on the process for determining the particular cultural property on which import restrictions may be imposed.

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**Questions from Mr. Foley to Mr. Basham**

**Question:** Following the two recent decisions in the Court of International Trade against the Continued Dumping and Subsidy Offset Act (CDSOA), or Byrd Amendment-particularly the decision that the Byrd amendment is unconstitutional because it is a governmental restriction on free speech-does CBP plan to suspend all future disbursements pending court appeals, and what happens to the money sitting in special accounts?

**Answer:** CBP intends to withhold, pending resolution of any appeals, distribution of all funds derived from goods involving NAFTA countries based on the Court of International Trade's declaration that all such distributions are illegal. CBP anticipates that any such undistributed funds will remain in the special accounts pending resolution of any appeals.

**Question:** If CBP plans to continue disbursements, please provide the rationale for this decision. In addition, the Committee has raised several oversight questions regarding the program. You may recall, the GAO issued a report last September on the operation of the CDSOA, and the report made several recommendations. To follow up on those recommendations, please provide the status and substance of:

**Draft regulations that were supposed to be finished in June**

**The audit of one company that was overpaid \$22 million and the ruling on the case by CBP's Office of Regulations and Rulings**

**CBP's verifications of recipients: When can the Committee expect to see the results of those verifications?**

**Answer:** Following GAO's audit of the program, CBP began the process of considering amendments to the regulations for the administration of the CDSOA. When the CDSOA was repealed earlier in the year, CBP initially anticipated that the amendments to the regulations could be unnecessary. Upon further consideration, however, it has been determined that, despite the statutory termination of the program, amendments to the regulations would facilitate winding down of the program until all disbursements are made of duties which were assessed and collected in accordance with the effective date provisions of the statute. Unless it is determined that the court decisions on the constitutionality of the program militate against proceeding with regulations, CBP has preliminary draft of regulations in review since the beginning of October. The regulations, recommended by the GAO, will provide for electronic filing to facilitate verification and will provide for a standard format, which will facilitate comparison of data.

The audit was completed and an audit report was issued June 2005. The audit report indicated that preliminarily it appeared that the company had overstated its qualifying expenditures on the 2003 and 2004 CDSOA certifications. However, a final determination of the issue required further legal analysis by CBP. The audit report stated that, upon resolution of the legal issues, CBP would finalize the determination of the qualifying expenditures for 2003 and 2004 and report the amounts of overpaid. It is CBP's understanding that analysis of the legal issues is being finalized and, the final results will be issued within sixty days of receiving the written decision.

CBP has established a Verification Pilot Program for verifying CDSOA disbursements. CBP notified 20 FY2005 claimants of the agency's intent to conduct verifications and to request pertinent cost allocation information. CBP has received and reviewed information from all twenty selected claimants, and began site visits on July 31, 2006.

CBP expects to complete the limited number of pilot site visits (six or eight) prior to September 30, 2006, and to summarize results by December 31, 2006.

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**Question from Mr. McDermott to Mr. Basham**

**Question:** Please provide a list of your offices responsible for responding to business complaints regarding CBP's trade-related activities, including a description of the offices' responsibilities and a description of how a business that wishes to raise a trade-related complaint with CBP should proceed. Please also describe which official in CBP is responsible for advocating on behalf of CBP's trade facilitation and enforcement roles so as to ensure that the agency's trade mission receives appropriate attention and

resources, even while CBP pursues its other mission of protecting the nation's security.

**Answer:** Customs and Border Protection's Office of Trade Relations (OTR) functions as liaison between the international trade community and CBP officials. Its role includes trade policy development and communication as well as problem resolution. The OTR serves as an impartial point of contact for the trade community for issues that could not be resolved at the local or national level. The Office of Trade Relations conducts independent reviews of complaints raised by the trade community and works with Headquarters and/or local CBP management to resolve legitimate concerns. The Director of the OTR is also the agency's designated Regulatory Fairness Representative for the Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Executive Director, Trade Enforcement and Facilitation (TEF), under the direction of the Assistant Commissioner, Office of Field Operations (OFO), has oversight of the U.S. Customs and Border Protection trade mission and CBP policies and procedures to ensure compliance with trade-related laws and regulations.

TEF is also responsible for responding to trade related complaints raised by the international business community are reviewed and responded to in a timely manner. A business with a trade-related complaint should first approach local CBP management for resolution. If not satisfied or the problem is not local in nature, the issue can be raised to headquarters level through the Office of Field Operations, Customer Satisfaction Unit (CSU), the CBP office and/or branch with oversight responsibility, or with the Office of Trade Relations.

The CBP Ports of Entry and Field Operations Offices (there are twenty Field Operations Offices in the United States that provide centralized management oversight and operational assistance to 317 U.S. ports of entry and fourteen pre-clearance offices), respond to concerns raised by the trade community in accordance with Customs Directive 3830-001A: *Customer Satisfaction Unit (CSU) and Centralized Complaint/Compliment Processing*. The CSU, established within OFO Headquarters (HQ), is responsible for monitoring complaints received by CBP. It also coordinates with the appropriate CBP HQ and field offices to ensure that they are reviewed in a timely manner with responses that appropriately address the concerns expressed by the complainant.

Contact information for the ports of entry, Field Operations Offices and Headquarters are on the CBP Web site, [www.cbp.gov](http://www.cbp.gov). The address for the Customer Satisfaction Unit is, U.S. Customs and Border Protection FOIA/CSU Room 5.5C, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20229. The Office of Trade Relations can be reached at 202-344-1440 or [traderelations@dhs.gov](mailto:traderelations@dhs.gov). The CBP website also provides a ready resource for answering a variety of questions and concerns and provides up-to-date information on CBP trade programs and initiatives.

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#### Question from Mr. Larson to Mr. Bashamm

**Question:** Please provide your views on all of the recommendations contained in the Department of Homeland Security Inspector General's report that recommended the merger of CBP and ICE, including what actions you intend to take on the report's recommendations and timelines for those actions.

**Answer:** On April 24, 2006, the Department of Homeland Security (DHS) submitted a response to the Inspector General's report titled "*An Assessment of the Proposal to Merge CBP and ICE*." ICE and CBP worked closely together with the Department in developing this response, in which DHS (and ICE and CBP) concurred or concurred in part or concept with all of the IG's non-merger based recommendations for the DHS Second Stage Review implementation.

Taking into account the IG's recommendations, Assistant Secretary Julie Myers and Acting Commissioner Deborah Spero on May 10, 2006, issued a memorandum that outlined existing referral guidance agreements between CBP and ICE. It also provided important guidance to the field and HQ components regarding currency and monetary instruments, illegal drug apprehensions and seizures, commercial importation and exportation violations, national security matters, gangs, and other important current issues. As the integral enforcement relationship between ICE and CBP continues to expand, ICE and CBP field personnel were encouraged to find every feasible opportunity at the local level to promote broader cooperation, coordi-

nate efforts on case referrals, and jointly resolve, at the field level, issues as they arise, elevating issues only as necessary.

Furthermore, on December 8, 2005, the Director of ICE's Office of Investigations and the Director of CBP's Office of Field Operations issued a joint memorandum that establishes regular meetings of senior Headquarters executives from CBP and ICE to discuss issues of significance between the agencies. Moreover, the memorandum provides a mechanism for "Working Group" members (comprised of Headquarters and field executives) to study, discuss, and resolve large-scale issues and make joint recommendations to senior agency executives. Finally, the memorandum has further encouraged field managers to discuss and resolve issues related to coordination and communication.

These efforts and many others attest to the strong and mutually beneficial working relationship that currently exists between ICE and CBP. ICE and CBP are committed to carrying out the IG's recommendations and continuing this successful and cooperative partnership.

Please refer to attached document for detailed explanation of the Department's views on the Inspector General report, "An Assessment of the Proposal to Merge CBP and ICE."

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#### Question from Mr. Tanner and Mr. Levin to Mr. Bashamm

**Question:** Please provide an explanation of why DHS is not in compliance with section 412(b) of Homeland Security Act requiring that customs revenue functions and staffing not be diminished. In addition, please provide a detailed description of the staffing numbers related to this issue and plans and timelines for addressing any deficiencies.

**Answer:** CBP will carefully monitor future retirements and attrition to ensure compliance with section 412(b). Although CBP has new hires in the "pipeline" for many positions, we recognize that this is not enough. CBP will aggressively recruit and hire additional personnel to return us to the baseline staffing levels established by section 412 by the end of the year. The table below details the current status of revenue function staffing.

Revenue Function	Baseline— March FY 2003 Staff On-board	Current— July FY 2006 Staff On-board	"Pipeline"— New Hires Selected and In Process	Future Hires Needed
Import Specialists	984	897	40	47
Customs Auditor	364	349	10	5
International Trade Specialist	74	59	7	8

Performing our trade mission requires the skills of employees in many positions. While staffing of specific positions and hiring more people may have been an effective way of ensuring that CBP's trade mission was met in the past, technological advances and improved methods are other factors that must be considered in the future. With the growing volume of trade, the personnel, strategies, and technology for ensuring trade compliance and facilitation must also grow and change. Personnel, such as national account managers and regulatory auditors, play an increasingly important role in addressing compliance and facilitation at the company level rather than focusing on individual shipments as has been our historical approach. In addition, technological advances under ACE provide efficiencies that enable the redirection of human resources to other functions. Once we return to the baseline staffing levels established by section 412 by the end of the year, CBP would like to begin a dialog about how changes to our infrastructure affect staffing.

CBP will be compliant with section 412(b) by December 31, 2006. Current Import Specialist staffing numbers as of July 2006 are 897. In order to be compliant with section 412(b), CBP must maintain a staffing level of 984 Import Specialists. This leaves eighty-seven positions to be filled by year's end. As of July 8, 2006, twenty-nine applicants are pending Background Investigations and eleven applicants have accepted positions and are waiting start dates. CBP is actively recruiting to fill the remaining forty-seven positions.

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**Question from Mr. Reynolds to Mr. Basham**

**Question:** For trade agreements to deliver their promised benefits, there must be a strong commitment on the part of the Administration to ensure that they are strictly enforced. One area of potential abuse concerns the transshipment of goods from countries with which we do not have trade agreements through countries which have been given preferential import treatment, in violation of the stringent rules of origin that the U.S. typically negotiates. This very issue was most recently brought to my attention by western New York's dairy producers, who have concerns about the potential transshipment of dairy products through Peru under the proposed trade agreement with that country. There have been reports that the number of import specialists at Customs has declined significantly since the agency was shifted into the Department of Homeland Security, despite an increase in the overall volume of trade since that time.

If those reports are true, how will Customs be able to more closely and regularly monitor imports from our FTA partners in order to ensure that violations of the rules of origin, including transshipment of finished goods and the shipment of products using foreign ingredients originating outside the FTA, are not taking place?

**Answer:** CBP has uncovered a number of fraudulent schemes designed to take advantage of preferential import treatment when in fact, they are not eligible to do so. To combat this enforcement challenge, CBP regularly monitors import data and analyzes shifts in patterns that may indicate a violation of the Free Trade Agreement (FTA) requirements. Once targets are identified, CBP has a variety of means to verify the eligibility of the FTA claims, such as Import Specialist review, audits, laboratory analysis, and foreign factory visits for textile products.

Each FTA provides for strong cooperation between the bilateral partners for fighting illegal transshipment and enforcing FTA provisions and under each of the FTA requirements, there are separate sections governing the imports of textiles using the duty free preferences.

Within Customs and Border Protection we have several means of verifying the claims made under the free trade agreements. One effective FTA tool, for example, provides for the deployment of the Textile Production Verification Teams to high-risk factory locations located in the foreign country. These teams ensure that the goods produced in the foreign factory facility and imported into the United States meet not only the requirements of the FTA, but that the country of origin is correct. Each year, CBP visits approximately twelve to thirteen countries for this purpose.

In addition, Import Specialists are responsible for verifying the veracity of preferential claims made under our free trade agreements. Import Specialists receive a yearly Trade Agreement Sub Plan, mandating the verification of specific numbers of free trade agreement (FTA) claims. Verifications for claims made under the pending Peru FTA will be mandated. By using risk assessment, Import Specialists are instructed to focus their resources on claims possessing the highest risk.

The CBP Regulatory Audit Division, with participation from the Office of Field Operations, also conducts Quick Response Audits (QRAs) to investigate transshipment allegations brought to our attention by U.S. industry groups.

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**Question from Mr. Herger to Mr. Bashamm**

**Question:** Both the House and Senate recently passed amendments to the FY 2007 Homeland Security Appropriations bill that would prevent funding for U.S. Customs and Border Protection to carry out its mission and halt shipments of imported prescription drugs from other countries that comply with certain requirements of the Federal Food, Drug, and Cosmetic Act. Specifically, an amendment in the Senate would limit imported prescription drugs to those that originate from Canada. A similar amendment in the House contains no country-specific restrictions, and would allow importation from any country.

