

CUSTOMS BUDGET AUTHORIZATIONS AND OTHER CUSTOMS ISSUES

HEARING BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS SECOND SESSION

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CUSTOMS BUDGET AUTHORIZATIONS AND OTHER CUSTOMS ISSUES

THURSDAY, JUNE 17, 2004

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

The Subcommittee met, pursuant to notice, at 10:09 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (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
June 07, 2004
TR-5

CONTACT: (202) 225-1721

Crane Announces Hearing on Customs Budget Authorizations and Other Customs Issues

Congressman Philip M. Crane (R-IL), 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) 2005 and FY 2006 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 Thursday, June 17, 2004 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 or for inclusion in the printed record of the hearing.

BACKGROUND:

Budget Authorizations:

The President's budget proposal provided FY 2005 funding for CBP at \$6.2 billion and ICE at \$4.0 billion. On May 20, 2004, Chairman Crane, along with Reps. Rangel (D-NY), Shaw (R-FL), Levin (D-MI), and Ramstad (R-MN), introduced H.R. 4418, the "Customs and Border Security Act of 2004," authorizing appropriations for FY 2005 and FY 2006 for CBP and ICE at the level requested in the President's budget proposal.

Other Customs Issues:

Reorganization in DHS: On November 25, 2002, the President signed into law legislation (P.L. 107-296) creating a new DHS. 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 the Bureau of 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 the Bureau of ICE. Issues for the Subcommittee to address involve whether the new agencies are functioning effectively, whether trade functions are being given sufficient priority now that the agencies are integrated into a department whose primary mission is security, and whether adequate resources are devoted to customs functions.

Customs-Trade Partnership Against Terrorism (C-TPAT): In November 2001, CBP initiated 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. In the first year of the program, Customs enrolled more than 1,700 companies in C-TPAT, and interest in the program continues to increase. In July 2003, the U.S. General Accounting Office (GAO) issued a report regarding the expansion of C-TPAT in which it identified a number of concerns with the program. First, although C-TPAT expected to hire more than 150 additional

staff, Customs has not devised human capital plans to meet long-term staffing needs. Second, while Customs has established performance measures based on the quantity of operational efforts, it has not developed any measures of program achievement. Issues for the Subcommittee to address involve the effectiveness of this program in enhancing security and facilitating trade, whether performance measures exist to determine the effectiveness of the program, and whether companies are receiving the anticipated trade benefits of the program.

Customs Modernization: The current Customs automation system, the Automated Commercial System (ACS), is an aging system that has experienced several “brown-outs.” 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. CBP predicts that by the end of the 2004, the number of ACE users will reach 20,000 and the number of ACE accounts will reach 1,100.

In addition, CBP is in the process of integrating the International Trade Data System (ITDS) with ACE. 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. ITDS will provide only the data that is necessary to an agency’s mission.

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 trade industry in building ACE.

FOCUS OF THE HEARING:

The hearing will focus on budget authorizations for FY 2005 and FY 2006 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 SUBMISSION OF WRITTEN COMMENTS:

Requests to be heard at the hearing must be made by telephone to Michael Morrow or Kevin Herms at (202) 225-8209; 1721 no later than the close of business Wednesday, June 9, 2004. 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 Subcommittee 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 Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee 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 Subcommittee are required to submit 200 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 Tuesday, June 15, 2004.** Failure to do so may result in the witness being denied the opportunity to testify in person. The 200 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 Subcommittee 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 Subcommittee 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 "108th Congress" from the menu entitled, "Hearing Archives" (<http://waysandmeans.house.gov/Hearings.asp?congress=16>). 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 Thursday, June 24, 2004. **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.

Chairman CRANE. The Committee will start our hearing, and I would like to welcome Commissioner Bonner and Assistant Secretary Garcia this morning. It has been just over a year since the former U.S. Customs Service was incorporated into the U.S. Department of Homeland Security (DHS) and we are at a critical juncture in the evolution of the agencies that were created in that transfer, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).

The Customs Service has a long and distinguished history. It was the first agency of the Federal Government to be created over 220 years ago to collect revenue and to ensure that imports flow smoothly across the border. Today, Customs collects more than \$20 billion in revenue each year. Over the years, Customs has taken on many other functions because of its unique border presence. Fighting against illegal drugs, transshipped tee-shirts and Rolex knock-offs are just a few of these other functions.

In the wake of the terrorist attacks on the United States, the role of Customs in guarding our borders against chemical, biological, and conventional weapons has become more prominent. While I supported the creation of the new department, I shared the concern of many of my colleagues on the Committee that this move could damage the critical trade function of Customs.

To address that concern, the Committee on Ways and Means made recommendations that were accepted in the legislation to prohibit consolidation, discontinuation, or diminution of Customs functions, resources, or staffing. The Committee noted in a letter transmitting its views and recommendations on the legislation that the primary function of the Customs Service has always been revenue collection and trade facilitation.

By contrast, in its fiscal year 2003 performance and annual report, CBP states that CBP's priority mission is to prevent terrorists and terrorist weapons from entering the United States. The trade mission has slipped down. The CBP notes further that CBP also continues to perform its traditional missions, including seizing illegal drugs and other contraband, apprehending people who attempt to enter the United States illegally, protecting our agricultural interests from harmful pests and diseases, collecting duties, and enforcing our trade and immigration laws at our borders.

The ICE lists its mission as follows, quote, "To prevent acts of terrorism by targeting the people, money, and materials that sup-

port terrorist and criminal activities.” Obviously, preventing terrorism is an enormously essential mission and it is only natural that when a department’s central mission is homeland security, the agencies of that department will be judged on their ability to support that central mission and will shift their focus accordingly. However, with international trade comprising nearly 25 percent of our gross domestic product, CBP’s mission to move goods across the border in a smooth, efficient, and predictable manner cannot be relegated to a mere supporting role. Instead, it is a vital part of our economic strength and viability.

On May 20, 2004, I introduced legislation along with Congressmen Rangel, Shaw, Levin, and Ramstad authorizing appropriations for fiscal year 2005 and fiscal year 2006 for CBP and ICE. This legislation is a regular part of this Committee’s authorization process, necessitated by the expiration at the end of this fiscal year for the existing authorization for the former U.S. Customs Service. It is also a part of our ongoing process of exercising oversight and focusing on the critical importance of the efficient flow of trade across our borders. I hope during this hearing the Subcommittee can address some of the challenges faced by CBP and ICE and I look forward to hearing the testimony. Now I yield to our Ranking Minority Member, Mr. Levin.

Mr. LEVIN. Thank you, Chairman Crane. As mentioned, this is a hearing relating to an authorization bill that was introduced by a number of us on a bipartisan basis. The hearing this morning relates to some of the entities, but not all, that are subject to the authorization bill. When we worked on this some time ago, there were concerns about the reorganization and what it would mean for the Customs Service and for their traditional functions, including those that relate to Customs enforcement. So, some of our issues today, no doubt, will relate to how is it working out. What is the impact of the security emphasis, and we fully understand that, within this new department and the other traditional activities of the Customs Service relating to the movement of people, goods, and cargo across our borders. So, we will have a number of questions and we look forward to the testimony. Thank you.

Chairman CRANE. I thank you, and now we yield to Mr. Bonner and Mr. Garcia for their presentations.

STATEMENT OF THE HONORABLE ROBERT C. BONNER, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BONNER. Thank you, Mr. Chairman, Mr. Levin, Ms. Dunn, and Mr. Becerra. I am pleased to appear before you today to discuss CBP, perhaps then very briefly the President’s 2005 budget request for CBP. One of the most important ideas of the reorganization that led to DHS was, as Secretary Ridge has put it, to create “one face at the border,” or one agency for the borders, and that started on March 1, 2003, just over 15 months ago, when all immigration inspectors of the former U.S. Immigration and Naturalization Service (INS), all of the agriculture border inspectors of the Animal Plant Health Inspection Service, the entire Border Patrol merged with the bulk of U.S. Customs, the former U.S. Customs

Service, to form CBP, an agency within DHS responsible for managing and securing our Nation's borders.

The CBP is the largest actual honest-to-goodness merger of people and functions taking place in DHS, and with approximately 42,000 employees, that is about one-fourth of all the personnel of DHS, which I would submit to you is not surprising when one considers how important the security of our borders is to the security of our homeland. By unifying the border agencies, a good government reform that has been advocated by many independent studies over the years, we are and will be more effective and more efficient than we were when border responsibilities were fragmented literally into four different entities in three different departments of the government, as they were before March 1, 2003, before the creation of DHS.

I want to tell you, Mr. Chairman, we are well on our way to successfully completing this historic merger. In the last year alone, we have done everything from designating 1 port director for each of the 300-plus ports of entry into the United States—land ports, sea-ports, airports—whereas before March 1, 2003, there had been 2 port directors or 3 port directors reporting in to different departments of the government. We have rolled out 1 CBP officer uniform for all CBP inspectors at our ports of entry, and nearly all 19,000, more or less, of the frontline inspectors, CBP inspectors, will be in the 1 uniform by July, by next month, and most already are.

The priority mission, as you indicated, Mr. Chairman, of CBP is, and I think has to be, preventing terrorists and terrorist weapons from entering the United States. However, we recognize that we need to carry out that mission without stifling or choking off the flow of legitimate trade or travel that is so vital to our country's economy. I have often said that part of our mission is a twin mission or twin goals, and that is increasing security but also the facilitation of trade. I might say in that regard that that facilitation of trade remains an important, a very important part of the traditional mission of CBP.

At CBP, we recognized actually—you know, the priority mission of U.S. Customs became anti-terrorism security before the creation of DHS. I can tell you, as Commissioner of Customs, it became the priority mission of U.S. Customs on the morning of 9/11. It wasn't just the creation of DHS. We also have seen that the goals of security and facilitation are not mutually exclusive, or they don't have to be. At CBP, we are and we continue to pursue smart border initiatives that do both. For example, rather than inspecting every container shipment that is arriving in the United States, which would have the effect, in my judgment, of virtually shutting down our economy, we have taken actions to ensure that we identify all of the high-risk containers and we inspect all of them rapidly using state-of-the-art technology.

In this regard, we are obtaining advance electronic data on nearly all shipments coming to the United States. We are using our automated targeting system to identify all high-risk shipments. We are inspecting all high-risk shipments for terrorist weapons using non-intrusive inspection technology and radiation detection technology.

We are also employing a layered defense or extended border strategy. For example, through the Container Security Initiative (CSI), we are pushing our zone of security beyond our physical borders by placing CBP personnel to work with other governments to target, identify, and inspect high-risk containers destined for the United States before they are loaded on board vessels at foreign seaports heading for our country.

Under the Customs-Trade Partnership Against Terrorism (C-TPAT), we have partnered with the private sector, with Members of the trade, and they have, our partners have increased their security, their supply chain security from foreign loading docks to our ports of entry, and those C-TPAT partners who have partnered with us have and will receive expedited processing at and through our ports of entry.

The development of Automated Commercial Environment (ACE), by the way, Mr. Chairman, remains a priority of CBP and it is at full throttle. The year 2004 is a pivotal year for ACE. The program will experience its greatest amount of growth to date and increase functionality, providing significantly improved capabilities to both the government and to the trade community. There are nearly 150 trade accounts participating in ACE representing more than 29 percent of the value of annual imports into the United States.

Just briefly, our total budget increase request for 2005 is \$190 million. This funding would provide CBP about \$25 million for CSI, about \$15 million to expand C-TPAT, \$50 million for radiation detection equipment at our entry points to detect against radiological and nuclear weapons, \$20.6 million in enhancements to the Automated Targeting System to improve our capabilities to identify high-risk goods and high-risk travelers for inspection and greater scrutiny, approximately \$64 million for Border Patrol surveillance and sensor technology, and \$10 million for unmanned aerial vehicles (UAVs), to deploy and operate UAVs to detect illegal border crossing.

I want to thank you, Mr. Chairman and Members of this Committee, for the strong support of CBP and DHS. Working together, I am confident that CBP and DHS will succeed both in our efforts to better secure our border against a terrorist threat and at the same time facilitate the movement of legitimate trade across our borders. Thank you, Mr. Chairman.

[The prepared statement of Mr. Bonner follows:]

**Statement of The Honorable Robert C. Bonner, Commissioner, U.S.
Customs and Border Protection, U.S. Department of Homeland Security**

I. Introduction and Overview

Chairman Crane, Ranking Member Levin, Members of the Subcommittee, it is a privilege and an honor to appear before you today to discuss Customs and Border Protection's (CBP) FY 2005 budget request.

I want to begin by expressing my gratitude to the Committee on Ways and Means for the support it provided for important initiatives implemented by CBP last year. That support enabled CBP to make significant progress in protecting our country against the terrorist threat, as well as to facilitate safe and secure legal trade. I also want to thank Congress for the support it provided in creating the new Department of Homeland Security, and the new U.S. Customs and Border Protection within that Department. As the head of CBP, I look forward to working with you to build on these successes.

The priority mission of CBP is to prevent terrorists and terrorist weapons from entering the United States, while at the same time allowing the expeditious flow

of legitimate trade. That extraordinarily important priority mission means improving security at our physical borders and ports of entry, but it also means extending our zone of security beyond our physical borders—so that American borders are not the first line of defense.

We must do this while continuing to perform our traditional missions well. These missions include apprehending individuals attempting to enter the United States illegally, stemming the flow of illegal drugs and other contraband, protecting our agricultural and economic interests from harmful pests and diseases, protecting American businesses from theft of their intellectual property, regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws. In FY 2003, CBP processed 26.1 million trade entries, collected \$24.7 billion in import duties, seized 2.2 million pounds of narcotics, and processed 412.8 million pedestrians and passengers and 132.2 million conveyances.

We must perform all of this important security and border-related work without stifling the flow of legitimate trade and travel that is so important to our nation's economy. In other words, we have "twin goals": Building more secure *and* more efficient borders.

Our total program increase request for FY '05 is \$223 million. These funds will help CBP fulfill its priority mission of preventing terrorists and terrorist weapons from entering the United States. As Commissioner, I will also devote needed funds to support the automation and information technology programs that will improve overall operations of the agency, and I will devote funds to support the traditional missions for which CBP is responsible.

Mr. Chairman, although I will touch on each of these areas in my statement, and outline the actions CBP has taken or is planning to take in each, I want to point out that in many cases, funds spent in one area have a direct and positive impact on other areas. For example, funds spent on automation and information technology provide invaluable assistance to our priority mission of preventing terrorists and terrorist weapons from entering the United States. Also, funds spent on our priority mission often result in improvements in our effectiveness and efficiency in carrying out our traditional missions, such as interdicting narcotics, and vice versa.