There are a number of issues presented by prescription drugs imported from other countries. First, it is virtually impossible to tell merely by looking at a prescription bottle whether the product meets all U.S. requirements. Second, prescription drugs imported from a particular country, such as Canada, may not in fact originate in that country. This difficulty was highlighted in a recent editorial in the Washington Times. Although the editorial specifically criticized the Senate amendment, it noted the

**startling findings of a 2003 federal crackdown on illegal drug imports, in which 85 percent of drug shipments headed to the U.S. and claiming to be from Canada were in fact from other countries, including Iran, China and Ecuador. A full 30 percent of the drugs were counterfeit.**

**In your view, what impact would these amendments have on the ability of Customs and Border Protection to fulfill its mission of protecting the American public from potentially unsafe and counterfeit medicines? If either amendment were included in the final Homeland Security Appropriations bill, what impact would this have on the potential for U.S. citizens to become exposed to other more dangerous substances?**

**Answer:** CBP has conducted "Operation Safeguard" enforcement blitzes at all international mail branches (IMB's) and at two express courier facilities. These enforcement efforts are designed to identify the type, volume, and quality of such shipments. During Operation Safeguard, CBP laboratory analysis was unable to identify the appropriate active ingredient in approximately 9 percent of the sampled drugs. Similarly, during a recent measurement exercise, approximately 10.5 percent of the drugs that CBP performed laboratory analysis on were identified to be counterfeit or contained wrong, additional or no active ingredients.

The Food and Drug Administration (FDA) is the Federal agency responsible for determining whether non-controlled prescription drugs comply with the Food, Drug and Cosmetic Act ("The Act"). For those drugs covered by either amendment, CBP would be precluded from assisting the FDA in enforcing The Act and in protecting the health and safety of American consumers from potentially unsafe and counterfeit medicines.

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#### **Questions from Mr. Tanner to Mr. Bashamm**

**Question: The Customs-Trade Partnership Against Terrorism (C-TPAT) guidelines for air carriers currently include customers in the definition of "business partners." Please explain why CBP considers customers a business partner of an air carrier and also explain what kind of "screening and selection" of customers CBP expects from air carriers. What impact does CBP think this requirement would have on the air cargo and express industries?**

**Answer:** Throughout the C-TPAT program, all member carriers (sea, highway, air, rail) are required to have knowledge of the company contracting for the shipment of their cargo from foreign into the United States. Known business partners may pose less of a security risk than new or unknown partners. Ultimately the carrier has the responsibility for all cargo carried on their conveyance, and the C-TPAT program is designed to enhance the security of the supply chain through greater knowledge of the business partners, and the adoption of strong security practices. These business partner guidelines for the C-TPAT program are very similar to the Known Shipper requirements of the TSA as applied to air carriers and indirect air carriers. CBP does not believe that requiring an air carrier to have some knowledge of the customer who has contracted to ship goods via the air carrier would have negative impact on the air cargo and express industries.

**Question: The Mod Act 1994 raised statutory limits for informal entries to \$2500. Why has CBP not increased the informal entry limit to \$2500 as authorized by statute?**

**Answer:** The final rule published in April 3, 1998 (TD 98-28, 63 FR 16414) set the informal entry limit to the intermediate level of \$2,000 rather than the statutory ceiling of \$2,500. It was determined that this created the best balance with respect to revenue and statistical information collection while expanding the public's opportunity to use the less burdensome informal entry procedures. CBP has not identified a financial or operational need to raise the value to \$2,500.

**Question: The Mod Act 1994 established a new minimum level of \$200 for administrative exemptions. Why has CBP not increased the value of this administrative exemption?**

**Answer:** The regulatory limit for this administrative exemption from duty and taxes is currently \$200 as established by Title 19, Code of Federal Regulations, Part 10.151. These changes were effective as of July 28, 1994. CBP has not identified a financial or operational need to raise the value of this exemption.

**Question: What is CBP doing to solidify the requirements for the remaining modules and functions of Automated Commercial Environment (ACE) and to provide sufficient advance notice to the trade community for development and implementation of ACE?**

**Answer:** CBP Office of Field Operations (OFO) provides operational guidance to ensure that ACE is built to meet CBP's enforcement needs, policies, and procedures while remaining within the legal parameters set by statute and regulation.

The Software Development Lifecycle (SDLC) provides an overall framework for ACE development and the requirements definition process that is a cornerstone of this development effort. Key SDLC milestones relating specifically to requirements definition include the Project Initiation Review and Authorization/Project Definition Completion Review, which ensures that user and functional requirements are defined, and the Critical Design Review, which ensures compatibility between defined requirements and completed design.

Supporting the SDLC requirements definition process are extensive efforts to elicit input on ACE requirements from stakeholders across CBP, International Trade Data System (ITDS) Participating government Agencies (PGAs), and the trade community. CBP Field Advisory Boards, comprised of personnel from various CBP operating disciplines, provide input on planned ACE capabilities. Advisory Board members are operational personnel working in ports and represent the CBP constituency who will actually be using our new system. Their "real world" input is critical to ACE's design and development. Requirements from fifty ITDS PGAs are also being integrated into future ACE releases via ITDS efforts.

The Trade Support Network (TSN), jointly hosted by OFO and OIT (Office of Information & Technology), is also an invaluable source of trade community input on ACE capabilities. Established in 1994 to provide an informal forum for the discussion of commercial system redesign efforts, the TSN now includes more than 280 active members representing 190 companies or organizations that span the entire breadth of the trade community, including trade associations, importers, brokers, carriers, and sureties. TSN subcommittees (including Subcommittees on account management, entry, revenue, multi-modal manifest, ITDS, "transition," legal and policy, exports, and supply chain security) provide input on user and functional ACE requirements. To date, the trade community has developed recommendations on more than 100 ACE requirements. Moreover, thirty members of the TSN have been designated "Trade Ambassadors" who spend up to forty hours per month (at individual company expense) in the Washington, DC area, working side-by-side with CBP personnel on the design of ACE.

The TSN provides a foundation for informing the trade community about the status of ACE and plans for forthcoming releases. Toward this end, the TSN meets two to three times per year to discuss the latest status of ACE development efforts with CBP leadership. Trade Ambassadors and the chairs of the aforementioned TSN Subcommittees constitute the Trade Support Network Leadership Council (TLC), which convenes telephonically on a monthly basis and provides leadership and guidance for TSN efforts.

CBP is also engaging the trade community through outreach efforts that encourage the formation of ACE accounts, the use of ACE Periodic Monthly Statement capabilities, and the submission of ACE electronic truck manifests. For example, CBP conducted the first ACE Exchange Conference on August 15–17, 2006, providing four hundred conference participants—including importers, brokers, and carriers—with information on new legal and regulatory requirements that will be implemented with ACE. The ACE Exchange also provided participants with information on: ACE benefits; how ACE will affect business operations; and how to apply for an ACE account. Due to the strong trade community response to this event, CBP is planning a second ACE Exchange Conference in Tucson, Arizona between October 31 and November 02, 2006. Additional, ongoing outreach efforts to help carriers prepare for the forthcoming requirement to file e-Manifests include mailings to northern and southern border carriers, attending appropriate trade shows, conducting local outreach seminars, and participating in local media interviews.

In addition to the CBP Field Advisory Boards and the CBP Trade Support Network, CBP personnel participate in various industry forums at which the ACE initiative is part of the agenda. These forums include the Association of American Railroads "Rail—Customs EDI Task Force," the Air Transport Association "Air Manifest Users Group," a weekly telcon hosted by the American Trucking Associations, the "TOPAS" (Terminal Operators and Port Authorities) meetings and multi-modal carrier forum CESAC (Customs Electronic Systems Action Council).

To further ensure development of thorough requirements, CBP is "decomposing" the program logic of the Automated Commercial System to identify the twenty (20)

years of business rules and operational requirements contained the ACS programs that will serve as the baseline upon which new functionality will be created for *Entry Summary, Accounts, and Revenue* (ESAR) (see Release 5) and *e-Manifest: All Modes and Cargo Release* (see Release 6) capabilities. The decomposition process promotes CBP's ability to transition forward into the ACE environment, key operational and business process requirements from the existing systems, as new functionality is incorporated and the core CBP automated commercial processes are transformed under the ACE initiative.

**Question: The statutory provisions for reimbursement for Customs services at express consignment facilities was revised and simplified, effective October 2002. Has CBP done an analysis and accounting of Customs services provided at express consignment facilities subject to these fees? Please comment on the current status of the costs to provide Customs services at these facilities and to collect these reimbursable fees.**

**Answer:** CBP has conducted a financial analysis of the costs incurred by CBP in providing services to express consignment facilities and centralized hub facilities in Fiscal Years (FY) 2004, 2005, and 2006. The collection/cost data reveals that at the close of FY 2004, the half of the 58c(b)(9)(A)(ii) payment intended to defray the cost of services to express consignment and centralized hub facilities left the agency with a deficit with the agency collecting only 78% of the moneys expended to provide those services. In FY 2005, CBP collected only 70% of these costs. In FY 2006, CBP collected only 59% of these costs. Projections for FY 2007 indicate that the deficit will increase again due to the fact that certain CBP expenses, such as reimbursable wages for CBP employees at these sites, will increase.

In FY 2006, CBP incurred a per bill cost of \$0.55. If the payment is raised to \$1.00, as proposed, CBP will collect \$0.50 per bill (the other \$0.50 to be deposited with the Secretary of the Treasury in lieu of the informal entry Merchandise Processing Fee).

Based on these figures, and subject to the monetary limits set by law, CBP proposes raising the \$0.66 payment to \$1.00 so that the half of the payment associated with providing services to express consignment and centralized hub facilities is more closely aligned with the actual costs incurred by CBP. The other half of the payment, collected in lieu of the MPF, is set by statute at equal to the payment for providing services to express consignment and centralized hub facilities.

This NPRM is the first proposed adjustment since the law was enacted. Therefore, if the NPRM becomes final the law will need to be revised to enable CBP to adjust the fee to recover actual costs in future years. CBP recommends that the “—not more than \$1.00—” language be removed without establishing a new “not more than” maximum. By revising the statute without a ceiling, the continuous need for new legislation each time the level is met will be eliminated.

The growth of the industry and their desire to establish additional hubs and facilities will continue to cause CBP's reimbursement to be less than actual costs. The CBP Regulatory Audit Division has conducted audits of three express consignment operators during FY06 with additional ones scheduled for FY07.

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#### Questions from Mr. Levin to Mr. Basham

**Question: Please describe whether the economic impact analysis conducted by DHS and the State Department on the Western Hemisphere Travel Initiative will go beyond the simple implementation costs of the proposed PASS Cards and include a comprehensive analysis of the broader economic impact on tourism and trade, and if not, an explanation of why not. Also, please provide information on whether DHS and State will conduct an economic analysis of other proposals for satisfying WHTI, other than the PASS Card proposal, and if not, an explanation of why not.**

**Answer:** For the land rule, DHS, CBP, and DOS will adhere to the requirements for economic analysis set forth in EO 12866 and OMB Circular A-4. We have completed our economic assessment for the air and sea rule and are now accepting public comment as part of the proposed rule.

**Question: What steps is CBP taking to evaluate and minimize the impact of its regulations and new programs on small- and medium-sized businesses, including, but not limited to, participation in C-TPAT and the potential outsourcing of verification procedures within that program?**

**Answer:** As a voluntary, not regulatory, program, the C-TPAT initiative is designed to enhance supply chain security through the adoption of stronger security practices. The program follows a flexible model, allowing for the customization of security practices based on the business model and size of the member. C-TPAT does not mandate specific security equipment, but rather allows the member to implement various types of procedures aimed at addressing any security weaknesses. At present, CBP conducts all C-TPAT validations with CBP personnel, at no cost to the C-TPAT member. Should CBP move to allow validations to be performed by outside contractors, the financial impact on the C-TPAT member would need to be analyzed. No decision has been made at this time as to whether or not C-TPAT validations may be contracted out at a later date.

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**DHS Response to OIG Recommendations from the report entitled  
“An Assessment of the Proposal to Merge CBP and ICE”**

We appreciate the Office of the Inspector General’s (OIG) recommendations to improve coordination between CBP and ICE. The Department has carefully studied these recommendations. As a general matter, they are consistent with the Secretary’s vision for the Department and with steps that he has implemented over the past year. To that end, we concur with the recommendations, although, in certain instances we have taken alternative corrective actions that we believe would more effectively address the issues raised in the OIG Report. Below are our specific responses to the OIG’s 14 recommendations.

*OIG Recommendation 1: Establish that the Under Secretary for Policy and the Director of Operations Coordination have authority over CBP and ICE with respect to policy and operational coordination. These offices’ purview must be re-enforced by the Secretary and Deputy Secretary’s actions. Accordingly, it will be essential for the Secretary and Deputy Secretary to channel related discussions and decisions with CBP and ICE through these offices.*

DHS Response: Concur in part. Completed.

After conducting a Second Stage Review of the department, the Secretary announced and implemented organizational changes in order to enhance the coordination of policy, operations, and intelligence across the DHS spectrum. These changes resulted in the creation of a department-wide Office of Policy, Office of Operations Coordination and Office of Intelligence and Analysis. This new organizational structure became effective in November 2005. Although they do not have direct authority over ICE and CBP, which are now direct reports to the Secretary, these offices have been charged with utilizing the tools of all of DHS’s components to address the Department’s critical homeland security mission. Indeed, these new offices interface on a daily basis with their counterparts in CBP and ICE, among other DHS component agencies.

Thus, for example, the Office of Policy consults closely with ICE, CBP, and CIS, in developing legislative and regulatory immigration and border security-related proposals. During weekly Security Border Initiative (SBI) meetings with the Secretary, the Assistant Secretary for Policy, the heads of ICE, CBP, and CIS, the General Counsel, the Chief Intelligence Officers, and the Director of Operations Coordination, among others, regularly review a range of immigration-related policy matters. This coordinated effort has vastly improved the Department’s ability to develop strong regulatory and legislative proposals.

Similarly, the Office of Policy has established an Immigration War Room, with participants from CBP, CIS, ICE, the General Counsel, and the Office of Legislative Affairs, to review closely and respond to legislative proposals moving through Congress. Other similar efforts are coordinated through the Office of Policy.

As stated earlier, complementing these changes and following the Secretary’s Second Stage Review, CBP and ICE became direct reports to the Secretary, a streamlined management approach that increases accountability, while eliminating layers of bureaucracy. Direct responsibility is thus placed on the agencies to better coordinate and cooperate in developing and implementing operational efforts. To complement and solidify the effectiveness of this structure, CBP and ICE, under the Secretary’s direction, created the ICE-CBP Coordination Council. The Council meets regularly to proactively consider and address issues to better coordinate and resolve operational and policy matters and to monitor implementation of Memoranda of Understanding, among other things. The Council reports to the Secretary on outstanding issues, resolutions, and disagreements that require further direction or deconfliction. The Council also interacts closely with the Assistant Secretary for Policy,

the Director of Operations Coordination and the Chief Intelligence Officer. Co-chaired by the leaders of both agencies, and including the heads of the main operational divisions of ICE and CBP, Council Members include:

CBP	ICE
Acting Commissioner	Assistant Secretary
Assistant Commissioner, Office of Field Ops	Deputy Assistant Secretary
Chief, Office of Border Patrol	Director, Office of Investigations
Director, Office of Anti-Terrorism	Director, Office of Detention and Removal
Director, Office of Policy and Planning	Senior Policy Advisor

*OIG Recommendation 2: Develop a vision of how ICE and CBP are to work together and contribute to the overall DHS mission. Consistent with this vision, the Operations Coordination Office and Under Secretary for Policy should work with CBP and ICE to define and set their respective roles and responsibilities. At minimum, clarification needs to be provided in the following areas:*

- ICE’s role at POEs and the establishment of its jurisdictional authorities in consideration of CBP authorities.
- CBP’s role in referring case leads to ICE; ICE’s role in responding to case referrals from CBP.
- ICE DRO’s transportation and CBP support roles.

DHS Response: Concur in part. Completed.

We concur with the need to more effectively implement the Secretary’s vision for ICE and CBP cooperation toward the overall mission of the Department. The Department has made a number of significant improvements to enhance this coordination so that we are achieving measurable border security and interior enforcement-related results.

1. Secure Border Initiative (SBI)

Chief among the changes instituted by the Secretary was the stand-up of the Secure Border Initiative (SBI), a collective effort to improve department-wide coordination in the apprehension, detention and removal areas.

Under the Secretary’s guidance, an SBI Program Executive Office situated within the DHS Office of Policy, is actively working across the components to address our challenges, with an integrated mix of increased staffing, more robust interior enforcement, greater investment in detection technology and infrastructure, and enhanced coordination on Federal, State, local, tribal and international levels. Indeed, the SBI Program Executive Office brings together ICE, CBP, Budget, and Management regularly to align resources. And the Secretary sits down with the leadership of these components each and every week to monitor improvements closely, launch new initiatives, ensure that we are measuring results, and readjust and realign resources accordingly.

Taking a comprehensive approach to immigration enforcement, the Secretary is providing the vision necessary to ensure a transformation of how CBP, ICE, and the Department at large conduct the critical border security mission. With an emphasis on national security and public safety, this vision, and SBI generally, focuses broadly on two major enforcement themes: (1) border control; and (2) interior enforcement. Strategies have been developed to ensure that all enforcement efforts—and proper CBP and ICE resources—are prioritized efficiently.

Using an integrated systems approach, The entire immigration enforcement system is constantly being reviewed, beginning with the gathering of immigration-specific intelligence and the detection of illegal border crossings; followed by apprehension, processing, transportation, and detention of the alien; and ending with the alien’s removal from the United States. This systematic approach deploys all of these tools in stages, allowing each stage to build on the success of earlier stages.

2. Border Enforcement and Security Task Forces

Since the issuance of the OIG report, DHS has established Border Enforcement Security Task Forces (BESTs) along the Southwest border. These DHS-led task forces are comprised of ICE, CBP, the DHS Office of Intelligence and Analysis, other Federal, State, and local entities, as well as representatives from the government of Mexico in appropriate locations. The goal of the BESTs is to improve border security through the creation of an environment that fosters cooperation and collaboration. A BEST in Laredo, Texas has been operational for several months now and is a model for widespread cooperation and efficacy. It has already improved DHS’s

effectiveness against criminal activity. The next BEST is being stood up in Arizona. Planning is underway for future task forces.

The BESTs are charged with sharing information, developing priority targets, and executing coordinated law enforcement operations designed to enhance border security and interior enforcement efforts. BESTs ensure that resources are appropriately focused and expended to identify and prioritize emerging or existing threats to border security and to coordinate a unified response that leverages Federal, State, local, tribal, and foreign law enforcement/intelligence entities to disrupt and dismantle cross-border criminal organizations to mitigate border security vulnerabilities. They focus on DHS strategic border security priorities, including:

- Cross-border Violence
- Cross-Border Human Smuggling and Trafficking
- Cross-Border Contraband Smuggling
- Cross-Border Money Laundering and Bulk Cash Smuggling
- Transnational Criminal Gangs
- Cross-Border Weapons Smuggling or Trafficking
- Travel Document-related Identity Theft and Benefit Fraud
- Cross-border Drug Smuggling

### 3. ICE–CBP Coordination Council

As discussed above, ICE and CBP have also created as an alternative corrective action the ICE–CBP Coordination Council. Through the Coordination Council, ICE and CBP leaders work directly together to proactively drive toward effective, executable solutions. Recent MOUs between ICE/Office of Investigations (OI) and CBP's Office of Border Patrol (BP) and Office of Field Operations (OFO) demonstrate that the necessary policy and operational coordination is occurring and continues to evolve.

In line with specific “at minimum” issues raised in the OIG recommendations, the Council has addressed a review of CBP investigative referrals to ICE. For example, a joint memorandum issued by the ICE Director of the Office of Investigations (OI) and the CBP Assistant Commissioner of the Office of Field Operations (OFO) on December 8, 2005, recognized ICE as the investigative arm and primary point of contact for investigative matters within the POEs. This memorandum also deemed CBP responsible for operational and interdiction activities in the POEs. CBP refers all case leads developed in the POEs to ICE for investigation.

Interactions between OI and CBP, Office of Border Patrol (OBP) were already governed by a November 16, 2004, joint memorandum issued by CBP Commissioner Robert Bonner and ICE Assistant Secretary Michael Garcia. This MOU clarifies that OI has primary responsibility for all investigations and OBP has primary responsibility for cross-border and border related interdiction activities between POEs. Based on locally established thresholds, OBP gives investigative referrals to ICE, with the exception of narcotics interdictions. OBP refers such interdictions to the Drug Enforcement Administration (DEA) under an existing MOU that predates the creation of DHS. When OBP makes a referral to an agency other than ICE, it provides details of the referral, information and intelligence to ICE. As discussed during the February 13, 2006, Council meeting, CBP will provide additional guidance to its field elements to ensure appropriate coordination between OBP and ICE.

The ICE–CBP Coordination Council has also established a working group to directly review CBP personnel support for ICE/DRO, including transportation and other requirements, related to common efforts to achieve the overall DHS mission. Progress on this working group will be reported out at the next Coordination Council meeting.

As just one example of improved operational coordination, in Operation Texas Hold 'em, CBP and ICE worked cooperatively to resolve detention and transportation issues involved in the apprehension of non-Mexican illegal aliens (NMIA) arrested in the Border Patrol's Rio Grande Valley Sector. Over a 60-day period between July 1, 2005 and August 29, 2005, ICE and CBP worked together to address the unprecedented increase in Brazilian nationals apprehended in the Rio Grande Valley Sector. Upon completion of the 60-day period, approximately 900 Brazilians were apprehended and removed from the United States achieving a tremendous deterrence effect as the number of Brazilian nationals attempting to enter illegally dropped 90% following this effort.

*OIG Recommendation 3: Communicate roles and responsibilities to all levels of CBP and ICE so that they are understood throughout the organizations. It is paramount that CBP and ICE employees understand their individual and institutional roles and responsibilities and the relationship of these to the roles and responsibilities of those of the other agency.*

DHS Response: Concur. Completed.

We concur with this recommendation and will continue to address these issues with all component agencies and, particularly with ICE and CBP, through the ICE–CBP Coordination Council. Primarily, CBP and ICE will utilize the Council to clarify any issues that arise related to roles and responsibilities. The Council’s ongoing mission will be to identify and address areas where greater cooperation can enhance mutual achievement of our missions and be proactive in fostering improved coordination efforts. It will address a revolving agenda of ICE–CBP touch points, developing, as appropriate and necessary, interagency policies, prioritizations, and procedures to better guide ICE and CBP interactions and communicate roles and responsibilities in those matters.

At the February 13, 2006 Council meeting, for example, the agencies agreed that CBP Acting Commissioner Spero and ICE Assistant Secretary Myers will issue a memorandum to both components’ personnel that will serve as a reminder and clarification regarding referrals between the agencies. This memorandum will reinforce the procedures and again communicate the roles and responsibilities of CBP and ICE as previously issued in the OI/OBP and OI/OFO MOUs. To be sure, communication at the field level is a priority and occurs through regular contact between the principal field officers, supervisory personnel and working level employees of ICE and CBP.

*OIG Recommendation 4: Monitor CBP and ICE field performance to ensure adherence to DHS’ vision and guidance, and accountability to related goals. To support this accountability, DHS leadership should develop performance measures and a reporting mechanism that convey an accurate picture of current operations to senior managers. In addition to performance metrics to measure internal CBP and ICE operations, a set of joint performance metrics should be developed to gauge the extent of interaction and coordination between CBP and ICE, as well as the level of support each organization extends the other.<sup>1</sup> Resulting metrics should assist the organizations in arriving at shared expectations about their respective obligations and level of support.*

DHS Response: Concur. Ongoing.

We concur with the recommendation and note that one of the Secretary’s top priorities for SBI was the establishment of metrics to closely monitor progress, inform decisionmaking, and quickly adjust the allocation of resources as appropriate. These metrics are constantly being updated.

Indeed, DRO and OBP are developing a new automated data sharing architecture for SBI-related issues, which are improving existing processes and result in faster processing of illegal aliens. These changes, in turn, allow ICE to detain more aliens within current resources, thus ensuring that the Secretary’s goal of ending “catch and release” along the Southwest border is met. As shared service partners, DRO and OBP agree that a high-level of communication, assistance and interaction is required to successfully carry out the business processes required for this integrated system. The Secretary is briefed weekly on metrics that display ICE/CBP success in achieving SBI-related goals for gaining operational control of the border.

Collectively, these metrics provide us with a clear overall picture of what is transpiring within the system. Most importantly, they allow us to make informed decisions on what needs to be changed, disregarded, or implemented. The following attachments provide an example of how metrics assist us in diagnosing problems and obtaining awareness.

- *Appendix 1:* This metric illustrates apprehensions by quarter. It shows an anticipated drop in apprehensions between the 1st quarter and 2nd quarter of FY 06. This is significant because it would be the first such drop in this timeframe in 4 years.
- *Appendix 2:* This metric compares weekly apprehensions and detentions (breaking out Salvadoran apprehensions). It illustrates that, except for Salvadorans, almost all other Non-Mexican Illegal Aliens apprehended along the Southwest border are being detained.
- *Appendix 3:* This metric shows the “gap”—that is, aliens apprehended but not detained. To end “catch and release,” the gap must be at or near zero. The current gap shows that the bulk of those not detained are Salvadorans and family groups.
- *Appendices 4 and 5:* These metrics foreshadow the projected detention resources required to eliminate “catch and release.” The first metric shows bed needs if

<sup>1</sup> One such performance measure could, for example, reflect the average number of beds allocated to aliens apprehended by CBP per day.



all Salvadorans are placed into regular section 240 immigration proceedings. The second metric shows bed needs if DHS could place most of these aliens into ER.