By way of summary of the FY '05 budget for CBP, I can tell you that the program increases we are requesting include:

- \$25 million for the Container Security Initiative, which will support the continued expansion of the program, including the stationing of CBP personnel in additional key international seaports to examine high-risk cargo before it is placed on ships bound for the U.S.;
- \$15 million for the Customs-Trade Partnership Against Terrorism to increase supply chain security and expedite the clearance of legitimate trade;
- \$50 million for Radiation Detection and Non-Intrusive Inspection Technology to detect weapons of mass destruction;
- \$21 million for Targeting Systems Enhancements to identify high-risk travelers and goods for inspection while allowing the vast majority of law abiding travelers and commerce to continue unimpeded;
- \$64 million for Border Patrol Surveillance and Sensor Technology for the expansion of the remote video system along the southern and northern borders to detect illegal crossings and to increase the effectiveness of agents responding to such crossings;
- \$10 million for Unmanned Aerial Vehicles to develop, procure, deploy, and operate a system of unmanned aerial vehicles to support the Border Patrol by detecting and monitoring illegal border crossings; and
- \$5 million to support the International Trade Data System (ITDS) to revolutionize the way international trade data is collected, disseminated, and used.

In my statement, I will discuss these programs and others that CBP has been working on during the past year. I would like to begin, though, with a brief update for the Subcommittee on the status of CBP after one year.

II. Customs and Border Protection at One Year

On March 1st, the Department of Homeland Security celebrated its one year anniversary as a Department. The anniversary marked the successful transfer of approximately 42,000 employees from the U.S. Customs Service, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service (APHIS) to the new Customs and Border Protection agency in the Department of Homeland Security. CBP is the largest actual merger of people and functions within the Department of Homeland Security. Indeed, about one-fourth of the personnel of DHS are housed within CBP. That is not surprising considering how important the security of our borders is to the security of our homeland.

A. One Face at the Border

To create CBP, on March 1, we took a substantial portion of U.S. Customs and merged that with all of the immigration inspectors and Border Patrol from the former INS, and inspectors from the Department of Agriculture's APHIS. This means that for the first time in our country's history, all agencies of the United States Government with significant border responsibilities have been integrated and unified into a single federal agency responsible for managing, controlling and securing our Nation's borders.

At CBP, we are creating, as Secretary Ridge has called it, "One Face at the Border"—one border agency for our country. In the year following its creation, CBP has made significant strides toward unification. And America is safer and its border is more secure than they were when border responsibilities were fragmented in three different departments of government, as they were before March 1, 2003—before the creation of the Department of Homeland Security.

On March 1, 2003, CBP designated one Port Director at each port of entry and put in place a single, unified chain of command. This was the first time there has ever been one person at each of our nation's ports of entry in charge of all Federal Inspection Services. And in terms of an immediate increase in antiterrorism security, on Day One, all frontline, primary inspectors at all ports of entry into the United States were equipped with radiation detection devices. Since March 1, 2003, all inspectors have also received antiterrorism training.

Last year, we began rolling out unified CBP primary inspections at international airports around the country, starting with U.S. citizens and Lawful Permanent Residents. Unified primary means that the CBP inspector in the booth will conduct the primary inspection for all purposes—immigration, customs, and agriculture. Launched at Dulles, Houston, JFK, Newark, LAX, Atlanta, Miami, San Francisco, unified primary is now operational at all major international airports. This is a major step forward in eliminating the process of travelers potentially having to "run the gauntlet" through three separate inspection agencies. Although legacy customs and immigration inspectors have assumed interchangeable roles at the land border ports of entry for years, this is the first time unified primary has been done on a national scale at our country's airports.

Along with unified primary, we have also developed and are implementing combined anti-terrorism secondary which leverages the expertise and authorities of both legacy customs and immigration to conduct a joint secondary inspection of passengers deemed high-risk for terrorism. CBP has also begun to coordinate and consolidate our passenger analytical units—the units that identify potential high-risk travelers for inspection. Again, this brings together the customs and immigration experience and authority to more effectively and efficiently identify and interdict individuals who pose a possible terrorist risk.

B. Unifying Symbols and the CBP Officer Position

Since July 2003, we have begun rolling out a new CBP uniform and patch for all CBP inspectors at our Nation's ports of entry. It will replace the three different customs, agriculture, and immigration inspectional uniforms and patches. The new uniform and patch represent our most visible unifying symbols to the American public. The new uniform is being implemented in four phases. In the first phase, completed as of October 1, 2003, all CBP managers and supervisors converted to the new uniform. Other CBP uniformed personnel will be phased in at various points with implementation scheduled to be complete by July of this year.

All of these actions are helping us unify and become more effective as an agency. Perhaps our most significant step toward achieving "One Face at the Border," though, was announced by Secretary Ridge on September 2, 2003: the rollout of the new "CBP Officer" position. As of October, 2003, we stopped hiring and training legacy "immigration" or "customs" inspectors and began hiring and training a new group of "CBP Officers," who will be equipped to handle all CBP primary and many of the secondary inspection functions, in both the passenger and cargo environments. We are also deploying CBP Agriculture Specialists to perform more specialized agricultural inspection functions in both these environments.

C. Integrated Training

Training is a very important component to the roll out of the CBP Officer. We have created a new 14 week, 71-day basic course that provides the training necessary to conduct primary processing and to be familiar with secondary processing of passengers, merchandise, and conveyances in all modes of transport—air, sea, and land. The new CBP Officer course was built from the 53-day basic Customs inspector course and the 57-day basic Immigration inspector course, with redundancies removed, and with additions to address anti-terrorism and CBP's role

in agriculture inspection. The training also supports the traditional missions of the legacy agencies integrated in CBP. Our first CBP Officers were hired on September 22, 2003, and they immediately started training at the Federal Law Enforcement Training Center (FLETC).

D. Enhanced Security Between Ports of Entry

We have also worked very hard to improve the security of our country between the ports of entry. We have revised and refocused the Border Patrol's National Strategy, which had previously been focused on preventing the flow of illegal aliens and drugs between ports of entry on our border with Mexico. It now includes an aggressive strategy for protecting against terrorist penetration, at both our northern and southern borders.

We have started implementing this Strategy. On 9–11, there were 368 authorized positions for Border Patrol agents for the entire northern border. In the last year, we have added almost 500 agents to the northern border, giving us more than 1,000 total—exceeding the goal I set soon after March 1, 2003. This staffing increase will better secure our border against terrorist penetration.

We are doing more than just adding staffing. We are adding sensors and other technology that assist in detecting illegal crossings along both our northern and southern borders, including Remote Video Surveillance (RVS) systems. These RVS systems are real-time remotely controlled force enhancement camera systems, which provide coverage along the northern and southern land borders of the United States, 24 hours per day, 7 days a week. The RVS system significantly enhances the Border Patrol's ability to detect, identify, and respond to border intrusions, and it has a deterrent value as well.

We have seen gains in security by the creation of CBP. For example, the Office of Field Operations and the Office of the Border Patrol are now able to quickly and easily share equipment and information to support one another, and have done so on many occasions, whether it be the use of radiation detection equipment at higher threat conditions, or the use of truck imaging equipment to detect and deter human smuggling.

III. Meeting Our Twin Goals: Building More Secure and More Efficient Borders

As the single, unified border agency of the United States, CBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, we have developed numerous initiatives to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel. Funds from the FY '05 budget will help us expand those initiatives and to begin new ones to ensure further protection of both the American people and the American economy. Our strategy in implementing these initiatives involves a number of factors, including: (A) constantly improving and expanding our targeting systems to better screen more people and goods entering and departing the U.S.; (B) pushing our "zone of security outward" by partnering with other countries; (C) pushing our "zone of security outward" by partnering with the private sector; (D) deploying advanced inspection technology and equipment at our ports of entry to detect weapons of mass destruction; and (E) deploying advanced detection and monitoring equipment between our ports of entry to detect illegal crossings.

A. Enhancing our ability to identify high-risk people and cargo

Information is one of the most important keys to our ability to increase security without stifling legitimate trade and travel. Good information enables us to more accurately identify—or target—what is "high risk," defined as a potential threat, and what is low risk or absolutely no risk whatsoever. The separation of high risk from no risk is critical because searching 100 percent of the cargo and people that enter the United States would unnecessarily cripple the flow of legitimate trade and travel to the United States. What is necessary and advisable is searching 100 percent of the *high-risk* cargo and people that enter our country. To do this, we need to be able to identify what is high risk, and do so as early in the process as possible. CBP has several programs and initiatives that help us accomplish that task.

Advance Electronic Information

Since September 11th, CBP has taken numerous steps to ensure that it has the information it needs, at the right time, to identify all high-risk people and shipments destined for the U.S. As a result of these efforts, and the strong support of the Congress, CBP now has, among other authorities, the statutory authority to require Advance Passenger Information and Passenger Name Record data on all people flying into and out of the United States, as well as advanced, electronic manifest data on cargo destined for or departing the United States. CBP has worked aggressively to promulgate and implement regulations pursuant to these enabling stat-

utes. For example, we are currently implementing regulations requiring advance, electronic manifest (or similar) data on virtually all cargo coming into the U.S. by any mode (rail, truck, aircraft, vessel), whereas this data was previously provided on a voluntary, and very limited basis. These requirements should be fully implemented by early FY '05.

National Targeting Center (NTC)

The NTC began around the clock operations on November 10, 2001, with a priority mission of providing tactical targeting and analytical research support for Customs' anti-terrorism efforts. As personnel from Customs, the INS, and the USDA came together on March 1, 2003, under the umbrella of CBP, the NTC mission broadened commensurately with the CBP role in support of Homeland Security.

The NTC is primarily staffed by CBP Officers and analysts that are experts in passenger and cargo targeting for air, sea, and land operations in the inbound and outbound environments. The NTC develops tactical targets—potentially high-risk people and shipments that should be subject to a CBP inspection—from raw intelligence, trade, travel, and law enforcement data. NTC also supports CBP field elements, including CSI personnel stationed in countries throughout the world, with additional research assets for passenger and cargo examinations.

In January 2003, the NTC staff relocated to a state-of-the-art facility. The new facility is designed to accommodate representatives from all CBP disciplines, including representatives from the Office of Border Patrol, the Office of Intelligence, and the Office of Information and Technology, as well as liaison staff from the law enforcement and intelligence communities. The NTC has developed relationships with the Office of Naval Intelligence and the U.S. Coast Guard via an exchange of personnel with the National Marine Intelligence Center. NTC has also exchanged personnel with the Transportation Security Administration, the Department of Energy, and provided targeting expertise to the DHS Operations Center.

The funding sought in FY '05 will enable the NTC to continue to expand its infrastructure and personnel to meet the needs of CBP as we see continued increases in passengers and commercial shipments coming to the U.S. It will also enable the NTC to continue to play a central role in interagency activities related to identifying high-risk people and cargo.

Automated Targeting System

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

The funding increases sought for ATS in the FY '05 budget will allow for the continued improvement of the system as well as provide it with the capacity to process the electronic data related to the ever-increasing number of people and goods entering the United States. For example, the funding will allow us to develop and implement a version of ATS that, for the first time, will be able to identify potentially high-risk travelers in passenger vehicles. It will also be used to upgrade our passenger targeting system by improving the amount of government data that the system can access and analyze as well as provide us with the capacity to train more people on the use of the system. On the cargo side, the funding will permit ATS to increase its capacity and upgrade its capabilities by utilizing cutting edge information analysis technologies developed by CBP and the private sector.

B. Pushing our Zone of Security Outward—Partnering with Other Countries

Container Security Initiative (CSI)

To meet our priority mission of preventing terrorists and terrorist weapons from entering the United States, I believe CBP must "push our zone of security outward"—so that our borders are not the first line of defense to keep terrorists and terrorist weapons out of the U.S. We have done this by partnering with other countries on our Container Security Initiative (CSI), one of the most significant and successful homeland security initiatives developed and implemented after 9-11.

Almost 9 million cargo containers arrive at U.S. seaports annually. Under CSI, which is the first program of its kind, we are partnering with foreign governments to identify and inspect high-risk cargo containers at foreign ports, *before* they are shipped to our ports and pose a threat to the U.S. and to global trade.

The four core elements of CSI are:

- *First*, identifying “high-risk” containers, using ATS and the 24-hour rule, before they set sail for the U.S.
- *Second*, pre-screening the “high-risk” containers at the foreign CSI port before they are shipped to the U.S.
- *Third*, using technology to pre-screen the high-risk containers, including both radiation detectors and large-scale imaging machines to detect potential terrorist weapons.
- *Fourth*, using smarter, “tamper-evident” containers—containers that indicate to CBP officers at the port of arrival whether they have been tampered with after the security screening.

CSI continues to generate exceptional participation and support. The goal for the first phase of CSI was to implement the program at as many of the top 20 foreign container ports—in terms of volume of cargo containers shipped to United States seaports—as possible. Those ports account for nearly 70 percent of all cargo containers arriving at U.S. seaports. Today, the governments representing 19 of the top 20 ports have agreed to implement CSI, and I am confident that we will reach agreement with the 20th port very soon.

We announced the second phase of CSI in June 2003. Under CSI Phase II, we will implement CSI at other foreign ports that ship a significant volume of cargo to the United States, and that have the infrastructure and technology in place to support the program. We have already signed CSI agreements with Malaysia, Sweden, South Africa, and Sri Lanka. Once we have Phase II implemented, we anticipate that CSI will cover approximately 80 percent of the containers coming to the U.S.

Right now, CSI is operational in those foreign ports from which a majority of all cargo containers destined for the United States are shipped.

I want to express my gratitude to the Committee members for their support of CSI in FY'04. With the \$25 million increase in funding that we are requesting for CSI in FY '05, we will have CSI in place and operational at as many as 40 seaports around the world.

Immigration Security Initiative Officers (ISI)

Recently, we have started applying the concept underlying the Container Security Initiative (CSI), *i.e.*, pushing our zone of security beyond our borders, to the movement of people traveling to the United States. This effort originated with the legacy INS and its Immigration Control Officer (ICO) program. Through CBP, this continuing effort is being cultivated to better address the worldwide threat of terrorism.

The responsibility of the ISI program is to: 1) prevent the onward movement of people identified as presenting a security threat to the carrier or passengers on international flights destined to the U.S.; 2) disrupt and deter the smuggling of special interest aliens, fraudulently documented aliens and/or otherwise inadmissible aliens destined to the U.S.; 3) provide advance notice of passengers to authorities at onward destinations whose true identity and purposes warrant a closer inspection; 4) collect law enforcement intelligence on known or suspected criminal aliens and smugglers; 5) apprehend and prosecute these individuals, through cooperation with host governments and other U.S. law enforcement agencies; and 6) provide training in fraudulent document detection, migration trends, passenger assessment and related topics to host governments and carrier personnel. The ISI will fulfill its responsibilities in accordance with the code of conduct for Immigration Liaison Officers (ILO) of the International Air Transport Association/Control Authority Working Group (IATA/CAWG).