In addition, a Technology Solutions Work Group, convened by DRO, has made significant progress in establishing specific metrics related to SBI goals during the past few months. The working group consists of OBP, OI, and DRO representatives, who assess the reporting capability of existing ICE information systems, such as the Deportable Alien Control System (DACS) and Enforcement Integrated Database (EID), to provide critical information and data to monitor and measure the performance of the SBI transformation effort.

The group, for example, has identified specific events in the apprehension and removal process that need to be measured by SBI, as well as data collected in support of those events. These metrics focus on apprehensions of non-Mexican expedited removals, the length of detention for those aliens with and without credible fear, and the total number of removals. Several gaps in the data were identified. The working group examined the process of apprehending, detaining, and removing an alien under expedited removal to identify specific events and corresponding data fields that would address these gaps. Key metrics and data were identified for each step of the process along with the corresponding database(s) and data field(s). Key metrics that did not have a corresponding data field were also identified and a proposed data field was provided for the associated database.

The group also developed several methods of improving the quality of information supporting SBI performance metrics and the reporting process. Since enhancements were made to the EID—DACS interface, data passed between these systems has been more timely and accurate, and metrics now can be analyzed with greater confidence. Also, a newly established reporting capability uses automated downloads to create a limited SBI data view based on current SBI reporting requirements. The new report uses information gathered from the EID, DACS, and Asylum Pre-Screening System (APSS) database and will create a baseline for a more permanent solution made possible with the introduction of a planned Data Mart.

Finally, the Secretary recently hired a new Special Assistant to the Secretary and Director for Information Integration, who will oversee Department-wide performance metrics implementation, monitoring and reporting. This experienced manager will be responsible for coordinating and implementing new metrics to monitor performance against goals established by the Secretary, in coordination with DHS customers, including the President, the Congress, and State and local officials.

*OIG Recommendation 5: Develop a formal mechanism to assure that the Under Secretary for Management and the CFO collaborate with ICE and CBP management to develop a process for CBP and ICE to increase participation in one another's budget formulation and strategic planning processes. This budgeting and planning interaction should include avenues for CBP and ICE to comment on and influence one another's budgets and strategic plans. These efforts should be pursued with the aim of achieving an effective balance of resources and ensuring adequate support for major operational initiatives across institutional boundaries. In addition, the CFO should track budget execution to guarantee compliance with agreed-to budget and plans.*

DHS Response: Concur in concept. Completed.

Processes are in place to monitor and align budgetary priorities. The Department, through the Investment Review Board (IRB) and the Joint Requirements Council (JRC), guides the overall balance between the two agencies in regards to resources and budget requests. The IRB is the formal DHS mechanism to assure that the Under Secretary of Management and the Chief Financial Officer (CFO) collaborate with ICE and CBP to ensure agency budget formulation and strategic planning processes align with the Department's comprehensive strategy to achieve its mission.

As part of the SBI, the Department established in November 2005 a new SBI Program Executive Office (PEO). A key responsibility of the PEO is the effective coordination of border resources, particularly between ICE and CBP, including both in the formulation of budget requests and the operational implementation of appropriated resources. The PEO is partially staffed with ICE and CBP detailees working hand-in-hand to review border security resource proposals in advance of, or concurrent with, DHS CFO review. The office is also developing integrated planning models and program plans upon which major border and immigration reform resource decisions are based.

It is a paramount responsibility of the CFO to develop budgets that are sufficiently coordinated and integrated across components, not just ICE and CBP. If there is a need to improve coordination of plans and budgets among components,

the CFO will take comprehensive actions and will not establish unique operational processes and procedures for ICE and CBP alone. Indeed, multiple offices and components have an operational stake in our border, immigration, and law enforcement missions.

Nevertheless, the efforts of the SBI PEO will clearly help the Department continue to improve resource and planning process results. The DHS CFO staff continues to meet regularly with both ICE and CBP regarding planning and budget execution. All DHS components must report financial information monthly to the CFO, and a formal process is in place to meet with ICE and CBP for mid-year financial reviews. Both ICE and CBP are regular, active members of the CFO-led Joint Requirements Council that both reviews and makes decisions on key investments of both agencies. ICE and CBP are also active participants of the Chief Information Officers Council. In addition, the Chief Financial Officer tracks budget execution to guarantee compliance with agreed-to budget and plans.

Finally, the CFO has a full time staff dedicated to budget, performance, and strategic planning and integration between all components.

*OIG Recommendation 6: Direct the Operations Coordination Office to undertake an interagency procedural review process to ensure that ICE and CBP procedures support agreed upon roles and responsibilities and are compatible with one another at touch points. Where necessary procedures do not exist, the Operations Coordination Office should direct development of needed procedures, and notification and information exchange protocols.*

DHS Response: Concur in concept. Completed.

We have stood up the ICE–CBP Coordination Council to address compatibility of roles and responsibilities. The ICE–CBP Coordination Council has and will continue to address, at a national level, appropriate touch points that are raised internally, or from the field level. An example of the Council’s procedural review process is its evaluation of existing ICE–CBP MOUs on referrals. During the Council meeting on February 13, 2006, ICE and CBP agreed to issue a joint memorandum to the field that would clarify and reinforce key components of the existing policies by which CBP refers cases to ICE for investigation and will ensure that enforcement results are routinely and effectively shared between the two agencies. The signatories of this memorandum will be Acting Commissioner Spero and Assistant Secretary Myers, prior to its distribution to the field.

*OIG Recommendation 7: Ensure that the Operations Coordination Office closely monitors the development of redundant capabilities within CBP and ICE as indications that resource sharing arrangements are not proceeding smoothly. Attention should be given to:*

- *CBP’s plans to expand the number of enforcement officers and enlarge their jurisdiction.*
- *CBP’s use of Border Patrol agents in an investigative capacity.*
- *CBP’s fraudulent document analysis capability.*
- *CBP’s expanding intelligence apparatus.*

DHS Response: Concur in concept. Completed.

We concur with the over arching theme of this recommendation. We understand, however, that similar capabilities resident in separate organizations are not necessarily redundant and therefore inefficient or ineffective. DHS will continue to sustain the mutually reinforcing capabilities resident within ICE, CBP, and other component agencies and will work to ensure that capabilities are complementary, aligned and consistent with organizational mission accomplishment. We have various mechanisms in place including the Joint Requirements Council, the Investment Review Board, CIO Council, and the ICE–CBP Coordination Council to ensure component agency capabilities are within their scope of authorities and responsibilities.

In addition, we are certain that areas addressed in the recommendation are not redundant but complimentary in nature. For example, The CBP Fraudulent Document Analysis Unit (FDAU) and the ICE Fraudulent Document Lab (FDL) are not redundant, but are instead quite complementary and together provide for a comprehensive review and analysis of fraudulent documents. The intelligence and targeting functions of the FDAU are complemented by the forensic capabilities and broad trend analysis and targeting of fraudulent document use performed by the FDL. Frequent liaison and communication between the FDL and the FDAU assures constant linkages between the two and promote appropriate information sharing to the field.

As well, in terms of intelligence, both CBP and ICE coordinate with the Department’s newly established Office of Intelligence and Analysis. Specifically, an example of the CBP and ICE cooperative interaction is reflected at CBP’s National Tar-

getting Center (NTC). ICE has an on-site liaison officer assigned to the NTC to ensure effective communication and information exchanges between CBP and ICE. For example, all “special interest alien” intercepts by CBP Officers or Border Patrol Agents are reported to the NTC and notification is made to the ICE liaison officer to conduct further investigations or inquiries, or to forward the information for further review to the appropriate ICE headquarters personnel.

Additionally, the Coordination Council will be issuing guidance reaffirming that CBP/OBP has primary responsibility for all cross-border and border-related interdiction activities between the ports of entry (POE), and ICE/Office of Investigations has primary responsibility for all investigations. Interdiction cases conducted by Border Patrol agents that require investigative follow-up are referred to ICE/OI, as well as general cases for information sharing purposes. In addition to national policy being reviewed and reaffirmed through the ICE–CBP Coordination Council, local notification thresholds and protocols are also in place between Border Patrol Chief Patrol Agents (CPAs) and OI Special Agents in Charge (SACs) at the local level to consider unique operational environments and resources.

*OIG Recommendation 8: Require that the Policy Office engage in coordination with CBP and ICE to align priorities with an interagency bearing (e.g., detention bed space, investigative case selection) through a consultative process. Pursuant to this process, the Policy Office should monitor implementation of these priorities through performance tracking and periodic interagency reviews including assessments of related resource deployments.*

DHS Response: Concur in part. Completed.

We agree and via the ICE–CBP Coordination Council, CBP and ICE are working together to align all priorities with an interagency bearing. When necessary, they consult with the DHS Policy Office for guidance and alignment with broader DHS priorities. Additionally, as part of the Secure Border Initiative, ICE and CBP coordinate closely to ensure a systems management approach to border security and interior enforcement initiatives. A good example of this recommendation in practice is the SBI Program Executive Office’s reengineering of the detention and removal processes. Under this initiative the “catch and release” style of border enforcement will be eliminated and replaced by a “catch and remove” approach. Organizationally placed in the Policy Office, the Secure Border Initiative is a comprehensive multi-year plan created to reduce illegal immigration into the U.S. via enhanced border security and interior enforcement. By integrating ICE and CBP capabilities and facilitating effective resource utilization and prioritization, SBI is enhancing security along our Nation’s borders.

*OIG Recommendation 9: Establish a forum for coordinating among staff from the Secretary and Deputy Secretary’s Office, Under Secretary for Management, CFO, Under Secretary for Policy, Director of Operations Coordination, CBP Commissioner, and ICE Assistant Secretary to discuss issues related to the ICE–CBP relationship.*

DHS Response: Concur. Completed.

As discussed in greater detail above, the Secretary holds weekly meetings with the agency heads of CBP, ICE, and CIS, the Under Secretary of Management, the CFO, the Assistant Secretary of Policy, the Assistant Secretary of Intelligence and Analysis, the Director of Operations Coordination, as well as staff from the Secretary and Deputy Secretary’s Office, to discuss efforts related to SBI and to coordinate and raise issues as appropriate.

Additionally, the new ICE–CBP Coordination Council, with its close relationship to DHS leadership, provides for the proper level of communication necessary to nurture the ICE–CBP relationship. Through the Council, the highest level of ICE–CBP leadership will have direct interaction, and given that these senior leaders are direct reports to the Secretary, all in key DHS leadership positions will have consistent and regular interaction concerning ICE and CBP.

The Deputy Secretary’s weekly “Gang of Seven” meetings, in which the Deputy Secretary hosts a meeting, with the seven heads of DHS operating agencies provides an additional forum for coordination between the Secretary’s most senior staff and the leadership of ICE and CBP.

In addition to the above, the heads of ICE and CBP meet individually and collectively with the Secretary and the Deputy Secretary on a regular basis to discuss a host of issues related to these two components.

*OIG Recommendation 10: Create joint CBP–ICE bodies to oversee the implementation of interagency coordination efforts and MOUs. These bodies could respond to requests to deviate from plans, make adjustments, provide clarification, and resolve different interpretations of related guidance.*

DHS Response: Concur. Completed.

We agree and efforts to improve coordination in critical areas such as the provision of air support to ICE investigations have led to the establishment of interagency working groups such as the OI—OBP working group in November 2004 and the OI—OFO working group in December 2005. In addition, the CBP Air Council, established in November 2005, has kept ICE informed of decisions relative to the deployment of air assets in support of their traditional role in investigations.

In addition, the Secure Border Initiative Program Executive Office as well as the ICE—CBP Coordination Council were created to coordinate interagency efforts and MOUs. We are also in the process of establishing local ICE—CBP working groups in the 23 ICE Detention and Removal Offices (DRO) to address routine and extraordinary coordination issues in the field.

Another example of an effective interagency coordination body is the ICE/OI and CBP/OFO interagency working group chartered on December 8, 2005, to address a series of priority issues, including; National Policy Coordination, JTTFs, Sharing of Intelligence, Third Party Rule, Controlled Deliveries, and CBP Officer Enforcement.

As noted above, DHS is forming Border Enforcement Security Task Forces (BESTs), pulling together ICE, CBP, I&A, and other Federal, State, and local law enforcement entities to focus on cross-border crimes. BESTs are integrating intelligence, investigative and interdiction efforts, to take a comprehensive approach toward dismantling the cross-border criminal organizations that exploit our border.

BESTs will work in conjunction with existing task forces (JTTFs, HIDTAs, and OCDETFs) to enhance communication and proactively exchange data and intelligence. They will leverage those entities as well as cooperating foreign law enforcement and intelligence entities to focus investigative, interdiction, and intelligence resources to identify, prioritize, and attack emerging or existing threats, to include drug-related threats.

These models are beneficial because they enable officials at the point of execution to identify problems that hinder the operational development process and to proffer potential solutions.

*OIG Recommendation 11: Develop a headquarters-level joint CBP—ICE standing Committee to manage the relationship between the two. This Committee could address a revolving agenda on CBP—ICE touch points and develop interagency policies and procedures to guide CBP and ICE operations. The Committee should document and distribute information on dispute scenarios and resolutions to help foster greater uniformity in interpreting policies and procedures and resolving related disputes. To resolve disputes at both the headquarters and field levels, CBP and ICE should create a strictly proscribed time standard for disposition, as the dynamic nature of the enforcement environment requires swift decisions to accomplish the mission.*

DHS Response: Concur. Completed.

We agree and, as discussed above, have established the ICE—CBP Coordination Council. The Council's ongoing purpose is to identify and address areas where greater cooperation can enhance mutual achievement of our missions and be proactive in fostering improved coordination efforts.

In December 2005, the Council conducted its first meeting. Acting ICE Assistant Secretary John P. Clark and Acting CBP Commissioner Deborah J. Spero attended and were joined by other ICE and CBP senior managers and representatives. A subsequent meeting was held on February 13, 2006, at which ICE Assistant Secretary Julie Myers and Acting CBP Commissioner Deborah J. Spero, along with senior managers and subject matter experts from the respective agencies, discussed agenda items including: OI and OBP Referral Policy, CBP Air deployment plans, Single Journey Boarding Letters, DRO detailees, Interior Repatriation and Busbound, Enforcement Initiatives, and Intelligence and Information Sharing.

Please see responses to OIG Recommendations 1, 2, and 3 for further clarification of the Coordination Council and corrective action addressing this point.

*OIG Recommendation 12: Develop dispute arbitration and resolution mechanisms at the field-level. These mechanisms should be available for airing both routine and extraordinary interagency operational concerns and recommending remedial actions, and they should be designed to minimize the risk of retaliation against employees who raise concerns. When the resulting field-level arbitration mechanisms result in the resolution of a dispute, headquarters should be notified of the issue and resolution.*

DHS Response: Concur. Completed.

We agree. The Department recognizes that frequent and regular communication between ICE and CBP in the field is essential to maintaining effective working relationships. On December 8, 2005, the OI—OFO working group directed their respec-

tive field offices via a joint memorandum to develop local communication mechanisms to ensure that enforcement actions are routinely and effectively shared between ICE and CBP in their respective areas of operations. Both agencies are confident in their operational commanders in the field (DFOs/Sector Chiefs/CBP Air Commanders/SACs) to resolve issues and disputes, and will elevate such issues to the headquarters level if a resolution has not been achieved.

Additionally, we have established local working groups operating out of DRO Field Offices to address local coordination issues. The groups meet to discuss planned operations and work out support issues. The groups focus on detention priorities and coordinate to allocate the limited detention resources among the competing enforcement priorities. The ICE—CBP Coordination Council intervenes to resolve disputes that rise to the headquarters or national level, taking as an assumption that issues and disputes should first be addressed by the relevant operational commanders in the field (DFO/Sector Chief/CBP Air Commander/SAC). The ICE—CBP Coordination Council will issue guidance to the field that will reinforce effective communication between CBP and ICE.

*OIG Recommendation 13: Develop an operating environment that facilitates collaborative intelligence activities. Such an environment should promote ICE—CBP staff co-location when possible and where appropriate. In addition, CBP and ICE should pursue the development of joint intelligence products to reflect a more comprehensive picture of border security. Finally, CBP and ICE should jointly employ new technology systems for the exchange and analysis of intelligence information that facilitate these activities.*

DHS Response: Concur. Completed.

We agree and are addressing this through further coordination of intelligence and information sharing opportunities. This is in fact one of the initial issues that the ICE—CBP Coordination Council is addressing. A working group has been established to propose solutions. Additionally, it should be noted that improved coordination mechanisms are in place, including staff co-location of an ICE representative at the CBP National Targeting Center (NTC). Additionally, pending a departmental National Intelligence sharing directive and other ongoing DHS-wide intelligence initiatives, ICE and CBP components will continue to work jointly to develop processes and procedures to improve information sharing and intelligence activities.

*OIG Recommendation 14: Address the prevalent and growing contentiousness between CBP and ICE. Competition is natural between two groups, but ICE and CBP leadership should develop programs and policies to encourage mutual respect. Field level activities must be monitored more closely to ensure that border security is not compromised by organizational antagonisms mentality. Likewise, DHS leadership should take action to develop a corporate culture in which all CBP and ICE employees believe that they have a vested stake in each other's mission and in the overall DHS mission.*

DHS Response: Concur. Ongoing.

We agree and note that the Secretary recently approved a DHS-wide initiative aimed at addressing the Department's culture in order to transform the Department into a highly effective, world-class organization. The Organizational Transformation Team lead by the Chief Human Capital Office will address additional management and human resource issues that affect ICE and CBP, as well as the issues leading to the Department's performance in OPM's Federal Human Capital Survey. The Secretary's vision is for the Department to develop a single DHS culture that encapsulates the combined individual cultures of our component agencies while embracing a single team oriented focus on the department's mission.

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[Submissions for the record follow:]

National Retail Federation  
July 25, 2006

The Honorable Clay Shaw, Chairman  
U.S. House of Representatives  
Ways and Means, Subcommittee on Trade  
1104 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the U.S. retail industry, the **National Retail Federation (NRF)** submits these comments to the House Ways and Means Subcommittee on Trade 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 and independent 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.

NRF's members import products into the United States or rely on imported products to fill out their merchandise orders. Many of our members are participants in the Customs-Trade Partnership Against Terrorism (C-TPAT) and a large number of are regarded by U.S. Customs as significant importers. Many NRF members have also instituted innovative supply chain security practices to insure the safety of their global supply chains. NRF therefore, has a strong interest in insuring that the Department of Homeland Security (DHS) and the Bureau of Customs and Border Protection (CBP) have adequate resources to carry out their functions needed to promote the movement of legitimate commerce while also safeguarding the international supply chain from the entry of dangerous materials and persons.

We have several issues that we would like to address as part of these hearings:

1. The validation process associated with membership in C-TPAT;
2. The appropriate development of the Automated Commercial Environment (ACE); and
3. The development of a post maritime security incident response plan.

#### **The C-TPAT Validation Process**

A Government Accountability Office report in 2005 stated that the C-TPAT program remains an essential security component to deter the introduction of harmful materials. However, the report also stated that the program could be improved upon by insuring that C-TPAT members are validated to guarantee that members actually abide by the business practices identified in their supply chain security profile.

CBP has hired a cadre of "Supply Chain Security Specialists" to perform these validations. To date, these CBP agents have completed a validation on almost 60% of the over 6,000 C-TPAT members. Furthermore, CBP plans to hire additional supply chain security specialists to complete a validation on 100 percent of C-TPAT members as soon as possible.

NRF supports the use of CBP agents to perform these validations. We have misgivings and apprehensions about proposals to allow CBP to use third-party validators to perform these on-site visits. Outsourcing the validation process to third party companies has the great potential to prove problematic for retailer importers for the following reasons.

First, there remains no requirement or regulation that would safeguard against the release of trade secrets, proprietary sourcing information or other confidential business information. Even if U.S. regulations and legislation were in place to prevent the release of this information by third party validators, nothing prevents validators domiciled in other countries from releasing this information to competitors. Already, many countries refuse to allow or make it difficult to allow CBP agents to perform in-country validations. The use of third parties registered in these countries to perform validations has the potential to release confidential business information even if U.S. regulation or legislation prohibited such action.

Second, there remains no mechanism to guarantee that third parties used to perform C-TPAT validations are capable of actually performing the duties to which they have been tasked. In order to guarantee an adequate level of performance, CBP would need a vetting process and perform a regular audits on these validators. Addressing this problem could result in needless redundancies and act as a drain on much needed resources by forcing CBP to hire auditors to examine the auditors.

Finally, NRF remains concerned that U.S. retail importers could be required to assume the added expenses of paying for the services of third-party validators, especially since importers may have insufficient information about particular validators, and could expose themselves to theft of trade secrets and the revealing of confidential business information. These validation expenses borne by importers could also add additional costs to membership in the program, which could act as a disincentive for potential new members to join.

For these reasons, NRF urges the Trade Subcommittee to insure that CBP has adequate funding to hire the requisite number of supply chain security specialists

to perform in-country C-TPAT validations as opposed to outsourcing these duties to third parties.

#### **The Development of the Automated Commercial Environment (ACE)**

After more than a decade and several billion dollars over budget, DHS is still slowly building and improving the ACE computer system. The rollout of ACE has the great potential to demonstrate enormous benefits for importers including retailers by providing these companies with a single electronic interface for duty collection and customs and regulatory compliance.

While it is slowly rolling out trade compliance components of the ACE system, DHS has stated that security features will be the last elements incorporated into the system. NRF supports the inclusion of security data elements in ACE as quickly as possible in order to ensure its rapid deployment as an effective security enforcement tool.

The incorporation of security related data in ACE has the benefit of providing DHS with a wealth of existing trade data used to identify truly suspect cargo. Today, DHS collects information relating to the security of cargo destined to U.S. ports through each ocean carrier's vessel manifest. However, a manifest is an internationally regulated contract of carriage and does not list vital pieces of data to help identify high-risk cargo. For example, the manifest does not list the foreign vendor or factory and sometimes does not list the ultimate consignee or other businesses party to the transaction. However, importers already provide much of this information, including foreign vendors and factories, electronically to CBP as part of the customs entry process. In essence, CBP already collects this information. Unfortunately, CBP cannot easily tap into these databases to improve upon existing programs to identify the suspect cargo effectively and efficiently.

Other federal agencies also collect vital trade data that could be used to better identify suspect cargo. An effort has been underway to allow these agencies to share and view trade data through the International Trade Data System (ITDS). However, once again, DHS plans to incorporate these databases into ACE are currently among the last elements of the ACE system as it becomes fully operational.

NRF urges the Committee to provide oversight into the development of ACE and how DHS and CBP plan to incorporate security related elements.

#### **The Development of a Post Maritime Security Incident Response Plan**

Retailers remain particularly sensitive to the need to promote sound policies and business practices that strengthen security. Retailers typically have very tight supply chains. A few days added to the supply chain schedule translates into lost sales and large financial losses. A maritime security incident that could close ports of entry will surely lead to lost sales for retailers and enormous economic losses for the nation. For this reason, retailers remain the most ardent supporters of C-TPAT and other programs designed to promote supply chain security to help minimize the chances of a maritime security incident.

Retailers have long urged Congress, DHS and the Administration to work with importers in developing plans to resume trade lanes in the aftermath of any incident. Doing so will help retailers and other importers to make better contingency plans to mitigate the economic consequences of the event. To date, retailers still do not know if all U.S. seaports will be closed following an event, or just a select few. Retailers still do not know if cargo originating from all countries will be allowed to enter U.S. ports or only a select few. Retailers and others must know certain specifics of these plans in order to make contingency plans regarding the routing and sourcing of cargo. The ability to do so will impact not only the retail industry but U.S. commerce and economy as a whole.

NRF supports proposals that outline how DHS is to resume trade lanes following a maritime security incident. These proposals give retailers and other importers vital information needed to make these crucial contingency plans. For example, DHS could be required to give priority to C-TPAT cargo carried by C-TPAT steamship lines that transited a CSI port as has been proposed in other legislation, such as the Senate GreenLane Maritime Cargo Security Act. Still other proposals go so far as to require that DHS take comments from the trade community before publishing these rules on resuming trade lanes. NRF calls on the Trade Subcommittee also to include a provision requiring that DHS communicate these plans to the importing community.

In closing, NRF thanks the Subcommittee for holding these hearings and urges it to continue its oversight activities and DHS and CBP trade compliance and secu-

city activities. If you have any questions about NRF or its positions on these issues please contact me.

Sincerely,

Erik O. Autor  
Vice President

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**Statement of The Honorable John R. Carter, a Representative in Congress  
from the State of Texas**

Chairman Thomas:

The purpose of this hearing is to review the impact of current and proposed border security and immigration policies on programs in the Committee's jurisdiction.

As you are aware, Section 2029 (y) of the Social Security Act requires aliens in the United States to be "lawfully present" in order to receive Social Security benefits. Even though most illegal workers pay taxes, they do not place a burden on the Social Security Administration (SSA) as they are not eligible for said benefits unless they become legal residents of the United States.