Canada, Australia, the United Kingdom and the Netherlands have existing ILO programs stationed around the world. In concert with our international partners, the INS launched Operation Global Shield in October of 2002, deploying officers to numerous locations within major transit hubs in Central and South America, Europe, and the Far East. Operation Global Shield was a considerable success, resulting in 2,971 interceptions within a five-month period.

CBP is now building upon the lessons learned from Operation Global Shield as well as the experiences of our international partners to improve the ISI concept to better respond to the threat of international terrorism. The U.S. currently has over 70 legacy immigration personnel overseas; many of who are engaged in ISI related activities on a part time basis. CBP will work with these personnel to hone their skills to aid in the effort in preventing potential terrorists from boarding aircraft destined for the U.S.

C. Pushing our Zone of Security Outward—Partnering with the Trade

Customs-Trade Partnership Against Terrorism (C-TPAT)

The Customs-Trade Partnership Against Terrorism (C-TPAT) is a voluntary partnership between CBP and industry to secure international supply chains from end-to-end. Through C-TPAT, participants develop and maintain secure supply chains from the foreign factory floor to the ultimate destination in the U.S. CBP, in return, offers C-TPAT shipments expedited processing and provides C-TPAT participants with other benefits.

The program is rigorous. In order to join C-TPAT, a company must conduct a self-assessment of its current supply chain security procedures using C-TPAT security guidelines developed in partnership with logistics and security experts from the trade. A participant must also commit to increasing its supply chain security by addressing any vulnerabilities that exist. Perhaps most importantly, participants also make a commitment to work with their business partners and customers throughout their supply chains to ensure that those businesses also increase their supply chain security. By leveraging the influence of importers and others on different participants in the supply chain, C-TPAT is able to increase security of U.S. bound goods at the time of container stuffing. This reach—to the foreign loading dock—is critical to the goal of increasing supply chain security.

Although C-TPAT is a partnership, we are not simply taking the participants at their word when it comes to their supply chain security. As a former President once said: “Trust, but verify.” Applying this lesson, we have created a cadre of specially trained supply chain security specialists to validate the commitments made by C-TPAT participants—to ensure that they are increasing supply chain security as they have promised CBP. These specialists meet with personnel from C-TPAT participants and their business partners and observe the security of their supply chains, including security at overseas loading docks and manufacturing plants. Through this process, we work with C-TPAT participants to identify ways that they can further increase their supply chain security and we ensure that companies that are not honoring their commitments lose their C-TPAT privileges.

C-TPAT is currently open to all importers, cross-border air, sea, truck, and rail carriers, brokers, freight forwarders, consolidators, non-vessel operating common carriers (NVOCCs), and U.S. Marine and Terminal operators. We are currently enrolling certain foreign manufacturers in the C-TPAT program as well, and we will continue to develop ways to include this important element of the supply chain in the program. The intent is to construct a supply chain characterized by active C-TPAT links at each point in the logistics process.

As of March 12, 2004, the C-TPAT participation and validation numbers are as follows:

	Partners	Security Profile Received	Certified Partners	Insufficient Security Profiles	Validations Initiated
Importers	3826	2763	1861	450	310
Carriers	1178	1018	591	155	185
Brokers / Forwarders	1196	1037	822	74	206
Foreign Manufacturers	202	120	90	22	0
Marine Port Auth. & Terminal Op.	43	37	26	9	20
Total	6445	4975	3390	710	721

Free and Secure Trade (FAST)

Building on C-TPAT, we have created the Free and Secure Trade (FAST) program with Canada and Mexico. This program increases the supply chain security of goods moving across our land borders and also facilitates the movement of legitimate commerce by aligning customs processes on both sides of the border and offering the most expedited customs processing available on the land border. To be eligible for FAST processing, importers, carriers, and manufacturers (on the southern border) must participate in C-TPAT and must use a FAST-registered driver. Because each participant must meet C-TPAT supply chain criteria and the driver must be vetted by CBP (including exhaustive database checks and a personal interview), the FAST program substantially increases the security of supply chains across our northern and southern borders. And because FAST relies on advanced electronic data transmissions and transponder technology, CBP can offer FAST shipments the most expedited clearance procedures available today. With these procedures in place, CBP can focus its security efforts and inspections where they are needed most—on high-risk commerce.

FAST is currently operational at 11 major northern border crossings and 2 major southern border crossings. The program will expand to additional locations in FY '05.

I would like to thank the Committee for its consistently strong support for C-TPAT and FAST. The \$15 million funding increase we have sought for C-TPAT in FY '05 will enable us to continue to expand both programs by enrolling additional participants. It will also allow us to add a substantial number of supply chain security specialists to our ranks, thereby ensuring that as the program grows, we will be able to conduct an appropriate number of validations. As a result, we will substantially increase the security of our international supply chains.

D. Using Technology to Detect Weapons of Mass Destruction at our Ports of Entry

As trade increases, CBP's reliance on Non-Intrusive Inspection (NII) technology to secure the borders becomes more and more critical. Only by using NII technology to speed the inspections process for weapons of mass destruction and contraband

can CBP meet its twin goals of increasing security and at the same time facilitating trade.

CBP uses various technologies in different combinations to substantially increase the likelihood that a nuclear or radiological weapon or weapons grade material will be detected. In addition, CBP uses NII technology to detect and interdict narcotics, currency and other contraband secreted in large containers and commercial shipments. Technologies deployed to our nation's land, sea and air ports of entry include large-scale X-ray and gamma-imaging systems—systems that can image the contents of an entire container in seconds. These systems include the Vehicle and Cargo Inspection System (VACIS), Mobile VACIS, Truck X-ray, Mobile Truck X-ray, Rail VACIS, Mobile Sea Container Examinations Systems and the Pallet Gamma-ray System. In September 1996, our first large-scale NII system, a Truck X-ray, became operational in Otay Mesa, California. Today, we have 145 large-scale NII systems deployed.

In addition, we have developed and begun implementing a national radiation detection strategy. Pursuant to that Strategy, we are deploying nuclear and radiological detection equipment to include personal radiation detectors (PRDs), radiation portal monitors (RPMs) and next generation radiation isotope identifier devices (RIIDs). In combination with our layered enforcement strategy—working overseas to prevent the proliferation of nuclear materials and to detect them before they are shipped to the U.S.—and our use of multiple inspection technologies, these tools currently provide CBP with significant capacity to detect nuclear or radiological materials. Our FY '05 request for \$50 million would provide CBP with the funding to continue to purchase and deploy the technologies needed to implement its national radiation detection strategy.

E. Using Technology to Detect and Monitor Illegal Crossings Between our Ports of Entry

Integrated Surveillance Intelligence System (ISIS)

ISIS is a critical part of CBP's strategy to build smarter borders. By using remotely monitored night-day camera and sensing systems, the Border Patrol can better detect, monitor, and respond to illegal crossings. This, in turn, is critical to the Border Patrol's ability to increase its apprehension capabilities, particularly along our northern border. As a result, the deployment of ISIS is a critical component of the Border Patrol's revised National Strategy to prevent terrorists from entering the U.S. and to gain control of our nation's borders.

ISIS consists of three independent components: 1) the remote video surveillance (RVS) camera system; 2) sensors; 3) the Integrated Computer Assisted Detection (ICAD) database. The RVS system integrates multiple color, thermal and infrared cameras, which are mounted on various structures, into a single remote controlled system. The network of sensors consists of seismic, magnetic and thermal devices used to detect and track intrusions. ICAD software components assist in the coordination and data collection of agent deployment in response to sensor alarms.

The \$64.1 million in ISIS funding sought in '05 would enable CBP to broaden substantially its ISIS coverage of the northern and southern borders—to deploy the system where no ISIS coverage currently exists. This is important because Border Patrol experience has shown that in locations where ISIS is deployed, fewer agents can do a better job of securing the border. ISIS acts as an important force-multiplier that allows Border Patrol agents to remotely monitor the border and respond to specific illegal border crossings rather than having to exhaustively patrol an area adjacent to the border. By contrast, Border Patrol operations without ISIS support are not only less effective, they are more resource-intensive and less safe for Agents.

Unmanned Aerial Vehicles (UAVs)

Like ISIS, Unmanned Aerial Vehicles (UAVs) are both an important part of the smarter border strategy and an essential element of the Border Patrol's revised National Strategy. UAVs equipped with sophisticated on-board sensors have the potential to provide unparalleled surveillance capability. UAVs provide long-range surveillance. As a result, they are especially effective force-multipliers because they have the capacity to remain on station much longer than other airborne assets, and are particularly useful for monitoring remote land border areas where patrols cannot easily travel and infrastructure is difficult or impossible to build.

UAVs will perform missions involving gathering intelligence on border activities as well as conducting surveillance over open water along the Gulf Coast, the Florida peninsula and the Great Lakes region on the northern border. The high endurance of the larger classes of UAVs permits uninterrupted overnight or around-the-clock coverage, and the size and operating altitudes can make UAVs effectively undetectable by unaided human senses. UAVs will also contribute to enforcement

effectiveness and officer safety by providing communications links for coordinating multiple units on the ground is important in remote border operating areas.

The \$10 million in funding sought for UAVs will enable CBP to capitalize more fully on the UAV research that has taken place in a military context, and to apply UAVs in support of the Homeland Security mission. The funding would allow CBP to deploy and operate a system of unmanned aerial vehicles in support of the Border Patrol and other components of Customs and Border Protection. The use of UAVs will complement the other intrusion detection and intelligence gathering components of the border surveillance network to meet the mission of stopping the illegal entry of terrorists, smugglers and others into the United States.

IV. Automation / Information Technology

Mr. Chairman, no discussion of a successful strategy to protect the American people and the American economy in the 21st century would be complete without consideration of the central importance of automation and information technology to CBP's mission.

A. Automated Commercial Environment

The Automated Commercial Environment (ACE) is an important project for CBP, for the business community, for our country, and for the future of global trade. If done properly, it will reform the way we do business with the trade community. It will also greatly assist CBP in the advance collection of information for targeting high-risk cargo to better address the terrorist threat. And in doing so, it will help us expedite the vast majority of low-risk trade.

The successful implementation of ACE has been and continues to be one of my top priorities as Commissioner. Increasing support from Congress and the Administration for ACE has been essential to the development of the new system. Funding of \$319 million in FY '04 has enabled us to continue development and begin to deliver on the first installment of ACE benefits to the trade community. Indeed, since my testimony last year, I can tell you that the development of ACE and the efforts to put its capabilities to work on America's borders have continued full throttle while CBP works with the Homeland Security Investment Review Group to analyze the existing IT systems being used by DHS agencies, identify redundant technology investments, and plan for the DHS's IT architecture. Among many other accomplishments, this past year brought ACE release 2 to the public for the first time. Currently, 50 importer accounts and related CBP personnel have access to the ACE Secure Data Portal to conduct their CBP business transactions on-line. This portal provides reliable, secure, high-speed access to critical information. When fully deployed, this will be the basic tool by which all users within the trade community and government access ACE.

I want to thank Congress again for its past support of ACE. The continued support of ACE with \$322 million in funding for FY '05 will enable us to keep pace with our schedule for ACE releases in 2004 and 2005. Those include:

- Summer 2004—Release 3 (Account Revenue: Periodic Statements and Payments): Initial account revenue will be enabled, allowing accounts to centralize payment processing and utilize periodic statement and payment capabilities as well as ACH Credit and Debit.
- Winter 2005—Release 4 (Truck Manifest and e-Release): Cargo Processing will be introduced with the implementation of Automated Truck Manifest and Preferred & e-Release for trucks. This will allow for quicker entry for pre-filed and pre-approved cargo.

B. International Trade Data System (ITDS)

One important, fully integrated component of ACE is the International Trade Data System (ITDS). The ITDS initiative is an e-Government strategy being designed, developed, and deployed jointly with ACE that will implement an integrated, government-wide system for the electronic collection, use, and dissemination of the international trade transaction data required by the various trade-related federal agencies.

ITDS will simplify and streamline the regulation, promotion, and analysis of international trade. It will also assist importers, exporters, carriers, and brokers in complying with federal trade, transportation, and other regulations by streamlining business processes. ITDS is customer focused and will serve as the government's "single window" into international trade data collection and distribution.

In conjunction with ACE, ITDS will also improve risk assessment. By centralizing and integrating the collection and analysis of information, ACE will enhance CBP's ability to target cargo, persons, and conveyances. The trade data will allow for advanced inter-agency assessment of risks and threats to determine which goods and

people must be scrutinized. In addition, Through ACE, the ITDS will be capable of linking the government's law enforcement and other databases into one large-scale relational database that tracks all commerce crossing our borders. ITDS thus extends the functionality of ACE+ by bringing together critical security, public health, public safety, and environmental protection agencies under a common platform.

The \$5 million increase we are requesting in the FY '05 budget for ITDS will allow us to ensure integration of ITDS with key federal agencies, and keep us on schedule to have full functionality rolled out by winter 2006–2007.

V. Other Traditional Missions

Although CBP's priority mission is preventing terrorists and terrorist weapons from entering the United States, we know that we must—and will—accomplish that priority mission while continuing to perform our traditional missions well. Included among those missions are our responsibilities for interdicting drugs, apprehending individuals who enter the United States illegally, regulating and facilitating international trade, and protecting U.S. agricultural and economic interests from harmful pests and diseases.

A. Drug Interdiction

Our counterterrorism and counternarcotics missions are not mutually exclusive, and one does not necessarily come at the expense of the other. The initiatives we have put in place to prevent terrorists and terrorist weapons from entering the United States have enabled us to be more effective in seizing other illegal contraband, including illegal drugs. Indeed, one of the first results we saw after implementing ATS for commercial trucks on the land border was a large narcotics seizure from a targeted shipment. And, it is worth noting that the lessons we have learned in our battle against international drug trafficking will help us in the fight against international terrorism.

It would be a grave mistake for drug traffickers and other criminals to misinterpret our focus on terrorism as a weakening of resolve on other fronts. If anything, we have made life even more miserable for drug smugglers as we have intensified our overall presence along America's borders. Our heightened state of security along America's borders has strengthened, not weakened, our counternarcotics mission. As we have added staffing for both inspectors at the ports of entry and Border Patrol Agents between the ports of entry, acquired more inspection technology, conducted more questioning of travelers, and carried out more inspections of passengers and goods in response to the terrorist threat, we have seized greater amounts of narcotics. In FY '03, for example, we seized more than 2.2 million pounds of illegal drugs, and made some of the largest individual seizures ever recorded by officers safeguarding our borders.

Effective coordination between inspectors at the ports of entry and agents who carry out investigative activities is essential to the success of our counternarcotics mission. For that reason, CBP will continue to cooperate closely with special agents from U.S. Immigration and Customs Enforcement to carry out this mission.

B. Apprehending individuals entering illegally between the ports of entry

The Office of the Border Patrol is specifically responsible for patrolling the 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. Its primary task is securing America's borders between official ports of entry by preventing the illegal entry of people, goods, and contraband across our borders.