Currently, there are over 10 million illegal immigrants living and working in our borders. Several surveys indicate that households headed by illegal workers pay, on average, less than \$5,000 annually in federal taxes. This is less than two-thirds of the average paid by all legal households. While providing much less to the treasury, each illegal household results in a net loss of over \$2,700 annually due to healthcare costs and other social programs. However, the Social Security Administration actually sees a net profit from illegal workers because while they pay in, they are not eligible to receive benefits.

Under current law, the path to citizenship for an illegal alien is difficult. However, language in S 2611 would allow some 10 million illegal aliens a path to citizenship. This newfound amnesty will place a severe strain on Social Security to meet the needs of the 10 million new workers suddenly eligible to receive benefits—benefits they have accrued by openly ignoring our laws.

I am concerned about the obvious incentives of S 2611 to additional illegal workers. Our first priority should be to employ U.S. citizens, whether native born or legal immigrant. As we learned in the years following the 1986 amnesty, a path to citizenship for illegal workers only serves to invite more illegal aliens across our borders, not shut the door. This open invitation will serve only to place additional strain on welfare programs and drive down wages for American workers.

I am also concerned about the cost associated with the Senate Bill as projected to all social security wage earners. Through Tax Year 2003, over 255 million wage files have been placed in the Earnings Suspense File (ESF) by SSA. In the 1990's alone, nearly \$190 billion in unmatched wages were placed in the ESF. Some have argued that this serves as a "savings account" for illegal workers to later draw benefits once they reach a legal status. Make no mistake that this is not the case. The ESF, by its very definition, is comprised of money we cannot attribute to any worker, legal or not. Each wage report placed in the ESF merely shows that SSA cannot match the file with a worker in its system. Because of this, any wages attributable to an illegal worker that are placed in this file are wages earned through either identity theft or Social Security fraud. I find it reprehensible that we would consider granting benefits to those who work in our country illegally while the solvency of Social Security for America's seniors remains a very real problem.

Furthermore, the Earnings Suspense File does not include contributions made by illegal workers under fraudulently obtained, valid Social Security numbers or Individual Taxpayer Identification Numbers legally obtained from the IRS. While these records result in deposits to Social Security, they are not drawn on due to the illegal status of the record holder. Should these monies, deposited over several decades, be drawn we should expect nothing less than bankruptcy of the Social Security system.

As we attempt to forecast the effects of the amnesty included in S 2611, it is important to note that in 2010, the first of the "baby-boomers" generation will be eligible for Social Security benefits. It is an unfortunate coincidence that just as an entire generation of Americans begins to draw Social Security benefits, the first wave of the 10 million illegal aliens granted amnesty would also become eligible for these very same benefits, thereby placing an even greater strain on the system.

Because of these concerns, I urge the Ways and Means Committee to look into methods by which we can utilize the Social Security Administration and the Internal Revenue Service to assist with not only controlling, but decreasing the levels of illegal work in the country. The primary tools to fight this battle are through more accurate verification of a person's eligibility to work legally in the United States,



and enforcement of current law against employers who so willingly violate it. I also urge the Committee to undertake a serious study of the potential costs to federal, state, and community welfare programs and educational systems associated with the legalization of millions of illegal immigrants.

Consumer Electronics Association  
Arlington, Virginia 22201  
*August 8, 2006*

The Honorable Clay E. Shaw  
U.S. House of Representatives  
1236 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Shaw:

The Consumer Electronics Association (“CEA”) appreciates the opportunity to provide this written statement for consideration by the Subcommittee on Trade of the Committee on Ways and Means, in furtherance of the public hearing held by the Subcommittee on July 26, 2006, to review budget authorizations for the Bureau of Customs and Border Protection (“CBP”) of the Department of Homeland Security (“DHS”) and the Bureau of Immigration and Customs Enforcement (“ICE”) of DHS, as well as to review other Customs issues. As part of this review, CEA is grateful to the Subcommittee for its consideration of the important questions of whether DHS’s new agencies are operating effectively, whether trade functions are being given sufficient priority now that the agencies are integrated into a department focused on security, whether adequate resources are devoted to customs functions, and whether companies are receiving the anticipated trade benefits from programs such as the Customs-Trade Partnership Against Terrorism (“C-TPAT”).

With respect to each of the preceding questions, CEA believes that while DHS and CBP have made sincere efforts and continue to have commendable objectives in the trade realm, trade facilitation has not kept pace with the very important emphasis on security. We join with the statements and testimony already before the Subcommittee in believing security and trade must be balanced, and that neither should be sacrificed at the expense of the other. Indeed, CEA would like to thank Chairman Shaw for his initial statement recognizing that while border security must be one of our government’s highest priorities, the government must also facilitate “the legitimate trade that is the lifeblood of our economy.” CEA agrees, and also agrees with the need identified by the Chairman to evaluate whether DHS has the resources it requires to protect both the safety and economic security of America’s citizens.

CEA particularly appreciates this opportunity to highlight for the Subcommittee significant issues of concern at CBP ports of entry along the United States’ southern border, as a focused example of the consequences that can result from enhancing security without enhancing trade resources. These issues, which are tied to a lack of necessary resources at key border crossings with Mexico, have the potential to jeopardize CBP’s voluntary supply chain security programs and strangle trade with the United States. CEA, on behalf of its members, strongly supports providing DHS with the appropriations necessary to resolve these issues. In revisiting CBP’s trade-related activities, CEA also opposes any changes to what are currently voluntary programs such as C-TPAT that would make them more burdensome or less rewarding to the many companies that have already invested significant sums to become true partners in supply chain security.

#### **CEA’S INTERESTS**

CEA is the preeminent trade association promoting growth in the consumer electronics (“CE”) industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services. CEA’s members account for more than \$121 billion in annual sales in the United States. This figure represents approximately 40 percent of all CE sales worldwide. The CE industry directly employs approximately 1.9 million workers in the United States. Of these, 212,000 jobs are in manufacturing, 574,000 are in retail, 38,000 are in transportation, and 1,073,000 are in parts of the U.S. economy that solely depend on the utilization of CE products, such as the motion picture and sound recording industries, telecommuni-

cations, broadcasting, and software development. In 2005 alone, the U.S. CE industry added nearly 30,000 jobs—growing nearly 1.5 percent in the last 12 months and 19 percent in the last 15 years. Today, the industry represents approximately 1.4 percent of total non-farm employment.

**CEA SUPPORTS FACILITATION OF SECURITY AND SOUTHERN BORDER TRADE BY VOLUNTARY INITIATIVES SUCH AS FAST AND C-TPAT**

While the members of CEA have interests that span the globe, trade within the NAFTA is particularly attractive because of the size of the consumer market at issue, and the ability to serve that market with the most efficient supply chain techniques. The U.S. trade relationship with Mexico, at more than \$270 billion per year, is second only to U.S. trade with Canada. In fiscal year 2005, over 3.5 million containers entered the United States from Mexico across the southern border.

To serve these markets, companies have become increasingly reliant on “just in time” inventory procedures. Reliance on successful “just in time” inventory procedures within NAFTA, however, means that the significant volume of trade among the three NAFTA nations depends on rational and efficient border facilitation. Because we recognize that border operations must never be streamlined at the expense of national security, CEA and its members have applauded and sought to take advantage of cooperative endeavors such as C-TPAT and the Free and Secure Trade Program (“FAST”), among others.

***FAST and C-TPAT are Increasingly Popular Tools for Trade***

CEA is not alone in recognizing that FAST and C-TPAT are important and potentially beneficial programs. Indeed, in his remarks submitted to the Subcommittee, CBP Commissioner W. Ralph Basham identified five “pillars” which are the key components that will allow CBP to achieve its mission goals of border security and trade facilitation. The fifth pillar identified by the Commissioner was CBP’s efforts to partner with the private sector. These partnerships include both the C-TPAT and FAST programs.

With respect to FAST, we note from prior testimony that since its inception in December 2002, FAST has enrolled approximately 61,000 commercial drivers and has expanded to seven locations along the Southwest Border. It is anticipated that FAST will expand in 2006 to seven additional locations along the Southwest Border. Similarly with respect to C-TPAT, more than 10,000 companies have applied to become C-TPAT members, and more than 6,000 of those have been certified as having implemented C-TPAT security criteria.

CEA believes that FAST and C-TPAT have succeeded in generating so many applicants because, as echoed by the Commissioner, they were created as voluntary, incentive based partnerships between CBP and industry, which benefit the U.S. economy and national security by improving supply chain security while at the same time facilitating the movement of low-risk cargo through expedited border processing, “Front of Line” inspections, and reduced border examinations.

***FAST and C-TPAT Have Had Positive Real-World Results***

When operating as intended, programs such as FAST and C-TPAT have helped to facilitate the increasingly significant cross-border trade with Mexico. FAST, for example, was created as part of our government’s efforts to work closely with Mexico to create institutions and infrastructure to enhance border security while making border transit easier and quicker for legitimate travelers and goods. It was intended to provide expedited crossings for cargo from participating companies who have demonstrated that their facilities are secure and their shipments low-risk.

One of our member companies commented that initiatives such as FAST and C-TPAT allow for transit of products across borders in minutes instead of hours. When these programs work as intended, the company noted that it was not uncommon to be able to cross through some Mexican and U.S. Customs areas in as little as 15 minutes, as compared to as much as two hours under prior procedures. Such speedy entries under the FAST program work to enhance security, as by their very nature high speed crossings act to significantly reduce the number of trailers waiting in lines, which in turn reduce the likelihood that trailers could be tampered with.

**ENTRY CHALLENGES AT THE SOUTHERN BORDER ARE JEOPARDIZING SECURITY AND TRADE**

Recent experiences at certain southern border crossings, particularly at peak times, suggest that because of insufficient resources the system is not working as it should, and that the promised benefits of C-TPAT and FAST participation are not being realized. This is not only disappointing for the companies that committed significant resources to participate in these programs, but the practical consequences of mounting delays jeopardize both trade and security.

***Resources and Procedures are Inadequate to Address High Import Volumes, Leading to Significant Delays***

Both the C-TPAT and FAST program have provided for designated lanes at major border crossings, which are intended for use by participants in the programs. In practice, however, some of these travel lanes designated for C-TPAT and related expedited programs have not been enforced. Consequently, the benefit of voluntary compliance in these programs is eroded if not altogether eliminated. One of our members reported that at one entry point on the Mexican border, vehicles within all classifications have been directed to the same lane.

Even where dedicated lanes are maintained, some of our member companies have experienced long delays at some Mexican border points of entry which, while clearly exacerbated by seasonal volume changes, are largely due to insufficient personnel to staff existing lanes, limited hours for customs clearance, poor road infrastructure within the customs complex, and increased security concerns.

At the Otay Mesa/Tijuana port of entry, for example, on average an estimated 2800 trucks now cross the border each day, and seasonal volume peaks between August and January (as U.S. retailers stock inventory for the holiday season) cause the long queuing of trucks. One company reported that while one to two hours is the normal delay for non-FAST shipping at this crossing, it can take up to four to six hours to cross a trailer during peak production periods. Last year, leading into the Christmas period, waiting periods actually jumped to 8–10 hours. Another major CE company reported that on May 22, 2006, a non-peak period, its 18 shipments through this port of entry took an average of 5.5 hours to clear customs, and on the following day its 13 entries took an average of 6.5 hours to clear, even though only 9 of the 31 total entries were inspected either by x-ray or other means.

At other ports of entry, for example the San Luis port of entry, delays associated with inspecting shipments during the peak agricultural season have spillover effects for non-agricultural goods, and can lead to the doubling of waits during these times. While a new commercial crossing has been planned for San Luis, it is not expected to open until 2008.

Other delays have been the result of failure to staff the border consistently during peak times, and to coordinate staffing between U.S. and Mexican customs officials. **Companies report that the** hours at U.S. and Mexican ports of entry are inconsistent at each crossing. In addition, there have been instances where only three Mexican and eight U.S. gates are open during operating hours.

We applaud the temporary efforts that have been taken by CBP at the U.S. port at Otay Mesa/Tijuana where staff has been temporarily supplemented with CBP Officers transferred from other ports and where three temporary entry lanes have been created to supplement the eight existing gates. We note that both the Mexican and U.S. ports have extended their hours of operation during peak traffic periods. Trucks may now enter the Mexican compound until 8 p.m. each weekday evening, an increase of one hour. Both ports have agreed to allow empty truck importations beginning at 5 a.m., instead of 6 a.m. Moreover, we understand that the U.S. port is committed to expand the current facility by two permanent lanes next year and the project is now in the design phase. We remain concerned, however, that these measures are temporary at best and/or dependent on the availability of resources and political will to achieve long term relief for this growing problem.