The Border Patrol relies on agents, enforcement equipment (such as a fleet of specialized aircraft and vehicles of various types), technology (such as sensors and night vision cameras), tactical infrastructure (such as roads and vehicle barriers), and intelligence to carry out its mission. Applied in the correct combination, these resources can effectively deter, detect, monitor, and respond to illegal border crossings, as we have seen in locations such as the San Diego Sector and during operations such as Desert Safeguard.

In FY '03, the Border Patrol played a key role in safeguarding the United States from the entry of terrorists, criminals, and illegal immigrants. Among the 931,557 people apprehended by the Border Patrol in FY '03 were:

- Two Indian aliens illegally in the United States who were wanted in Canada for attempted murder after they allegedly tied-up, tortured, doused in gasoline, and lit a person on fire;
- One of the ten most wanted criminals in Texas;
- An Iranian citizen illegally in the United States with an extensive criminal history and who may have been involved in bomb making and other serious illegal activity at the time of his arrest at the San Clemente checkpoint;

- A Turkish citizen illegally in the United States who may have been involved in serious illegal activity at the time of his arrest at McAllen International Airport; and
- An alleged resident of the United Arab Emirates illegally in the United States who may have been involved in serious illegal activity at the time of his arrest in Louisiana.

Building on these gains, and drawing on the lessons we learned during Desert Safeguard, CBP is working with other agencies and the Mexican Government to implement the Arizona Border Control Initiative this year. Under this initiative, CBP will substantially reduce the number of illegal entries that occur in Arizona this year and, as a result, will reduce the number of deaths that occur as aliens try to cross the Arizona desert during the warmest months of the year.

C. Preventing individuals from entering illegally at the ports of entry

With respect to preventing individuals from entering the country illegally at the ports of entry, CBP continues to stop hundreds of thousands of people a year who are inadmissible into the U.S. for a variety of reasons, including prior immigration violations, criminal history, or the possession of false or fraudulent documents.

We are helped in this effort by our close work with the Department of State to ensure CBP inspectors have the tools they need to verify the identity of visa holders and the authenticity of visas issued by the Department of State. Data on holders of immigrant visas is transferred electronically to ports of entry. When the electronic record is updated to reflect an immigrant's admission at a port of entry, that data is transferred electronically to the Bureau of Citizenship and Immigration Services (CIS) for production of a permanent resident card and creation of the immigrant file.

More importantly, with the successful implementation of US VISIT at our international airports earlier this year, CBP officers now have access to photographs and data transmitted electronically by the Department of State relating to holders of nonimmigrant visas. This permits officers on the primary line to review visa application data and verify the identity of the holder. This has virtually eliminated the possibility that a traveler could use a false or fraudulent visa to enter the U.S..

D. Regulating and facilitating international trade

CBP maintains responsibility for regulating and facilitating legitimate international trade. As I mentioned earlier, many of the initiatives CBP implements serve the twin goals of increasing security and facilitating trade. With the right level of industry partnership and the right combination of resources, we can succeed not only in protecting legitimate trade from being used by terrorists, we can actually build a better, faster, more productive system of trade facilitation for the U.S. economy.

We have continued to work with the trade on these matters over the past year, and we will continue to do so in the year ahead. For example, we worked with all segments of the maritime trade to make changes to the 24-hour rule and our computer systems to better facilitate the movement of sea containers in our domestic seaports and to inland destinations. We also worked very closely with the trade to craft and implement our Trade Act regulations, and we will continue this process during the rest of this year. Finally, we have partnered with the trade and technology companies to design and test a smarter, more secure sea container. More importantly, members of the trade are using this container. Through C-TPAT, we have partnered with several large importers to begin using these containers, and we expect to see their use rise substantially in the months ahead.

E. Protecting U.S. agricultural and economic interests and the food supply

CBP now oversees the enforcement of the laws and regulations pertaining to the safe importation and entry of agricultural food commodities into the U.S. The traditional goals of the Agriculture Inspections (AI) program have been to reduce the risk of introduction of invasive species into the U.S., protect U.S. agricultural resources, maintain the marketability of agricultural products, and facilitate the movement of law-abiding people and commodities across the borders. Accordingly, inspecting potentially high-risk travelers and cargo is critical to keeping the prohibited items out of the U.S., monitoring for significant agricultural health threats, encouraging compliance with regulations, and educating the public and importers about agricultural quarantine regulations.

With the creation of CBP, the AI program has expanded its focus to include a new priority mission of preventing potential terrorist threats involving agriculture. Indeed, the threat of intentional introductions of pests or pathogens as a means of biological warfare or terrorism is an emerging concern. To address this threat and to

enhance its traditional AI missions, CBP has already begun using the Automated Targeting System, and its collective expertise regarding terrorism and agriculture, to strengthen our ability to identify shipments that may pose a potential risk to our agricultural interests.

In addition, CBP has worked closely with the Food and Drug Administration (FDA) to implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to guard against threats to the food supply. In the last several months, we have modified our electronic data collection systems to collect data from the trade required under the Bioterrorism Act, implemented a joint risk-management system for food shipments with FDA that builds off our Automated Targeting System, and commissioned CBP officers to utilize FDA authorities in certain circumstances at the ports of entry. These efforts have built on our priority and traditional missions to make the food supply more secure, and will be supported in part by the targeting funding sought in the FY '05 budget.

VI. Conclusion

Mr. Chairman, Members of the Subcommittee, I have outlined a broad array of initiatives today that, with your assistance, will help CBP continue to protect America from the terrorist threat while fulfilling our other traditional missions. Because of your support, and because of the creation of DHS and CBP, we are far safer today than we were on September 11th. But our work is not complete. With the continued support of the President, DHS, and the Congress, CBP will succeed in meeting the challenges posed by the ongoing terrorist threat and the need to facilitate ever-increasing numbers of legitimate shipments and travelers.

Thank you again for this opportunity to testify. I would be happy to answer any of your questions.

Chairman CRANE. Thank you, Commissioner. Now, Secretary Garcia.

STATEMENT OF THE HONORABLE MICHAEL J. GARCIA, ASSISTANT SECRETARY FOR U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. GARCIA. Thank you, Mr. Chairman. Good morning. Good morning, Mr. Levin, distinguished Members of the Subcommittee. It is a pleasure to be with you today to discuss the integration of the former U.S. Customs Service into ICE within DHS, as well as to discuss the resources required to carry out our mission. At the Committee's request, my remarks today will focus on how ICE has integrated the legacy Customs mission into our agency as well as address how we are prioritizing and funding that Customs mission.

Within ICE, the Office of Investigations continues the legacy Customs mission through investigations of criminal violations that involve national security; financial and smuggling crimes, including commercial fraud; intellectual property rights violations; illegal arms exports; narcotics and other forms of smuggling; cyber crimes; child pornography; and child exploitation.

We understand that after September 11, keeping sensitive U.S. technology and weapons out of the hands of terrorists and world regimes has never been more important. The ICE helps protect national security by preventing the illegal importation, exportation, and transfer of weapons of mass destruction, arms munitions, and critical technology. In fiscal year 2003, ICE launched hundreds of cases, investigations, into the illegal export of arms and strategic technology.

The ICE also protects the integrity of the U.S. trade system through enforcement of trade laws. One way we do that is through

identification, disruption, and dismantling of organizations that smuggle contraband and people into the United States, including targeting organizations that commit commercial fraud. In fiscal years 2003 and 2004, ICE special agents were responsible for the seizure of approximately \$238 million in fraud-related merchandise, 280 arrests, 210 indictments, and 135 convictions for fraud violations.

Identifying and eliminating vulnerabilities in U.S. financial and trade systems is the goal of ICE's Cornerstone operation. Cornerstone is an excellent example of how we are integrating those Customs authorities within ICE, and as a result, we are more effective in identifying vulnerabilities in the financial and trade sectors, vulnerabilities that terrorists and other criminals might exploit to earn more, or store illicit proceeds to finance their other operations.

Terrorists can earn money through intellectual property violations and other commercial fraud, such as cigarette smuggling, export violations, and cyber crime; move illicit proceeds through unlicensed money brokers, insurance fraud, and bulk currency smuggling; and store their money through the purchase of gold and other precious metals.

Through Cornerstone, we have made tremendous progress in the fight against financial crime and money laundering. In just over 1 year, ICE has seized nearly \$309 million in suspect currency and we have affected nearly 1,700 arrests. I would like to tell you just a few stories behind these numbers, stories that show the potential for terrorists and other criminals to earn, move, and store proceeds through this type of criminal activity.

In Operation Meltdown, ICE worked with the Internal Revenue Service to uncover a scheme in which jewelers were converting proceeds of drug sales into the equivalent value in gold. They then melted the gold and fashioned it into things like hammers and wrenches and shipped the items to Colombia, where it was sold and converted back to cash. This investigation resulted in 23 arrests.

In another recent case, ICE investigations uncovered a scheme in which an Egyptian-born investor was allegedly routing cash from the militant terrorist group Hamas through the New Jersey investment firm into various business charities and real estate ventures in the United States. It is believed that he then diverted millions of dollars in proceeds from these investments to Hamas and other terrorist organizations. Since the statute of limitations had expired on most of his financial transactions, he was in prison on immigration charges after we discovered that he made false statements on his immigration applications. This case is an excellent example of how ICE is using every tool at our disposal, including our authorities under the immigration law, to shut down money laundering networks.

Before turning briefly to the budget request, I would like to mention another ICE division that continues another important legacy Customs division, and that is the Air Marine Operations (AMO) Division. Within ICE, AMO is a stand-alone division that provides air space security, law enforcement support, and an interdiction capability, and has become an integral part of the ICE and DHS mission.

The Customs mission within investigations and AMO are well represented in the President's 2005 budget, which will continue to strengthen ICE's efforts to protect the homeland as well as continue its traditional enforcement missions. The President's 2005 budget request seeks slightly more than \$4 billion for ICE, \$302 million more than in fiscal year 2004, which represents an increase of 8 percent for the integrated customs and immigration enforcement mission.

I am confident that the ICE request for fiscal year 2005 will enable ICE to continue its aggressive enforcement of customs laws. By cross-training all of our approximately 5,500 special agents, we increase the resources available to enforce our broad authorities, including those authorities exercised under Cornerstone and our other legacy Customs programs and priorities.

The President's 2005 budget also seeks \$373 million in AMO appropriations and seeks \$40 million in enhancements. While many challenges lie ahead for ICE, we continue to build a premier law enforcement agency from the powerful tools and authorities we have been given. I look forward to working with the Subcommittee as it completes the budget process for fiscal year 2005. Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement, and of course we would be happy to answer any questions you have.

[The prepared statement of Mr. Garcia follows:]

Statement of The Honorable Michael J. Garcia, Assistant Secretary for U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security

I. Introduction

Good morning, Chairman Crane, Mr. Levin, and distinguished Members of the Subcommittee. It is a pleasure to be with you today to discuss the integration of the former U.S. Customs Service into Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS), as well as discuss the resources required to carry out our mission.

ICE is comprised of some of our Nation's oldest and most recognizable law enforcement agencies. Even though we are a new agency, ICE remains committed to enforcing and enhancing the traditional law enforcement mandates of our legacy agencies while at the same time using all of our resources and authorities in the fight for homeland security.

The mission of homeland security is to address vulnerabilities—vulnerabilities that expose our borders to infiltration, our financial systems to exploitation and that weaken our national security. The ICE mission is to implement pro-active initiatives aimed at closing vulnerabilities and strengthening national security.

At the committee's request, my remarks today will focus on how ICE has integrated the legacy Customs mission into our agency, as well as address how we are prioritizing and funding the Customs mission. I will focus on the two key divisions within ICE, which received legacy Customs missions: the Office of Investigations and the Office of Air and Marine Operations.

II. Office of Investigations (OI)

OI investigates criminal violations that involve national security, financial and smuggling crimes including commercial fraud, intellectual property rights, illegal arms exports, narcotics and alien smuggling, human trafficking, cyber crimes and child pornography and child exploitation. OI has 27 principal field offices throughout the United States and approximately 50 international offices throughout the world.

In the post 9/11 world keeping sensitive U.S. technology and weapons out of the hands of terrorists and rogue regimes has never been more important. The **National Security Investigations Division** oversees investigative programs designed to protect our national security by preventing the illegal importation, exportation, and transfer of weapons of mass destruction, arms munitions and critical technology. In FY 2003, ICE launched roughly 3,000 investigations into the illegal

export or arms and strategic technology. ICE agents have had some incredible successes. To cite but one example, last year our agents uncovered the sale of missile and fighter jet components to an Iranian front company. Among the items allegedly exported were components for Hawk missiles, F-14 fighter jets, F-5 fighter jets, F-4 fighter jets, C-130 military aircraft, military radars, and other equipment.

Another way ICE protects the integrity of the U.S. trade system is through enforcement of trade laws under the **Smuggling and Public Safety Division**, which oversees programs designed to identify, disrupt, and dismantle organizations that smuggle contraband and people into the United States, including targeting the organizations that commit commercial fraud. The Commercial Fraud Unit investigates violations of trade laws involving: (1) in-bond diversion; (2) forced child/prison labor; (3) health and safety concerns; (4) textiles; (5) environmental crimes; (6) tobacco smuggling; (7) anti-dumping/countervailing duties; and (8) North American Free Trade Agreement (NAFTA) enforcement.

In FY 2003 and FY 2004, ICE Special Agents were responsible for the seizure of approximately \$238 million dollars in merchandise, 280 arrests, 210 indictments, and 135 convictions for fraud violations.

Identifying and eliminating vulnerabilities in our financial and other parts of our trade system is the responsibility of the Financial Investigations Division. This division leads the ICE initiative known as "Cornerstone," a comprehensive law enforcement initiative that partners with the private sector to identify vulnerabilities in both the trade and financial sectors. I would like to spend a few extra minutes to discuss Cornerstone and give you some examples of the successes we have had in shutting down homeland security vulnerabilities.

Cornerstone

As I mentioned at the opening of my remarks, the ICE mission is to close vulnerabilities that could be exploited by criminals or terrorists. These vulnerabilities could be in the trade system, the financial system or the Immigration system. By enforcing the law and maintaining the integrity of these systems, we help close these vulnerabilities. Cornerstone is an excellent example of how we are integrating customs and immigration authorities and, as a result, we are more effective in identifying vulnerabilities in the financial and trade sectors—vulnerabilities that terrorists and other criminal organizations might exploit to earn, move or store illicit proceeds to finance their operations.

Terrorists can **earn** money through intellectual property violations and other commercial fraud such as cigarette smuggling, export violations, and cyber crimes; **move** illicit proceeds through unlicensed money brokers, insurance fraud and bulk currency smuggling; and **store** their money through the purchase of gold and other precious metals.

Through Cornerstone we have made tremendous progress in the fight against financial crime and money laundering. In just over one year, ICE has seized nearly \$309 million in suspect currency, and we have ~~effected~~made nearly 1,700 arrests.