***The Consequences of Delay***

• *Economic Impact*

The significant delays identified above can have far reaching consequences. The most apparent are the economic repercussions, namely increased operation costs for border crossing carriers, damage to important customer relationships, and potential drops in U.S. exports as foreign purchasers decide to find more reliable sources of supply that are less vulnerable to border delays than products crossing the U.S. border. Moreover, border delays can result in even greater harm to the competitive position of U.S. manufacturers. Delays in the delivery of any crucial input can shut down entire U.S. assembly lines, idling U.S. workers and undermining productive capacity and international competitiveness. Finally, these delays risk undermining private companies' confidence in the purported benefits of C-TPAT/FAST participation.

In more concrete terms, the consequences of these delays is that at Otay Mesa, for example, rather than three or four "turns" back and forth across the border per truck per day during non-peak times, trucks average 1.6 "turns" per day during periods of the greatest delay, at a 50%+ loss in earnings and customs revenue. Importers have reported that these delays occur both north and south bound, and that they are the result of contraband searches, inadequate staffing of customs officials, lim-

ited hours, and poorly constructed roadways leading into certain Customs border areas that cause traffic to cross over and bottleneck against itself.

- *Security Impact*

Separate from the financial challenges, there are potentially significant security concerns. For example, long wait times require trucks to sit in mixed queues for sometimes hours on end, which can expose their cargoes to tampering. Allowing such circumstances to exist for extended periods for commingled FAST/C-TPAT and non-participant shipments runs directly counter to one of the objectives of these programs, namely to enhance security by reducing the number of trailers waiting in lines.

- *Environmental/Societal Impact*

Unnecessary delays at border crossings also impact persons who have no involvement with a particular shipment. This includes environmental consequences felt by society as a whole, as requiring trucks to wait in long lines is necessarily inefficient and results in increased emissions from fuel needlessly burned. It also includes a societal impact on immediate residents of border communities who are exposed to exhaust and noise from a collection of hundreds of heavy-duty trucks idling day in and day out for months on end.

***Without Additional Resources, Trade Conditions at the Southern Border Are Likely to Deteriorate Further***

Multiple statements submitted to the Subcommittee for its July 25, 2006 hearing suggest that matters may grow worse if significant action is not taken. Colleen Kelley, speaking to the Subcommittee on behalf of the union representing over 15,000 CBP officers and import specialists, provided the deeply troubling information that within CBP many experienced personnel are leaving in frustration as a result of staffing shortages, and that as many as 25% of import specialists will either retire or become retirement eligible in the next few years. The data provided by Ms. Kelley with respect to the depth of existing personnel shortfalls, as well as similar information provided to the Subcommittee in the statement of Mary Joe Muoio, President of the National Customs Brokers and Forwarders Association of America, further underscores importer observations that ports of entry along the southern border simply do not have the personnel needed to handle increasing daily traffic as effectively as necessary and on a long-term basis.

Relatedly, Ms. Kelley rightly noted that Customs revenues are the second largest source of federal revenue collected by the U.S. government after tax revenues, and that staffing shortfalls within CBP can lead to loss of such revenues. As seen at the Otay Mesa port of entry alone, congestion at peak times reduces daily per-truck cross-border trips from 3 to 4 per day to 1.6 per day. This 50% reduction in trips leads directly to a commensurate reduction in revenue for CBP. It stands to reason that growing delays in the future will only serve to increase losses of such revenue.

**CBP MUST CAREFULLY ASSESS THE BURDEN THAT ANY NEW MEASURES WOULD HAVE ON TRADE**

In addition to its concerns about identified trade facilitation challenges that already exist at particular points of entry, CEA is mindful of the potential for other trade-related challenges that may result from further efforts by CBP to increase security. CBP has progressively increased the burdens and costs of participating in C-TPAT, thereby re-writing—after the fact—the terms under which many companies originally agreed to join the program.

For example, CBP has been imposing mandatory standards and requirements that were not initially required for participating companies, such as requirements that third party business partners satisfy many of the C-TPAT requirements. In some instances, the C-TPAT participating companies bear the burden of verifying that those standards are satisfied by its business partners, which has become a very costly expense for C-TPAT companies. This is in addition to the significant internal investments that all C-TPAT member companies had to make to join the program initially.

Another issue is that while many consumer electronic companies manufacture their products outside of the NAFTA region, they warehouse their products in Mexico in order to have sufficient inventory in the supply chain for North America. Generally foreign third-party warehouses and other foreign logistics providers are ineligible to enroll in C-TPAT. Current restrictions on the ability of these important players to participate in C-TPAT directly not only restricts the smooth flow of trade, but also undermines the U.S. government's overall objective of securing as much of the international supply chain as possible through C-TPAT and related programs.

Of more immediate consequence to delay at the border would be any new measures that require 100 percent physical inspection of U.S.-bound containers. While the security objectives of such a program are undoubtedly commendable, unless the significant technical challenges and resource allocation issues associated with any such proposals are resolved *before* the proposals are implemented, the on-the-ground consequences at the border could be intractable many-mile-long delays. Should such undifferentiated delays become more endemic than they already are, a readily foreseeable result would be the further erosion of benefits promised to companies that have invested in international supply chain security through C-TPAT participation.

Similarly, while we are pleased with developments at Otay Mesa regarding the Automated Commercial Environment ("ACE") system, CEA encourages CBP to do everything necessary to develop and implement ACE as soon as possible and as broadly as possible, so that it can be used by personnel at all border crossings to quickly and reliably process entries. As occasional failure of the current computer system at many ports of entry is yet another factor that can contribute to entry delays at the southern border, CBP should ensure that ACE, once fully implemented, make things better and not worse. Because ACE is a system intended to streamline virtually every aspect of CBP's commercial operations, CBP should be provided with the necessary appropriations to make its good intentions for ACE become reality, and it should continue to maintain its close communications with the trade community regarding development of a system with actual trade benefits.

#### **RECOMMENDATIONS**

Given the level of frustration which already exists among many southern border importers and exporters, we welcome Commissioner Basham's commitment to the Subcommittee at its hearing on July 25, 2006 that CBP will be hiring more import specialists by the end of this calendar year, in the hopes of bringing CBP back into compliance with Section 412(b) of the Homeland Security Act of 2002 (requiring DHS not to reduce CBP functions and resources from pre-DHS levels). CEA hopes that these new specialists, as well as other new personnel, will begin to make a difference for CBP's trade facilitation activities.

When asked about the consequences of current personnel shortfalls, the Commissioner indicated that the shortfalls have not impacted validations of new C-TPAT applicants. At the same time, it is not clear that adequate resources have been devoted to ensuring that C-TPAT members who have already undergone validation receive the benefits promised by the program thereafter. CEA hopes that adequate resources will be devoted not only to bringing new companies into C-TPAT and FAST, but to delivering real results for the companies who have already committed to do their part for these important security/trade partnership programs.

A renewed commitment to trade facilitation is particularly important for CBP's southern border operations, where comparatively small adjustments could have significant results. CEA believes that the following changes, if implemented, could be greatly beneficial to those users of the southern border who have volunteered to assist DHS in its security programs.

#### ***Increase Personnel & Adopt Trade-Partner-Friendly Lane Allocations/Hours***

We urge that CBP **consider making permanent the additional staffing (at a minimum during peak months) at high volume border crossings in order to expand hours, expedite processing and maintain sufficient movement of the queue, thereby cutting down on possible security breaches.** CBP should have the resources necessary to staff and operate all existing gates, particularly at peak times. To ensure that this is possible, CEA believes more personnel are required.

CEA is also in favor of increasing and/or shifting the hours for ports of entry, at a minimum during peak months, to provide needed staff from 5 AM to 10 PM. This is particularly necessary before and after U.S. and Mexican Holidays. Such shifts may be possible by apportioning current Saturday hours to other days of the week, so that ports can stay open two hours longer per day, Monday through Friday. Most traffic is Monday through Friday, while Saturday traffic is typically used to accommodate trucks that did not make it through on Friday.

#### ***Adjust Existing Traffic Patterns to Avoid Blocked FAST lanes and Gridlock Generally, and Add Additional Crossings Where Necessary***

CEA requests that CBP examine both traffic flows within existing ports of entry and opportunities to work with Mexico to improve road and bridge construction at the border. This includes expediting new proposed commercial crossings for ports of entry such as San Luis, and the investigation of construction of additional crossings, particularly near Tijuana.

At existing facilities, dedicated FAST program lanes should be operated as such, and CBP should quickly work to cooperate with Mexican officials to realign traffic patterns so that FAST-eligible shipments have access directly to these lanes, without the current need to wait behind non-FAST shipments. At its worst in 2005, congestion at certain facilities such as Otay Mesa was so severe that it actually blocked entry into the FAST lane, requiring companies who volunteered for the FAST program and took steps needed to participate to wait in queues with all of the other non-participants. This completely defeats the benefit to the importer of the fast program, and could lead to decreased participation in this valuable security program. As CBP looks to dedicate additional lanes, attention should be given to how those lanes are aligned with existing traffic flows to eliminate the possibility of cross-over with non-FAST traffic.

Similar efficiencies can be obtained within some of the port facilities, by eliminating reverse and crossing traffic flows that trucks are often required to follow through the inspection process. Inspection equipment infrastructure should also be added, so that additional inspection lanes are available to process trucks once they enter the facility.

#### ***Refine C-TPAT Targeting to Reduce Inspections of Tier 1 Members***

To ensure that existing resources are used as efficiently as possible, CEA supports the continued reduction in Automated Targeting System scores for Tier 1 C-TPAT members. Reducing these scores should serve to reduce the number of unnecessary inspections conducted on the imports of C-TPAT members, and allow those resources to be focused on higher risk importers who have not volunteered to commit to the C-TPAT program.

CEA also opposes any of the pending legislative proposals that would seek to eliminate the ATS score reduction benefit for Tier1 C-TPAT members. Currently, the limited resources available to CBP for C-TPAT validations have led to extended waits for companies that seek to become Tier 2 C-TPAT members. (Our members report in some cases having waited over two years for CBP to complete the validation process after the company's certification). Even without a reduction in benefits for Tier 1 members, CBP must devote adequate resources to the validation process to eliminate such unreasonable delays. Unless and until CBP is able to reduce the C-TPAT validation cycle time, any discussion of eliminating Tier 1 benefits is counterproductive, as it will serve to reduce the benefits of many companies that—but for delay on the part of CBP—would otherwise qualify as Tier 2 participants.

#### ***Permit FAST Participants' Trucks to Use FAST Lanes Even Without Containers***

An additional entry inefficiency reported by one of our members, which seemingly could be easily remedied, stems from the way CBP reportedly handles FAST members' trucks that reach ports of entry without containers. Under current practice, if a FAST participant's truck brings an empty container south, to one of its Mexican facilities, and leaves the container there for future loading, upon returning to the border without a container the truck is reportedly prohibited from using the FAST lane. Instead, we understand the truck will be put through the normal non-FAST lanes, which take a much longer time to clear, even though the truck has no cargo (or even empty container) to inspect.

If a truck driver has passed all the screening required for FAST but has no cargo, it would be more efficient to allow the driver through the FAST Lane. In addition to easing congestion in the non-FAST lanes, this would ease burdens on FAST member companies, who would be able to stockpile empty containers at factories in Mexico for future use. Under the current system, it has been reported that stockpiling of containers is prohibitive (due to loss of use of trucks while waiting to cross the border in non-FAST lanes), which leads to longer inventory hold times at the factory while empty containers are brought in from the United States. This increases inefficiencies and is not an optimal allocation of resources in FAST members' supply chains.

#### **CONCLUSION**

CEA is cognizant of the many challenges that confront our government in its efforts to keep Americans safe from external threats while simultaneously keeping our borders open to vital international trade. CEA and its members therefore wish to thank the exceptional men and women of DHS, CBP and ICE who have devoted their professional lives to striking an appropriate balance between security and trade, and who work every day to overcome these challenges despite at times having insufficient resources. Although recent emphasis on security may have tipped the scales away from trade in recent years, CEA believes that the consequences of such a shift are neither inevitable nor irreversible. Instead, with the appropriation of suf-

efficient additional resources for trade facilitation, DHS's new agencies can operate effectively, and with the cooperation of industry through voluntary programs such as FAST and C-TPAT can make our borders effective barriers to threats which do not hinder commerce at the same time. Accordingly, CEA supports this Subcommittee's efforts to examine whether the current appropriations in this area are appropriate, and whether they have been sufficiently allocated.

Thank you for considering our comments. We would be happy to answer any questions you may have.

Sincerely,

Elizabeth A. Hyman  
Vice President, *International*

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**Statement of U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security**

Mr. Chairman, Ranking Member Rangel, and Members of the Committee:

**I. Introduction**

We appreciate the opportunity to submit testimony for the record to the Committee about the U.S. Citizenship and Immigration Services' (USCIS) Basic Pilot Employment Verification Program (Basic Pilot), which provides information to participating employers about the work eligibility of their newly hired workers. We will also describe the agency's plans to improve and expand the Basic Pilot in preparation for a nationwide mandatory Employment Verification Program.

An Employment Verification Program is a critical step to improving worksite enforcement and directly supports the President's goal of achieving comprehensive immigration reform. In his speech to the U.S. Chamber of Commerce on June 1, President Bush endorsed the Basic Pilot as "a quick and practical way to verify Social Security numbers" that "gives employers confidence that their workers are legal, improves the accuracy of wage and tax reporting, and helps ensure that those who obey our laws are not undercut by illegal workers."

Clearly, if we are to control illegal immigration, we can't just focus on the border. Illegal immigrants are living and working in every state of the nation, and our solution must be just as comprehensive. We must make sure that our immigration laws are enforced in New York and Colorado and Georgia, not just along the southwest border. Today, an illegal immigrant with a fake ID and Social Security card can find work almost anywhere in the country without difficulty. It's the prospect of jobs that leads people to risk their lives crossing a hundred miles of desert or to spend years in the shadows, afraid to call the authorities when victimized by criminals or exploited by their boss.

That is why the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program as part of the President's call for comprehensive immigration reform.

There is much we can do in advance of the enactment of comprehensive immigration reform. Here's what we are working on at USCIS to improve and expand the Basic Pilot:

- Ensuring that more aliens authorized to work have secure biometric cards.
- Accessing our card databases for verification of work authorization—which will decrease the number of Basic Pilot queries that require a manual check.
- Streamlining the enrollment process for employers by making it completely electronic.
- Creating monitoring and compliance units that will search Basic Pilot and Employment Verification Program data for patterns to detect identification fraud and employer abuse.

The President's FY07 budget requests \$110 million for expansion of the Basic Pilot to make it easier for employers to verify electronically the employment eligibility of workers. Based on our planning to date, we believe a feasible timetable allowing for phased-in expansion of mandatory verification along with flexible, user-friendly program requirements are essential to expand and operate the program as efficiently and effectively as possible.

We will also reach out to employers, including small businesses, for feedback and real-world input, such as ideas on the best ways to submit data on new hires with the least collective burden and how to make electronic employment verification as user-friendly as possible.

## II. The Current Basic Pilot Program and Employment Verification Program

With that backdrop, we would like to take this opportunity to outline how the current Basic Pilot works and the plans USCIS is putting in place to expand and improve it in preparation for a national mandatory program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, creating a program for verifying employment eligibility, at no charge to the employer, of both U.S. citizens and non-citizens. The Basic Pilot program began in 1997 as a voluntary program for employers in the five states with the largest immigrant populations—California, Florida, Illinois, New York and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. The program was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003 extending its duration to 2008 and also ordering that it be made available in all 50 States. However, the program remains only voluntary, with very limited exceptions. A small percentage of U.S. employers participate, although the program is growing by about 200 employers a month to a current 10,000 agreements between USCIS and employers. These employers are verifying over a million new hires per year at more than 35,000 work sites.

We seek in operating the Basic Pilot program to encourage the voluntary participation of small businesses, and to be responsive to their needs and concerns. Most (87%) of our participating employers have 500 or fewer employees. We would welcome your support in reaching out to enroll even more employers in the program. Interested employers can register by going to our Basic Pilot Employer Registration Site at: <https://www.vis-dhs.com/employerregistration>

### *How the Basic Pilot Works*

After hiring a new employee, an employer submits a query including the employee's name, date of birth, Social Security account number (SSN) and whether the person claims to be a U.S. citizen or work-authorized noncitizen (for noncitizens, DHS issued identifying # is also submitted) and receives an initial verification response within seconds. For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name and date of birth to the Social Security Administration (SSA) to match that data, and SSA will confirm citizenship status on the basis of its Numident database. For the 88% of employees whose status can be immediately verified electronically, the process terminates here; in the remaining cases, the system issues a tentative nonconfirmation to the employer. The employer must notify the employee of the tentative nonconfirmation and give him or her an opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight days to visit an SSA office with the required documents to correct the SSA record.

Noncitizen employees face a more elaborate process. Once SSA verifies the name, date of birth, and SSN, the system will attempt to verify the person's work authorization status against the Basic Pilot database. (If a noncitizen's SSN information does not match, the individual is first referred to SSA) If the system cannot electronically verify the information, an Immigration Status Verifier will research the case, usually providing a response within one business day,<sup>1</sup> either verifying work authorization or, in 19 percent of cases, issuing a DHS tentative nonconfirmation. If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight days to call a toll-free number to contest the finding and cannot be fired during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, USCIS generally resolves the case within three business days,<sup>2</sup> by issuing either a verification of the employee's work authorization status or a DHS Final Nonconfirmation.

As you know, the House and Senate have both passed significant immigration legislation this Congress, including provisions that require a mandatory electronic employment eligibility verification program for all 7 million U.S. employers. Although the House and Senate provisions differ in some significant ways, both bills would require the eventual expansion to all U.S. employers of an Employment Verification Program generally modeled on the Basic Pilot.

USCIS is already planning for the expansion of the program. The President's FY07 budget request includes \$110 million to begin expanding and improving the Basic Pilot, including conducting outreach, instituting systems monitoring, and compliance functions. USCIS is exploring ways to improve the completeness of the im-

<sup>1</sup> Statistics gathered from the Basic Pilot database, Oct. 1, 2005 to March 31, 2006.

<sup>2</sup> Ibid.



migration data in the Basic Pilot database, including adding information about non-immigrants who have extended or changed status and incorporating arrival information in real time from U.S. Customs and Border Protection. In addition, USCIS is enhancing the Basic Pilot system to allow an employer to query by the new hire's card number, when that worker has a secure I-551 ("green card") or secure Employment Authorization Document. This enhancement will improve USCIS' ability to verify promptly the employment eligibility of noncitizens because the system will validate the card number against the repository of information that was used to produce the card, thereby instantly verifying all legitimate card numbers.

*Planned Monitoring and Compliance Functions*

No electronic verification system is foolproof or can fully eliminatedocument fraud, identity theft, or intentional violation of the required procedures by employers for the purpose of hiring unauthorized persons or keeping them on the payroll. But an Employment Verification Program that includes all U.S. employers, along with monitoring and compliance functions and a fraud referral process for potential ICE Worksite Enforcement cases, can substantially deter and detect the use of fraud by both employers and employees as the Administration works to strengthen its overall interior enforcement strategy.

The current Basic Pilot is not fraud-proof and was not designed to detect identity fraud. In fact, a recent analysis of Basic Pilot systems data found multiple uses of certain I-94 numbers, A-numbers, and SSNs in patterns that could suggest fraud. As currently envisioned, the Employment Verification Program will include robust processes for monitoring and compliance that will help detect and deter the use of fraudulent documents, imposter fraud, and incorrect usage of the system by employers (intentionally and unintentionally). USCIS will forward enforcement leads to ICE Worksite Enforcement in accordance with referral procedures developed with ICE. The monitoring unit will scrutinize individual employers' use of the system and conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) will be referred to ICE Worksite Enforcement investigators.

It is essential that DHS have the authority to use information arising from the Employment Verification Program to enforce our Nation's laws, including prosecuting fraud and identifying and removing criminal aliens and other threats to public safety or national security. It is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use, and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

*Planning for the Employment Verification Program*

We are confident in our ability to get a substantially expanded Employment Verification Program operational with the President's budget request.

The Administration supports a phased-in Employment Verification Program implementation schedule on a carefully drawn timeframe to allow employers to begin using the system in an orderly and efficient way. We favor having the discretion to phase in certain industry employers ahead of others. As noted elsewhere in my testimony, USCIS already is working to improve and expand the Basic Pilot program to support the proposed expansion.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie the system, and DHS, up in litigation for years.

**III. Improved Documentation**

In the President's May 15, 2006 address to the nation on comprehensive immigration reform, he indicated that businesses often cannot verify the legal status of their employees because of widespread document fraud. We need, he said, "a better system for verifying documents and work eligibility. A key part of that system should be a new identification card for every legal foreign worker. This card should use biometric technology—to make it tamper-proof. A tamper-proof card would help us enforce the law, and leave employers with no excuse for violating it."

Many foreign workers already possess a secure, biometric card evidencing their immigration status as either an immigrant (an I-551 card, commonly known as a "green card") or a work-authorized nonimmigrant (an Employment Authorization Document or EAD). Some nonimmigrants currently have non-secure EADs, but USCIS is planning to eliminate the issuance of these cards in favor of secure cards.

In addition, USCIS is considering requiring more classes of work-authorized non-immigrants to obtain a secure EAD. Requiring all work-authorized non-immigrants to obtain secure documentation would help ensure that their work eligibility can be instantly verified in the Basic Pilot or Employment Verification Program. As discussed previously, USCIS already is developing the system capability to verify a new hire's immigration card number against the card information repository. Under this new system, a legitimate card number matched with a name and date of birth will electronically verify in a matter of seconds—and only a fraudulent card would fail to verify.

#### **IV. Conclusion**

We in USCIS are in a unique position to understand the importance of having legal means for individuals to enter and work in the United States. That is why we, and the President, support comprehensive immigration reform that includes interior and border enforcement in addition to a temporary worker program.

We thank both the House and the Senate for recognizing the need for change in this area. With a strong cooperative effort now, the prospect of a truly effective national mandatory Employment Verification Program, combined with improved documentation, will reduce pressure on border and interior enforcement, simplify today's processes, put employers on an equal footing, and support a temporary worker program that is vital to our economy.

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### **Statement of Ann Weeks, Underwriters Laboratories Inc.**

#### **Introduction**

The following is a statement on behalf of Underwriters Laboratories Inc. (UL) regarding the critical role of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) in the fight against counterfeiting. Counterfeiting threatens the 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 counterfeiters. The following is anecdotal evidence of how CBP and ICE efforts have kept tens of millions of dollars worth of products bearing counterfeit UL marks off the market. This statement also provides general recommendations on how additional funding could enhance their work to further protect the American public.

#### **What is Underwriters Laboratories Inc.?**

For 112 years, the UL 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 the UL Stake in Anti-Counterfeiting Enforcement?**

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. Consumers, local and federal authorities, and retailers all look for the UL mark to see whether products have met the appropriate safety standards. UL aggressively protects the integrity of the UL mark against counterfeiters. UL maintains a strict zero-tolerance policy:

“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 the Work of the CBP Affect the UL 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 of such counterfeits. 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 U.S. 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. These counterfeit products can cause significant damage to property and casualties, even death. Why are these types of counterfeit electrical cords dangerous? To properly conduct current, an electrical cord requires wire of a certain thickness. Counterfeit extension cords have wiring so thin that there is no way they can properly conduct electrical current: they will eventually overheat, melt and potentially catch fire. Because of CBP vigilance, CBP determined that the product was counterfeit and seized this extension cord and thousands of similar cords. The CBP routinely makes roughly one-hundred UL-related seizures each year, with an estimated value in the 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 home wiring: they 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.

The UL anti-counterfeiting program has become among the most successful in the world. The hard work and dedication by CBP staff has 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 nine percent of total seizures and are now the fifth most-seized product category. These numbers do not surprise UL: they reflect the increased vigilance by CBP and recognition of the clear and present threat that counterfeit posed by electrical products. We support the priority that CBP places on seizing counterfeit goods.

This vigilance must be maintained, and ideally increased: counterfeiters believe they can flood the American market with shoddy counterfeits without consequence. Counterfeiting is becoming crime of choice for many criminal elements because margins are high and the risk is low. Counterfeiters know the profit potential of supplying consumer electronics. They will exploit that potential until it is no longer lucrative. Moreover, 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. Going forward, however, prosecution and jail time may pose risks they are not willing to take.

Over the past four years, UL has observed 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 investment in equipment to readily assess the authenticity of product and certification marks. This will help CBP capture copies and look for successfully duplicated 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. It is important to note that technology works

to the benefit of counterfeiters as well: this is why the hands-on inspection of cargo as it crosses our borders is still vitally important.

**How Does the Work of ICE Affect the UL Anti-Counterfeiting Program?**

CBP is authorized to prevent the entry of counterfeit goods: the role of the ICE is to identify criminal activity and eliminate vulnerabilities that pose a threat the U.S. border. The ICE 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.

UL has seen just how effective CBP and ICE can be when working in together. Instigated by a 2003 CBP seizure, ICE conducted an investigation of XYZ Trading Corp. in Houston, Texas. 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 indicted five individuals on three separate charges involving the importation and sale of counterfeit goods. On December 13, 2005, ICE agents raided the homes, warehouses and 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 efforts with U.S. trading partners. The CBP and ICE anti-counterfeiting best practices should be incorporated into these efforts and appropriately funded. 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 and Canada as top priorities. In 2005 alone, 80 percent of U.S. 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**

UL appreciates and applauds the dedication of CBP and ICE to protecting the American public against terrorists and the instruments of terror in the post-9/11 era. 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. CBP and ICE must be adequately supported 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.

UL would be pleased to remain a resource to the Committee on Ways and Means, and the Subcommittee on Trade on this and other matters of mutual interest and concern.