I'd like to tell you a few stories behind these numbers: stories that show the potential for terrorists to earn, move and store their proceeds through this criminal activity. In Operation Meltdown, ICE agents worked with the IRS to uncover a scheme in which jewelers were converting the proceeds of drug sales into the equivalent value in gold. They then melted the gold and fashioned it into things like hammers or wrenches, and then shipped the items to Colombia where it was sold and converted back to cash. Our investigation of this case resulted in 23 arrests.

Last summer ICE agents investigated a case in which a Brooklyn jeweler was arrested for illegally transferring \$30,000 that was intended as a down payment on a shoulder-fired anti-aircraft missile. ICE agents also shut down a business in Manhattan that had illegally funneled \$33 million to Pakistan, in addition to selling fake passports and travel documents.

In another recent case, ICE investigators uncovered a scheme in which an Egyptian-born investor was allegedly routing cash from the militant terrorist group Hamas through his New Jersey investment firm into various businesses, charities, and real estate ventures in the United States. It is believed that he then diverted several million dollars in proceeds from these investments to Hamas and other terrorist organizations. Since the statute of limitations had expired on most of his financial transactions, he was imprisoned on immigration charges after we discovered that he had made false statements when he applied to become a naturalized U.S. citizen.

This case is an excellent example of how ICE is using every tool at our disposal—including our authority to enforce immigration law—to shut down money laundering networks and put their operators out of business. In fact, it is interesting to note

that in 122 of our financial cases and in 119 of our drug smuggling cases we were able to add immigration violations to those financial or drug-related investigations.

Traditionally, criminals engaged in the manufacture, distribution or sale of counterfeit and pirated products reap large profits with a relatively low risk of prosecution. As a result, IPR crimes are vulnerable to exploitation by terrorists and other criminal organizations. Cornerstone aims to change that equation through aggressive enforcement of IPR law. In FY 2003 ICE IPR investigations resulted in 132 arrests and 60 convictions. Working with U.S. Customs and Border Protection (CBP), our enforcement efforts resulted in 6,500 seizures of counterfeit merchandise, with a Manufacturers Suggested Retail Price (MSRP) of \$94,019,227. In the first six months of FY 2004, ICE agents executed 272 seizures of counterfeit merchandise, with an MSRP of \$18,967,325 and effected 123 arrests for IPR violations.

A recent IPR investigation conducted by ICE New York, "Operation Executive," identified individuals and organizations that were responsible for the large-scale smuggling of counterfeit trademark merchandise into the United States from the People's Republic of China. The deals were brokered through middlemen in Lebanon. This organization is suspected of being responsible for the importation of 100 containers of counterfeit goods with an MSRP of \$400 million dollars. ICE agents arrested 14 subjects, seized containers valued at approximately \$24 million dollars, and seized nearly \$100,000 in currency.

Tobacco smuggling also provides a lucrative source of funding for terrorists and other criminal organizations. In January of this year, ICE dismantled the largest nationwide tobacco smuggling organization to date and arrested 15 defendants. The 92-count indictment charged the defendants with tobacco smuggling and money laundering, among other offenses. The organization was responsible for the movement of more than 10,000 cases of counterfeit and contraband cigarettes and over 100 cases of liquor worth approximately \$20 million dollars.

Child Pornography/Child Exploitation

Before ending my discussion of Investigations, I want to highlight another area where ICE has been particularly successful. ICE has aggressively pursued its customs mission of protecting children against exploitation—either through the trade in child pornography or through the child sex tourism. In July 2003 ICE launched Operation Predator to protect children from human traffickers, child pornographers and other predatory criminals. This operation combines the immigration authorities to arrest and deport felons with convictions for sex offenses with the customs child pornography authorities. In less than one year, we have arrested 3,023 predators. As part of Operation Predator, ICE has an ongoing investigation into subscribers of commercial child pornography websites. This investigation has yielded 344 domestic investigations and 108 arrests, as well as 384 foreign arrests during FY 2004. ICE has prioritized arrests in these investigations by targeting first those who have access to children such as pediatricians, camp counselors, and others in positions of trust in the community. ICE has also targeted predators who travel abroad to have sex with minors. Through enforcement of the Protect Act, ICE made the first five arrests under this year-old statute that prohibits travel from the United States for child sex purposes.

III. Office of Air and Marine Operations (AMO)

Under the former U.S. Customs Service (USCS), AMO was a support component within USCS Investigations that focused mainly on drug interdiction. In ICE, AMO is a stand-alone division that provides airspace security, law enforcement support, and interdiction capabilities and has become an integral part of the ICE mission. AMO has over 1,000 employees with just over half of that number serving as pilots, marine enforcement officers and aviation enforcement officers. AMO maintains a fleet of 133 aircraft and 82 vessels to protect the Nation and the American people against the terrorist threat and the smuggling of narcotics and other contraband.

An essential element of these deployments is the work carried out by the Air and Marine Operation Center (AMOC), located in Riverside, California. This state-of-the-art center is linked to a wide array of civilian and military radar sites, aerostats, airborne reconnaissance aircraft and other detection assets, which provide 24-hour, seamless radar surveillance throughout the continental United States, Puerto Rico, the Caribbean, and beyond. AMOC allows ICE to identify, track, and support the interdiction and apprehension of those who attempt to enter U.S. airspace with illegal drugs or terrorist objectives.

AMO has also provided airspace security for a variety of events including the 2002 Winter Olympics, the 2003 and 2004 Super Bowls and is supporting airspace security efforts in the National Capital Region. In addition, AMO augments Coast Guard port security patrols and provides transportation and surveillance support for

the FBI, ATF and Secret Service. AMO also provides enhanced airspace security during periods of high alert.

IV. Budget Request for FY 2005

The President's FY 2005 budget will continue to strengthen ICE's efforts to protect the homeland, as well as continue its traditional enforcement missions. The President's FY 2005 Budget request seeks \$4.011 billion for ICE, \$302 million more than FY 2004, which represents an increase of 8 percent. This request for ICE includes resources to support border, air and economic security activities. I would like to specifically discuss with you the FY 2005 requests for the Office of Investigations and Air and Marine Operations.

The OI budget request for FY 2005 includes \$1.046 billion for investigations and intelligence programs. I am confident that the request for FY 2005 will enable ICE to continue its aggressive enforcement of customs laws. By cross training all of our approximately 5,500 special agents, we increase the resources available to enforce our broad authorities, including Cornerstone and other priorities.

The FY 2005 President's budget seeks \$374 million in Air and Marine Operations (AMO) appropriations and seeks \$40.5 million in total enhancements, including:

- \$28 million for Increased P-3 Flight Hours. P-3 aircraft are critical to interdiction operations in the source and transit zones as they provide vital radar coverage in regions where mountainous terrain, expansive jungles and large bodies of water limit the effectiveness of ground-based radar. This request will increase P-3 flight hours from 200 to 600 per month.
- \$12.5 million for Long Range Radar. Primary Long Range Radar provides position information (geographic/altitude) of airborne objects and flight data information to civil aviation, defense, and law enforcement agencies. ICE uses the radar to receive data for drug interdiction efforts along the southern border.

V. Conclusion

The FY 2005 budget request for ICE supports the President's National Strategy for Homeland Security, the framework for accomplishing our complex mission to protect the homeland, and ICE's mission to enforce customs and immigration laws.

While many challenges lie ahead, we continue to build a professional law enforcement agency from the powerful tools and authorities we have been given. I look forward to working with the Committee as it completes the budget process for FY 2005.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I would be happy to answer any questions you may have at this time.

Chairman CRANE. Thank you, Mr. Secretary. Commissioner Bonner, at a recent briefing, CBP presented us with its mission statement. The first three bullet points were entirely devoted to security. Trade concerns were not mentioned until the fourth point, and even there, the focus was on enforcing laws rather than facilitating trade, stating, quote, "We steadfastly enforce the laws of the United States while fostering our Nation's economic security through lawful international trade and travel," close quote. What assurances can you give this Committee that CBP is sufficiently prioritizing trade facilitation?

Mr. BONNER. Well, first of all, Mr. Chairman, I would say that that mission statement, of course, is the mission statement that is put out to the frontline employees. I think correctly understood, I have stated it many times that not only am I personally committed to trade facilitation and the trade issue and the trade side of Customs, but Customs and now CBP is strongly committed to its trade facilitation role.

I think I have made that very abundantly clear, both in my conversations with the trade community, and I have many—I was just actually up yesterday to the American Association of Exporters and Importers convention in New York. I think every manager in CBP

understands that an important part of our mission is not just security but it is trade facilitation and that those things don't have to be mutually exclusive. We also have, by the way, Mr. Chairman, I think a very good outreach program through our Office of Trade Relations at CBP.

Last, I would just say that the issues of security and trade facilitation are interrelated issues. We look at them as it is not that it is either one or the other, that we have to perform our security mission at the border, and that is prevent terrorists or terrorist weapons from entering. At the same time, we have to do it in a way that maintains the movement, the free flow of movement of trade and people into the United States. So, these are interrelated issues and that is the way we have viewed them. That is the way we have approached them with our initiatives since 9/11, and that is the way we will continue to approach them, and that is that there is a strong focus not just on the security side, but also on how we facilitate the movement of goods and trade into the United States.

Chairman CRANE. Thank you, Commissioner. Secretary Garcia, in the ICE fiscal year 2005 budget brief, it appears that every new initiative being pursued by ICE is in the area of immigration. There are no new Customs initiatives planned for fiscal year 2005. Is the current level of resources dedicated to customs enforcement sufficient given the dramatic increase in trade volume?

Mr. GARCIA. Thank you, Mr. Chairman. To go to the budget, several points. One, there are increases for Air and Marine, traditional Customs mission. You are correct that there is no enhancement directly targeted to any particular Customs program. If you step back from the budget numbers and you look at what we are trying to accomplish under the President's fiscal year 2005 budget, you see that resources are being given to Detention and Removal Division within ICE in order to free up agents and agent hours that are now performing things like institutional removal in prisons.

Look back and see our 5,500 agents cross-trained, our Title VIII authority being used to leverage some of our Customs programs, and you will see, I believe, a dramatic increase in the ability of ICE to dedicate agent hours to all our programs as a result of that shift in responsibilities to Detention and Removal. You also see an enhancement for International Affairs. I know, Mr. Chairman, that you are well aware of the important work that our international offices do in terms of the traditional Customs enforcement mission.

I would like to give one example of this force multiplier leveraging idea with Title VIII and it is in the inbound diversion area. Traditionally, Customs has looked at the materials involved in inbound diversions. We are now going forward with a program to look at the bonded warehouses, the foreign trade zones, looking at the people who have access to this material, looking at immigration violations that can be used to leverage our cases in this area and make us more effective. That is just one example of how we are using this force multiplier concept, the Title VIII concept, in our Customs authorities, and I think a very successful program will follow from that and that effort.

Chairman CRANE. Thank you, and my last question is for both of you. The Trade Act of 2002 (P.L. 107-210) required the former U.S. Customs Service to implement a cost accounting system to identify expenses incurred in commercial and non-commercial operations by September 30, 2003. The Committee noted in its accompanying report that the Customs Service is currently unable to answer fundamental questions about how it spends money. It is my understanding that this cost accounting system has not been implemented. Do CBP and ICE plan to implement the accounting system required by law, and what is your anticipated timing for implementing this system?

Mr. BONNER. Let me take a stab at that, because first of all, several years ago, U.S. Customs, now CBP, implemented a Cost Management Information System. That system is in place and that is a system that is—whereby it is capable to determine how money is spent and what activities it is spent on. I have that capability right now, and we have certainly had it before September 30, 2003.

There may be a question here, and I want to get back to you, Mr. Chairman, on this, but there may be a question here as to how you fully account for, let us say, frontline inspector time in terms of what it is devoted to, and this gets into the issue, by the way, of the interrelationship between the commercial or non-commercial, between security and trade facilitation. If you have inspectors and you are extending more overtime to staff, more lanes to keep them open so that you can do your security but at the same time keep commercial trucks rolling across the border from Canada into the United States, it is serving both functions.

So, there may be an issue of cost accounting here, how you allocate the cost, let us say, of that inspector time. However, we do have a cost accounting system, and I can assure you, we can break down our costs and expenditures by types of activity. So, what I would like to do is to, if I could, get back to you in writing on your question just to make sure that I am accurate in terms of my response and that my response is complete.

[The information was not received at the time of printing.]

Chairman CRANE. Very good. Do you have any comments, Mr. Garcia?

Mr. GARCIA. Certainly, Mr. Chairman, we continue to work with Commissioner Bonner and CBP to put that system in place and would be happy to join with Mr. Bonner in his written submission to the Committee.

Chairman CRANE. Very good. Thank you. Mr. Levin?

Mr. LEVIN. Thank you. Let me mention, the schedule on the floor today is somewhat changed and a bill that came through this Committee just a couple days ago is coming up not tomorrow but today, and I think the debate on the rule on it perhaps has already started. So, if we move in and out of the hearing, it will be more than we expected to occur.

Commissioner, let me ask you about the problem of collecting duties, anti-dumping duties. Your report, I think it was in March, the report that came from Customs indicated that over \$100 million of duties were uncollected last year from or relating to imports from China. You laid out a number of problems relating to it, and then you took some steps internally, within your agency. Let me ask

you, as a result of that, how is it different today than it was before when these duties were uncollected?

Mr. BONNER. Well, you are correct, Mr. Levin, that we have set in motion a number of steps to identify why there has been the collecting shortfall, and it is substantial, with respect to anti-dumping duties, and these are mainly on products originating in China and they are mainly agricultural products. There are a lot of things about the system that resulted in that shortfall and they were everything from, by the way, a default of a surety bond company, and so that is an issue I am addressing with the U.S. Department of Treasury to make sure that surety bond companies are adequately capitalized, but there was a large surety company that defaulted on bonds that related to anti-dumping duties.

Probably, the more central problem is the fact that there is a wide difference in terms of the preliminary anti-dumping duty assessment of the U.S. Department of Commerce and its final anti-dumping duty, and by the time it assesses this much larger final anti-dumping duty at the end of the line, it becomes very difficult to collect. So, we are taking some measures to address it.

I don't have—this is something in process. I think we will be able to do better. By the way, we are never going to totally close this gap for a number of reasons. I don't think you could ever get close to 100 percent collections here because of the system, but we can do better and I believe we will do better. However, I think you are going to have to give us a little bit more time and see how we do throughout the remainder of this fiscal year and into next fiscal year.

Mr. LEVIN. Aren't there some steps that could have been taken immediately, for example, relating to the sureties? The agency, the government does set the standards and does have the ability to implement them. Aren't there some steps that could have been taken promptly?

Mr. BONNER. Well, I think the main step that we are looking at taking would be to make sure that there are individual surety bonds at the time of the preliminary assessment and they are more adequate to cover the likely anti-dumping duty assessment that would be made.

Mr. LEVIN. You could do that right now, though—

Mr. BONNER. Well, I need—I have to coordinate that with Commerce, Mr. Levin, and that is what we are doing, so that is—

Mr. LEVIN. How long is that going to take?

Mr. BONNER. I don't think long. I think we are—

Mr. LEVIN. The report was in March and it is now mid-June. These moneys don't go into the government. Under the law, they go to American entities that have been hurt. So, essentially, the moneys that are being lost are moneys being lost by citizens, either individual or corporate citizens. Let me just ask you, there is legislation introduced to move over to a cash system. What is the position of the government on that?

Mr. BONNER. I think you always have the opportunity to move to a cash bond. I don't see any reason to do that if you do have an adequate surety bond and you have a surety company that can stand behind the bond if there is a default. There may be circumstances where you need to have a cash bond. I guess I would

say right now, and I am speaking, I will tell you, off the cuff, that I do not believe that we would need to go to a cash bond requirement if we were satisfied that there was a surety that was standing behind the potential liability for the anti-dumping duties that was viable and adequately capitalized.

Mr. LEVIN. Let me finish. My time is up. There is an urgency here and I don't think the excuse will be useful much longer to say, "We need more time." Steps need to be taken——

Mr. BONNER. We are taking steps, Mr. Levin, and I——

Mr. LEVIN. What is your goal to resolve this issue the best——

Mr. BONNER. Well, I am hopeful that we will resolve part of the issue in a few weeks. We have discussed the surety bond issue with Treasury. We are also discussing with Commerce, the issue of once an anti-dumping duty is imposed, that new entities are formed, new Chinese companies that ship the same product and that sort of thing, so that we are moving faster and more quickly to take action against essentially the evasion of the anti-dumping duties.

By the way, we have had a working group at CBP that has been hitting this issue hard. We have engaged Commerce on this issue. I think some of the things that we are going to do will materialize in the very near term, and within not months, but sooner than that.

Mr. LEVIN. We will be looking.

Chairman CRANE. Ms. Dunn?

Ms. DUNN. Thank you very much, Mr. Chairman. Welcome, gentlemen. I wanted to first of all make a request, and you are certainly free to comment on it if you would like, and then I have a couple of questions.

Commissioner Bonner, you talked about the need to make security adjustments, make them more effective without interrupting trade or tourism. In my area of the country, Seattle, the cruise business is growing rapidly. More ships are sailing from Seattle to Alaska and that is very important for our economy, because otherwise they would be sailing from Vancouver, B.C., to Alaska.

Most cruise ships depart Seattle and make a very quick stop, sometimes as little as for 4 hours, in Vancouver or Victoria before heading up to Alaska. Most foreign passengers go through the United States Visitor and Immigrant Status Indicator Technology (U.S. VISIT) program prior to arrival in Washington State. Since the cruise ship stopped in Vancouver or Victoria, foreign passengers must once again go through the U.S. VISIT program before they arrive in Seattle. Our sense is that this is duplicative.

We certainly appreciate the need to balance protecting our security with allowing for the flow of people between countries, but I would ask that you take a look at this and see if the U.S. VISIT program, see how it affects the cruise industry and get back to me on this. You are certainly welcome to make comment now if you would wish.

Mr. BONNER. I would be happy to get back to you because I want to make sure I fully understand the fact that there is another U.S. VISIT requirement for foreign passengers that, let us say, embark at Seattle and you are going up to Alaska via Canada. It may be that there is another requirement when they re-enter the United States in Alaska, but let me look into this issue for you and

then we will get back to you. If there is something that we can do, consistent with the objectives of the U.S. VISIT program, with respect to ameliorating its impact on the cruise industry, we will. I will get back to you one way or the other.

[The information was not received at the time of printing.]

Ms. DUNN. I appreciate that, because it is taking away from passengers' time to do a little shopping, whatever they enjoy doing. Particularly, it is another hassle factor that could, we think, be a competitive problem for us.

Could you also, you talked a bit about the ACE program in your testimony. Could you tell us where that stands? What changes are being undertaken to accommodate new cargo security requirements that would allow Customs to monitor security compliance more effectively?

Mr. BONNER. The ACE program, we are actually into the third release of its functionality, and that is, by the way, a release that permits us for the first time ever to go to account-based processing with the trade community, and so this is actually one of the promises of ACE and we are actually in the training and testing phase of that right now with about 41 different importers. Beyond that, the next release of ACE will be the Electronic Truck Manifest, Commercial Truck Manifest system that we hope to roll out in November.

Beyond that, we do see a very significant role for ACE with respect to improving our essentially selectivity and targeting for risk purposes those shipments that pose a potential risk for security or for enforcement purposes as opposed to the vast majority which don't pose a risk. So, this actually allows us to focus on the relatively few shipments that pose a security risk and to expedite the processing of the vast majority that don't. That is, again, how security and facilitation actually interrelate.

We are already doing that with our somewhat antiquated Automated Commercial System (ACS), our old system, but ACE will permit us to, I believe, to vastly improve our targeting of potential commercial shipments that pose a risk for the terrorist threat and potentially other threats to our country. We are in the process of developing that as part of ACE and the rollout there will begin—it probably is not going to begin this year for ACE. It will begin sometime next year.

Ms. DUNN. One last question. Our ports play an important role in the Pacific Northwest. Very close to my district, there are two major ports, the Port of Seattle and the Port of Tacoma. They are very involved with our trade with Asian ports and would be very important to our economy if—critical to our National economy, as we discovered last year when there was a terrible problem on the West Coast that didn't allow goods to come into our ports.

In the event that a terrorist incident results in the closure of one or more ports, how is Customs working with other agencies both within and outside DHS to develop a plan to divert cargo to other ports and reopen the ports affected as quickly as possible?

Mr. BONNER. We are working—first of all, of course, the action that we would take, DHS would, of course, be related to a specific terrorist incident or potentially some intelligence with respect to a potential terrorist incident. The CBP is working very closely within

DHS and particularly with the U.S. Coast Guard in terms of essentially the contingency planning, if you will, for what we would do based upon certain kinds of scenarios, both—This would include, by the way, potentially keeping the flow of container shipments coming to all of our seaports, including the Ports of Seattle and Tacoma, notwithstanding some terrorist incident, if, for example, we had the opportunity to, as we have in many cases now, to screen those containers for security purposes before they are on-loaded in vessels in Singapore and Hong Kong moving to the Ports of Seattle or Tacoma or Los Angeles. So, we have some contingency planning that is being built into CSI that even in times of stress with respect to the terrorist threat, that we could keep the flow of trade going, and that would be very important to our economy and, frankly, to the world economy that we be able to do that.

We also are able to, as a contingency plan, because we are building in security through the private sector through our partners in the C-TPAT, we are in a position to—we may well be in a position to permit C-TPAT shipments into the United States where a C-TPAT partner has elevated the security, the supply chain security, at its foreign supplier or vendor and we have been able to verify or validate that that has happened.

So, we want to—essentially, we are building a security system that can allow trade to continue, notwithstanding a terrorist incident, even a terrorist incident that might involve a seaport of the United States. Coast Guard and CBP are probably the main players here with DHS apparatus and we are working on those issues, I can assure you, Ms. Dunn.

Chairman CRANE. Mr. Becerra?

Mr. BECERRA. Gentlemen, thank you for your testimony and for being here with us. Congratulations on the work that you have been able to accomplish. Let me ask a number of questions. Let me start first with port security and our shipping cargo issues that we still confront with our containers. In the Los Angeles area that I represent, we have some 12 million shipping containers that go through the ports of Long Beach and Los Angeles in 1 year. It is the busiest port in the Nation, third busiest in the world. My understanding is that we are still trying to deal with or grapple with the issue of how we inspect these massive containers, but when you consider that there are some 12 million coming through those 2 ports in 1 year, it becomes an overwhelming scenario to consider.

My understanding is that at one point, as recently as perhaps last year, we were inspecting at most about 1 to 2 percent of all those shipping containers that were coming through our ports in this Nation. I believe the number is somewhat higher but still far less than 10 percent of all those millions and millions of containers that are coming into this country.

The issue I want to raise is one relating to the incident that occurred in Israel, in the Ashdod Port in Israel, where individuals concealed themselves in a container, thereafter were able to escape from the container and, in essence, they killed several people and caused quite a bit of damage and violence in Israel.

What is to stop that from happening here, and what are we doing with regard to empty containers, because my understanding is that the only containers we inspect are loaded containers and

there are issues about the chain of custody of those containers from the point that they are supposedly loaded to the point that they are unloaded in our docks. My first question would be, what are we doing about empty containers? My understanding is, right now, there is no requirement under law and not necessarily any particular policy on the part of shippers to inspect empty containers among the millions of containers that are coming into this country.

Mr. BONNER. Well, first of all, we have full authority and do inspect empty containers. All the containers we look at, Mr. Becerra, are essentially the containers that we think pose a potential risk for the terrorist threat. Just to start off with, you know, the question to me isn't whether it is 1 or 2 percent. I am not sure it was ever that low. It really doesn't matter. The question is, are we searching the containers that pose a potential risk, particularly for the terrorist threat?

We have, since 9/11, we have mandated that we receive advance manifest information with respect to every oceangoing cargo container that arrives at every seaport of the United States. That is a 24-hour rule. We get that information not 24 hours before arrival at a U.S. seaport, but 24 hours before that container is even loaded on board a vessel outbound to the Port of Los Angeles or the Port of Long Beach or any other U.S. seaport.

We screen every container based upon our automated targeting rules, which are based upon the strategic intelligence that we have with respect to the areas of threat for potential concealment of terrorist weapons or terrorists themselves. We also use some anomaly analysis, as well, to identify those containers that we think pose a potential risk. We inspect, at least through x-ray screening and radiation detection, 100 percent of those, every one of those. You are right—

Mr. BECERRA. A 100 percent of those that you suspect—

Mr. BONNER. That we have identified as, based upon risk analysis, potentially posing a threat for terrorism, terrorist risk.

Mr. BECERRA. What percentage of the total number of containers does that represent?

Mr. BONNER. I can say that the total number of containers that we are inspecting right now through security inspection or otherwise, but some kind of an inspection or examination, is close to about 6 percent of all of the sea containers arriving in the United States.

Again, the question is not whether it is 6 percent or what the percentage is. Are we inspecting the right ones? I think we have a system to identify the at-risk containers, including potentially empties, and here is the point. As good as the Israelis are, and the Israelis are as good at security as any country in the world, if not the best, but the Israelis, that container that came into the Port of Ashdod actually came in, I believe, initially from Italy, went into the Gaza, was unloaded in the Gaza, came back into the Port of Ashdod as an empty from Gaza.

Now, I can tell you that our targeting system would say, we are going to x-ray it. We are going to inspect that container because it is coming from a very high-risk area. It is going to get a risk targeting score that is going to require an inspection. So, we are doing something beyond what even the Israelis are doing, at least with

ocean-going cargo containers, to identify those containers that pose a security risk.

I think this is the right approach. As I say, I know some people say, well, let us inspect all 12 million of those containers that come into the Port of Los Angeles or the Port of Long Beach or the Port of Seattle or Tacoma, but the reality is we ought to be smart about this using strategic intelligence, knowing something about where a container is coming from, who is shipping it, who the importer is and that sort of thing, make an assessment of those containers that pose a potential risk and then inspect all of those, and that is what we are doing upon arrival in the United States and through CSI we are extending our border out now to 18 foreign seaports where we are able to target and do that before those containers are loaded outbound on vessels to the United States.

Mr. BECERRA. Thank you.

Chairman CRANE. Mr. Shaw?

Mr. SHAW. Thank you, Mr. Chairman. I would like to pose a continuing problem which Customs is well aware of that we have down in south Florida with people taking their boats over to the Bahamas. A little known portion of the law has recently, since 9/11, been enforced, the enforcement of which really makes no sense at all, and that is that returning vessels from offshore not only have to call in and report back in, that they are back in the United States, but within so many hours they have to present themselves in person to the Customs folks, or is it Immigration? Anyway, they have got to present themselves.

Your people have been very helpful in trying to accommodate particularly fishing tournaments and things of this nature over time, which I really appreciate, but I don't think we have hit upon a satisfactory solution to the problem. It is perfectly obvious that if somebody is up to no good, that they are not going to call in and tell us that they are back, whether it be smuggling drugs or whether it be some type of terrorist activity.

We have been trying to seek a solution. We have been trying to do it in concert with the Customs and Immigration people. What exactly has transpired on that? Can we look for some legislation? The problem is actually in the legislation. It is not in the bureau, and I want to make that very clear, but the legislation makes absolutely no sense in its application.

Now, I know that up on the Canadian border, which Ms. Dunn was talking about just a few minutes ago, particularly on the East Coast, perhaps on the West Coast too, that there is some accommodation for people. People will go on their boat and get in their boat and go up to Canada to have dinner or vice-versa or visit friends and nothing is made of it. However, when you go to the Bahamas, you seem to have a problem coming back and I would like to just inquire as to what suggestions you might have, what progress we have made on this point. Mr. Bonner?

Mr. BONNER. One thing that may be progress, and that is that for purposes of both Customs and Immigration, it is just one agency you have to deal with now, CBP. You don't have to deal with two different agencies. That said, there may be this legal requirement that if it is a non-U.S. citizen, non-lawful permanent resi-

dent, they may have to present themselves to Immigration when they——

Mr. SHAW. No, I am speaking of U.S. citizens at this point. I don't want to complicate it with non-citizens.

Mr. BONNER. Okay. That does un-complicate it. I will say this. One of the issues that we are looking at is how we could institute essentially a trusted and vetted, let us say, pleasure boater or small boat program that would——

Mr. SHAW. Something like we are going to do at the airports?

Mr. BONNER. Well, it is something like we are doing right now with Canada with respect to—and Mexico with respect to people that are in vehicles, automobiles. We have what is called the NEXUS program in Canada in which Canadian citizens and U.S. citizens are eligible to apply, give some personal data about themselves. We run them both against terrorist and criminal indices and we also personally interview them for 20 to 30 minutes to make sure that there is no issue with respect to terrorism, there is no issue with respect to smuggling of goods, and then they get essentially a NEXUS card.

It is called NEXUS Marine, basically, but taking that concept and applying it to the small, the pleasure boat situation, and this would be both south Florida and it would be also, by the way, the Great Lakes, Puget Sound, every place where we have small boats, that we pre-identify a group of people that have been essentially enrolled into a trusted or a vetted, if you will, passenger program so that they could do probably a call-in rather than a personal actually contact with Customs and Immigration, which is now a CBP officer.

We are not there yet. We are trying to work out some of the details of how we would do that, but that is something that we are looking at as, I think, a potential kind of smart solution to the kind of issue that you are raising here, because then you have got boaters who, again, how do we identify them? Is there some sort of an radio frequency or something we can read? Then you have the group of boaters that we know we are not concerned about for terrorism purposes or for smuggling of drugs, which has been a problem historically in South Florida——

Mr. SHAW. You have the problem—you may have the people that frequently frequent the Bahamas and go back and forth, but perhaps the buddies that they took fishing with them didn't fit that profile. The point that I am making, and I compliment you. That is certainly progress. However, the problem that I see is that if there is a terrorist threat on this or if there is a drug threat on this, then we should be at the ports that these people come back into. It used to be that inside—speaking of Fort Lauderdale and Port Everglades, you used to have a place you could check in with Customs just as you came into the port so it didn't inconvenience anybody more than just a few minutes. Then it went to just phone in and let us know you are back and have a nice day. Now it is, by the way, you have got to come down to Miami, which is not a very pleasant thing to have to do, particularly if you work, and check yourself in.

It seems to be that the system is providing a nuisance without really providing also a solution to terrorism. So, we either have the

threat, and if we do, you ought to be there at the port. If we don't, we ought to change the law.

Mr. BONNER. So, there may be a staffing issue with respect to ports. I can certainly take a look at this—

Mr. SHAW. This could be a big deal.

Mr. BONNER. I will take a look at this.

Mr. SHAW. It could be a big deal, and again, that wouldn't be a perfect solution, but it is something that I would hope that you could vet through the agency and within a reasonable time—we have been talking about this for a long time—within a reasonable time, come up with a solution. Either there is a problem or there is not a problem. If there is a problem, we ought to be right there where those boats come in.

Mr. BONNER. As I say, we are looking at the overall issue, but I will take a look at the specific issue with respect to the Bahamas.

Mr. SHAW. You have been cooperative, but we haven't come up with a solution. Thank you.

Chairman CRANE. Thank you. Mr. Jefferson?

Mr. JEFFERSON. Thank you, Mr. Chairman. I want to ask a question about what is called the narrow interpretation of the existing laws and certain preference programs, particularly the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative (CBI) (Trade and Development Act of 2000, P.L. 106–200) program. We heard a lot of testimony at the hearing on AGOA III that apparel that is made wholly in Africa using appropriate fabric is in—if you might say, added to that would be some adornment, some small rope belt or some press-on label, and the products would come to the United States and be turned back because they weren't made completely of the appropriate material.

We have passed in this AGOA legislation a sense of the Congress urging a broad interpretation. It says that provisions relating to preferential treatment of textile and apparel articles be interpreted broadly in order to expand trade by maximizing opportunity imports. Are you aware of this problem, and how do you plan to interpret this provision that the Congress has just passed?

Mr. BONNER. First of all, no, I wasn't aware that this was a problem. I am certainly generally familiar with AGOA and the Caribbean Basin Trade Partnership Act (P.L. 106–200) of a couple of years ago. So, I am not aware of the problem, so I will have to look into it in terms of whether or not there is an appropriate interpretation of it.

The interpretation, though, of AGOA and related trade acts is done through our Office of Rulings and Regulations. It is important and I believe that there is every effort made to do a principled interpretation to determine—you know, of the language of the statute and, of course, if the ordinary rules of statutory construction apply in terms of interpreting statutes. So, we look to the language. If the language is unclear, obviously the next thing you do look to is legislative intent.

So, the attempt here is, with respect to any kind of an issue, including this kind of an issue, is to have our Office of Rulings and Regulations make a principled interpretation of these statutes and apply it as issues arise before it, but I don't know the specific issue. Obviously, there is a well-understood—you have to look at the stat-

ute and there is some—there is a general body of trade law in terms of—

Mr. JEFFERSON. I don't want to bog you down with that. There are a number of complaints that were registered with the Committee and we tried to address it with this new language. I just wanted to bring it to your attention and urge you to please—the normal rules, this is an attempt to move beyond what might be the more rigid ways of looking at this, because in the preference program, the notion is to bring products in from Africa and there is a short timeline to do this.

There is a huge set of competitors over there, mostly Chinese competitors that are very, very aggressive in the marketplace and they are making it very difficult for this program to work appropriately. So, I just bring it to your attention and urge you—let me talk about another couple of things because I know the time is short.

Back home at our port, the Trade Partnership Against Terrorism, we have about 400 importers that can be involved in the C-TPAT and only about 7,200 of them are involved in this program and they usually involve large importers, not the smaller periodic importers. This is the reality, it seems. So, the question is, is it feasible that the C-TPAT would be able to provide a sufficient container security coverage given that you are going to have this low volume of inspections, and then largely of the big importers when the smaller ones make up the bulk of the trade?

Mr. BONNER. Well, first of all, there is no restriction on smaller importers joining C-TPAT. They would have to develop the security plan, which would be submitted to us. We would review it to make sure that the supply chain security best practices are being met and that sort of thing. So, they are not excluded, as you know, from C-TPAT. That said—

Mr. JEFFERSON. It just is a manpower issue?

Mr. BONNER. Yes, it could be, and I understand that. That is—even C-TPAT has potentially some benefits for all importers, and the reason is that as we can get—and this is the objective, to get more and more U.S. importers into C-TPAT, including some of the middle-size and even smaller importers to get more and more into it so that we have increased supply chain security. The more we have done that and the more we have verified that supply chain security is increased, the more we are able to devote our inspectional resources to those shipments that pose a potential threat because of our targeting system or that are unknown.

The reality is, this is a system that ultimately benefits or has the potential to benefit and facilitate trade into the United States for everybody, including even small importers, even if they are not in C-TPAT, because we have—the more you can rule out because you are satisfied that shipments don't pose a security threat, particularly for the terrorism issue, the more quickly we can devote our resources to those shipments that are not C-TPAT shipments, if you will.

So, we welcome everybody into this. I realize there sometimes—you know, an importer that doesn't import frequently, probably there is an investment of some funds here and the use of some leverage in the supply chain to make the security improvements. I

realize that there are going to be some companies that, for a variety of reasons, don't want to make that investment, particularly perhaps their size just doesn't justify it. There still, as I say, there are benefits to everybody that imports into the United States to have C-TPAT, at least in my judgment.

Mr. JEFFERSON. Mr. Chairman, may I ask one last thing? I want to ask one last question.

Chairman CRANE. All right.

Mr. JEFFERSON. The folks in my port, the freight forwarders, have a few complaints. Customs established a point system that was supposed to promise fewer enforcing exams as carriers, importers, and brokers became C-TPAT certified. However, the anecdotes they bring to us indicates that the number of enforcement exams haven't really been reduced and that the bureaucracy is still there. Is this kind of a plan in the works and down the line they can see more relief, or is it—

Mr. BONNER. No—well, I don't know whether the freight forwarders are or representing C-TPAT importers, but I can tell you, no, it is not—we give—essentially in the terrorist risk scoring, there are three purposes for which exams or inspections might be conducted. One is anti-terrorism, and that is one that all of us are, I think, rightly concerned about. Second is enforcement exams, and this could be for illegal drugs or other kind of contraband, including, for example, knock-off products and the like. The third category is freight compliance exams.

Let me just say that if you are enrolled in C-TPAT and you have taken the steps to improve the security of the supply chain—this goes back to the vendors that are shipping goods to you from overseas—you will get increased—essentially, it will result in a decreased risk score for the purposes of an anti-terrorism security inspection exam and there are fewer exams. I am not saying none, but there are fewer exams if you are in C-TPAT for security purposes and there are fewer enforcement and trade compliance examinations if you are in C-TPAT. That is a fact. So, there are benefits right now for companies that enroll and join in and take those steps to become C-TPAT partners.

Chairman CRANE. Thank you. Commissioner, I agree with Mr. Jefferson about the problem he has raised about interpreting AGOA and I agree that the provision the House passed Monday indicates eligibility should be interpreted broadly and I encourage you to do so. Now, Mr. English?

Mr. ENGLISH. Thank you, Mr. Chairman. Commissioner Bonner, following up on Mr. Levin's questioning on the issue of uncollected duties, largely from Chinese imports, one particular issue you raised was with regard to new shippers. I believe you cite in a letter to Senator Byrd on May 28 that particular attention needs to be paid to new shippers and single-entry bonds. Also in that letter, you stated that CBP would not oppose legislation to assist you in remedying this problem. Has that position changed?

Mr. BONNER. No, it hasn't. We would not oppose legislation that would assist us in this issue. We do think, as I indicated to Mr. Levin, there are some steps that can be taken and that we are taking in conjunction with Commerce to address the issue of essentially the evasion of anti-dumping duties. However, our position

has not changed. We certainly do not oppose legislation that would help us take some action that would give us a higher rate of collection of anti-dumping duties.

Mr. ENGLISH. Thank you. Also, as we are both aware, Customs has received funds for training agents on specific steel products in recent years. Many of these products are similar and only minute technical differences separate them from other steel products. Do you feel this type of interaction with industry officials and Customs agents for the purpose of training helps agents correctly identify products at the borders, and also, do you feel this type of training will also assist in determining certain circumvention techniques, for example, certain pipe or tube products currently not manufactured in Canada but attempting to enter the United States under North American Free Trade Agreement (P.L. 103-182) treatment?

Mr. BONNER. I think it can, I think it does, and I think it is important to have the kind of advice and expertise that allows us to better identify the kinds of products that, for example, are subject to anti-dumping duties, and there are, as you know, some very technical issues in terms of trying to appropriately categorize and characterize types of products. They may be, by the way, misidentified in the entry data and so forth. So, this has been and would continue to be something that we welcome and value.

Mr. ENGLISH. I also understand that a project is underway at Customs South Florida Strategic Trade Center to improve communication between Customs and Commerce, the goal of this project being, as I understand it, to enhance anti-dumping communication between the agencies to better enforce orders.

I strongly encourage you to move fully ahead with this project and other initiatives to improve enforcement. We obviously are here in Congress trying to set policy, to provide a better level playingfield for American companies and American workers for products. However, without Customs being on the cutting edge of this, and I know that is certainly your objective, it becomes very difficult for us to address some of the occasions of unfair trade that we are seeing popping up around our border. I guess beyond that, is there anything else you can provide us with as an update with what the Administration sees as the top priority opportunities for circumvention that you are addressing?

Mr. BONNER. I need to give a little bit of thought to that. I would say, though, your point that through the Strategic Trade Center and otherwise, my sense is we are doing a better job across the board of engaging with Commerce because of the interrelationship of collectability and the actions taken by Commerce with respect to anti-dumping and countervailing duties. I would have to give a little thought, if I could, and maybe get back to you on trying to prioritize the most important issues, let us say, with respect to products or countries.

Mr. ENGLISH. That would be extremely helpful for us to have, and Commissioner, without adding to your workload, if you could provide us something at your convenience in writing on that point, I think it would be most helpful to the Subcommittee.

Mr. BONNER. I would be happy to do that.

[The information was not received at the time of printing.]

Mr. ENGLISH. Thank you, Commissioner, and thank you, Mr. Chairman.

Chairman CRANE. Thank you. I want to thank you both for your participation this morning and we look forward to continuing to work with you. With that, I would like to call our second panel, then, and that is Michael Laden, President, Target Customs Brokers, Inc., on behalf of the Retail Industry Leaders Association (RILA); Kevin Smith, Chairman, Joint Industry Group, and the Director of Customs, General Motors (GM) Corporation; Peter Powell, Senior, Chief Executive Officer, C.H. Powell Company; Colleen Kelley, National President, National Treasury Employees Union (NTEU); Phyllis Saathoff, President, National Association of Foreign-Trade Zones (NAFTZ) and Managing Director of Port Freeport, Freeport, Texas; and Sandra Scott, Vice Chair, Border Trade Alliance (BTA), and Director of International Affairs for Yellow-Roadway Corporation.

If you folks will please take seats at the panel, we will start. Try and keep your eyes on the little lights there on the panel, and when that light turns red, try and wrap up as quickly as possible. All printed statements will be made a part of the permanent record, however. So, anything above and beyond your presentations will be made part of the record. With that, we will start off with Michael Laden.

STATEMENT OF MICHAEL D. LADEN, PRESIDENT, TARGET CUSTOMS BROKERS, INC., MINNEAPOLIS, MINNESOTA, ON BEHALF OF THE RETAIL INDUSTRY LEADERS ASSOCIATION

Mr. LADEN. Chairman Crane, Ranking Member Levin, and Members of the Committee, thank you for allowing me to testify today. My name is Michael Laden and I am currently the President of Target Customs Brokers, Inc., a division of Target Corporation. I am here today on behalf of Target Corporation and the RILA to discuss important issues surrounding the reauthorization of CBP. A longer statement has been submitted for the record.

Target Corporation, along with RILA, has been actively working with Customs on issues surrounding commercial operations and security. I currently serve on DHS Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC). I also, along with RILA, played a key role in the development of the C-TPAT program, and Target was one of seven C-TPAT charter Members. Target is also participating in programs such as Operation Safe Commerce and the Customs Smart Box program, which are testing end-to-end supply chain security.

In the post-9/11 world, Customs, the trade community, and the United States as a whole have faced a new and difficult reality. How do you maintain a balance between homeland security and the free-flowing movement of legitimate international commerce? This is a monumental task that cannot be rushed into without serious consideration of the potential impact that regulations could have on the international supply chain. There are currently a number of ongoing government and private sector initiatives looking into this.

With that being said, Congress and the trade community must make sure that Customs does not lose its focus on issues surrounding commercial operations and focus solely on homeland secu-

ality. There are still a number of major issues surrounding commercial operations that Customs needs to address. I plan on discussing three such issues today, the end of global quotas and the impact to the trade, the broad interpretation of preference programs and trade agreements, and the regionalization of DHS.

Let me start with the end of global quotas this year. On December 31, 2004, global quotas on textiles and apparel products will be removed for Members of the World Trade Organization under the agreement on textiles and clothing. Retailers have long been looking forward to this date since Congress passed the Uruguay Round Agreements Act (P.L. 103-465) back in 1994. While Target is extremely excited about the possibilities in a quota-free world, there are many questions that we have as to what the process will be on January 1, 2005.

We, along with many other RILA Members, are in the process of placing orders for the first quarter of 2005 and beyond. There are a number of outstanding issues that Customs, along with the Committee for the Implementation of Textile Agreements (CITA) need to address so that retailers will have the appropriate measures in place beginning on January 1, 2005.

There are some necessary programming changes needed for the Automated Broker Interface program to be able to handle quota-free entries. We need to know from Customs when the changes for the current requirements will be made. This is critically important for those importers who pre-file their entries, as many of us do. There are also issues surrounding the future use of textile visas. Will Customs still require visas for shipments arriving after January 1, 2005?

We are pleased that Customs has created a website to address these issues. However, at this point, there is no current information or guidance to the trade on what is to be expected. It is critical that Customs populate this web page with relevant information and alert the trade community of its existence. This will not only help the trade ensure they are compliant, but will help Customs in the end, as well.

Let me move on to the broad interpretation of preference programs. Representing a company that has run into numerous problems with the narrow interpretation by Customs of certain preference programs, I am glad to the sense of Congress language in the bill that would require Customs to broadly interpret AGOA, the Andean Trade Preference Act (P.L. 102-182), and CBI preference programs. We, along with many other RILA Members, have run into too many situations where Customs has taken a narrow interpretation of the existing laws and have disqualified products from receiving the benefits as intended by Congress.

As a result, a great deal of business has been lost from those countries, especially from the nations of the Sub-Saharan Africa. We strongly encourage Members of this Committee to ensure Customs use as broad an interpretation as possible with regards to these future preference programs. Finally, let me discuss the concept of regionalization. As part of the President's fiscal year 2004 budget for DHS, there was a provision that called for DHS to create a powerful and logical regional structure. While we do not oppose the creation of a regional structure, we do have some concerns

about the potential impact on day-to-day Customs operations. We need to make sure that uniformity and consistency in the application of Customs laws, policies, and procedures are maintained.

We have communicated this concern to Secretary Ridge and Under Secretary Asa Hutchinson on numerous occasions. At the COAC meeting in February, the Under Secretary described the department's view of a regional structure. According to the Under Secretary, there will be between 7 and 10 regions and the Regional Director will have 3 areas of responsibility; act as a liaison between the Secretary and local officials; act as the on-site commander for incident management, coordinating multiple agencies; and handle day-to-day coordination. The Under Secretary stated that the Regional Director would not be responsible for day-to-day Customs operations and that all normal Customs operations—entries, rulings, and other administrative and operational matters—would, in fact, be handled by Customs headquarters.

While we appreciated this briefing, we have not heard anything since. At the meeting, the Under Secretary stated that the trade, especially COAC, would have an opportunity to review and comment on this plan. Our biggest concern has been that the regionalization plan has been crafted in complete secrecy. The critical stakeholders have had no input or opportunity to vet the proposed structure.

In the post-9/11 world, Customs faces many challenges, as witnessed by the name change to CBP. Customs has always had a difficult mission of facilitating legitimate trade while enforcing very complex and arcane sets of rules. This is now further complicated by a new focus on security. Target Corporation, RILA, and its Members stand ready to work with Customs, Members of this Committee, and the rest of Congress and the Administration to help ensure the security and safety of cargo arriving at U.S. ports. Thank you for allowing me to testify today.

[The prepared statement of Mr. Laden follows:]

Statement of Michael Laden, President, Target Customs Brokers, Inc., Minneapolis, Minnesota, on behalf of the Retail Industry Leaders Association

Chairman Crane, Ranking Member Levin and members of the Committee, thank you for allowing me to testify today. My name is Michael Laden and I am currently the President of Target Customs Brokers, Inc. a division of Target Corporation. I am here today on behalf of Target Corporation and the Retail Industry Leaders Association (RILA) to discuss the important issues surrounding the reauthorization of U.S. Customs and Border Protection.

With annual sales of approximately \$50 billion Target Corporation is the third largest U.S. retailer and the second largest importer of containerized cargo. Target Corporation operates approximately 1,500 retail stores in 47 states and employs about 285,000 team members. As an importer, Target files more than 110,000 entries annually with Customs and Border Protection for a variety of retail merchandise that touches almost every chapter of the harmonized tariff.

By way of background, the Retail Industry Leaders Association (RILA) is an alliance of the world's most successful and innovative retailer and supplier companies—the leaders of the retail industry. RILA members represent more than \$1 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide. Through RILA, leaders in the critical disciplines of the retail industry work together to improve their businesses and the industry as a whole.

Target Corporation, along with RILA, has been actively working with Customs on issues surrounding commercial operations as well as security. I am currently serv-

ing on the DHS Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC). I also, along with RILA, played a key role in the development of the Customs-Trade Partnership Against Terrorism (C-TPAT) program; Target was one of seven C-TPAT charter members. Target is also participating in programs such as Operation Safe Commerce (OSC) and the Customs Smart Box, which are testing end-to-end supply chain security efforts. I will discuss these issues later in my testimony. I am also the Chairman Emeritus of the American Association of Importers and Exporters (AAEI), and was a founding and charter member of the Business Alliance for Customs Modernization (BACM).

In the post 9/11 world Customs, the trade community and the United States as a whole have faced a new and difficult reality. How do you maintain the balance between homeland security and the free flowing movement of legitimate international commerce? While a difficult task, we believe that Customs and the other agencies have done a good job thus far. This is a monumental task that cannot be rushed into without serious consideration of the potential impact that regulations could have on the international supply chain. There are currently a number ongoing government and private sector initiatives looking into this. I will discuss security issues later in this testimony.

With that being said, Congress and the trade community must make sure that Customs does not lose its focus on issues surrounding commercial operations and focus solely on homeland security. There are still a number of major issues surrounding commercial operations that Customs needs to address. I will discuss one such issue this morning dealing with the expiration of global textile and apparel quotas at the end of the year. This is an issue that Customs, as well as other agencies, need to address right now so that retailers, such as Target, are prepared for the beginning of 2005.

Commercial Operations

Removal of Global Quotas

On December 31, 2004, global quotas on textile and apparel products will be removed for members of the World Trade Organization (WTO) under the Agreement on Textiles and Clothing. Retailers have long been looking forward to this date since Congress passed the Uruguay Round Agreements Act back in 1994.

While Target is extremely excited about the possibilities in a quota free world, there are many questions that we have as to what the process will be on January 1, 2005. We, along with many other RILA member retailers, are in the process of placing orders for the first quarter of 2005. There are a number of outstanding issues that Customs, along with the Committee for the Implementation of Textile Agreements (CITA), need to address now so that retailers will have the appropriate measures in place beginning on January 1, 2005.

It is fully expected that merchandise entered on January 1, 2005 will no longer be subject to quota at the time of entry. But there are a number of questions that we have about the filing process.

There are some necessary programming changes needed for the Automated Broker Interface (ABI) to be able to handle quota-free entries on January 1, 2005. We need to know from Customs as to when the changes for the current requirements will be made. This is critically important for those importers who pre-file their entries, as many do. Will the ABI system be able to recognize that a pre-filed entry on December 29, 2004 for merchandise arriving in the US on January 2, 2005 will not be subject to quota requirements? It is critically important that the ABI system be able to recognize this difference and recognize the new quota-free environment.

There are also a number of issues surrounding the future use of textile visas. Will Customs still require a visa for shipments arriving after January 1, 2005? Customs requires visa control numbers for their textile quota shipments to match the **year of export** from the last port in the shipment's country of origin. The U.S. Code of Federal Regulations, Title 19, Part 12.130 (i): defines the date of exportation for quota, visa or export license requirements, and statistical purposes, as "*. . . the date the vessel or carrier leaves the last port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes.*" (See also Administrative Message 94-0366, dated April 12, 1994). Will Customs still require this for exports after January 1, 2005? If so, will this be for exports from all nations or just those countries subject to trade restraints?

In addition, we also have some concerns about what is being communicated to Customs officers at U.S. ports. When will Customs issue a directive to the ports regarding full integration of all quota categories for WTO member countries? This is

actually a situation where Customs is waiting for guidance from CITA. We also encourage Customs to ensure that the types of required documents for entry for textile and apparel goods remains consistent at every port. As an example, the Port of Los Angeles requires that goods imported from Russia have a Certificate of Origin even though this is not a standard required document for entry.

Because of the quota regime, importers of textile and apparel products have not been able to take advantage of many of the modern entry procedures available to importers of other types of merchandise. This creates additional work for importers and it certainly creates additional work for Customs, which has been required to operate parallel entry systems, one for textiles and apparel and another for most other merchandise. We are more than happy to work with Customs and CITA on all of these issues.

We are pleased that Customs has created a website to address these issues. However, at this point, there is no current information or guidance to the trade on what is to be expected. It is critical that Customs populate this webpage with relevant information and alert the trade community of its existence. This will not only help the trade ensure they are compliant, but will help Customs in the end as well.

We urge at this point in time that Customs and CITA get together to work with each other, as well as the trade, to resolve all of the outstanding issues. These decisions are going to affect sourcing decisions that U.S. retailers are making right now.

Anti-Transshipment Efforts

Another area that continues to concern us is Customs' enforcement of illegal transshipments. We want to work with Customs to help fight illegal transshipments, but we continuously feel as if Customs thinks that importers of textiles and apparel routinely look for and conspire with foreign manufacturers to circumvent the quota system. This could not be further from the truth. Target, as well as others in the trade would like to work with Customs in partnership, as we have done on security measures, to address issues of illegal transshipments. We encourage Customs to work with the importing community on these efforts and refrain from treating every import as being an illegal transshipment.

Broad Interpretation of Preference Programs

Representing a company which has run into numerous problems with a narrow interpretation by Customs of certain preference programs, I am glad to the Sense of the Congress in Section 125 of H.R. 4418 that would require Customs to "*interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), and section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703), relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible beneficiary countries.*" We, along with many other RILA members, have run into too many situations where Customs has taken a narrow interpretation of the existing laws and disqualified products from receiving benefits that Congress had intended to receive. As a result, a great deal of business has been lost from those countries, especially from the nations of sub-Saharan Africa. We strongly encourage members of this committee to ensure that Customs use as broad an interpretation as possible with regards to these and future preference programs.

This is critical not only for enforcement of preference programs, but as it relates to enforcement of free trade agreements as well. Over the past several years, the United States has significantly increased the number of free trade agreements that have been negotiated or are in the process of being negotiated. The problem is that each comes with a different set of rules of origin that are extremely complex, not only for the trade, but for Customs as well.

User Fees

I would also like to state our support for the language in Section 103 of the bill that would require a study on the current user fees collected by Customs. As a major contributor to the user fees, Target strongly supports directly tying the funds collected through the Merchandise Processing Fee (MPF) directly to Customs commercial operations. As it stands now, the money goes into the general revenue and we are unable to conclude whether or not the funds go directly to Customs. We strongly support the language that was included in the FSC/ETI bill that tied the money directly to Customs commercial operations.

Security Efforts

Target, RILA and its members remain committed to working with Customs, the Department of Homeland Security and the other agencies involved in supply chain security. Target has worked very close with a number of the agencies and is in-

volved in several private sector projects, as well as government projects, looking at ways to address supply chain security from the factory to the store floor. Target not only helped to write the Customs-Trade Partnership Against Terrorism (C-TPAT), but also was one of the original seven charter members. As well, we are also participating in several trade lanes under Operation Safe Commerce, which is testing supply chain security from the factory all the way through the supply chain, as well as the Customs Smart Box program. Target is also very active on the international level as well. We are working with both the World Customs Organization and International Maritime Organization on their efforts on supply chain security.

Members of Congress should recognize that there is a great deal of work being done on supply chain security. Major regulations, including the Maritime Transportation Security Act, the Bioterrorism Act and the Trade Act of 2002 have all addressed aspects of supply chain security. In addition, enforcement of the International Maritime Organization's International Ship and Port Facility Security (ISPS) Code will begin on July 1. While this will be enforced by the U.S. Coast Guard, members of this committee need to recognize that this could have an impact on the free flow of legitimate commerce.

I urge this committee to continue to maintain oversight and jurisdiction over any future legislation that could impact global commerce. As well, we strongly urge that all of the agencies involved in homeland security continue to work with each other, as well as the business community, to ensure the effectiveness of any new regulations.

There are some specific issues that I would like to address specifically dealing with Customs and security.

Communications to the Trade

The Customs-Trade Partnership Against Terrorism (C-TPAT) is a great example of a true government-private sector program that addresses supply chain security. While the program is voluntary, over 6,000 companies have signed up for the program. As a charter member, we strongly believe in the program. However, we do have some concerns.

One of the biggest problems that we see is a lack of education among Customs agents in the field about C-TPAT and its benefits. As a trusted and verified C-TPAT partner, we are supposed to qualify for "green lane" benefits, expedited clearance. Unfortunately, we have not seen this occur. In addition, when Customs agents find an anomaly with a container belonging to Target, we believe that they should contact us to find out whether or not the anomaly is one that can be explained or not. We have information about the container and the vendor, starting from the purchase order, that Customs might not have access to from either the vessel manifest or the Customs entry. We can offer insight on the chain of custody of the container that Customs might not be aware of. As well, we have critical information about both the products and the vendors that Customs might not be able to identify from the vessel manifest.

In the true sense of public-private partnership, this type of communication is critical. This not only helps Customs to identify suspicious cargo, but helps keep legitimate cargo moving through the supply chain.

VACIS Inspections

As Customs seeks to increase the number of non-intrusive inspections by using the Vehicle and Cargo Inspection System (VACIS), we continue to experience long delays at a number of ports. In some ports, a VACIS examination can take upwards of seven days. Such long delays can cause havoc for a retailer's supply chain. Customs has identified this as a problem and is currently studying the situation. We urge them to correct the situation as soon as possible. Customs needs to make sure that the appropriate resources are available to correct the situation. Long delays not only impact a retailer's supply chain, but also lead to increased congestion problems at U.S. ports.

In addition, as Customs installs radiation portal monitors at the major U.S. ports, they need to ensure that the use of the monitors do not lead to increased congestion. While Customs says that it will only take a couple of minutes for a container to go through the portal, this could cause major delays. Congress, as well as Customs, needs to make sure that this does not cause further strain on already congested ports.

Shipper Definition

When Customs issued final regulations under the Advanced Electronic Cargo Manifest Requirements under the Trade Act of 2002, Customs had originally defined the term "shipper" on the manifest as the vendor/manufacturer as opposed to traditional definition of the party who makes the contract of carriage. While we under-

stand the need for Customs to have information about what happens early in the supply chain, redefining the term “shipper” on the manifest would not help to solve the problem. Using the new definition would have caused major problems for the maritime industry as well as others.

We are pleased that Customs has agreed to return to the traditional definition of “shipper” on the manifest and remain committed to working with Customs to identify other ways to collect additional trade data. We urge Customs to continue to work with the trade on these issues as future regulations are developed.

Regionalization

As part of the president’s fiscal year 2004 budget for the Department of Homeland, there was a provision that called for the Department to “create a powerful and logical regional structure.” While the trade does not oppose the creation of a regional structure for the Department, we do have some concerns about the impact a regional structure would have on day-to-day Customs operations. We need to make sure that uniformity and consistency in the application of Customs laws, policies and procedures are maintained. We have communicated this concern to Secretary Tom Ridge, Under Secretary Asa Hutchinson and Customs Commissioner Robert Bonner on numerous occasions.

Under Secretary Hutchinson addressed the COAC meeting earlier this year to describe the Department’s view of the regional structure. According to Under Secretary Hutchinson there will be between seven and ten regions. The regional director will have three areas of responsibility: 1) act as a liaison between the Secretary and local officials; 2) act as the onsite commander for incident management coordinating the multiple agencies involved; and 3) handle day-to-day coordination. The regional director will not be responsible for day-to-day Customs operations. All normal Customs operations (entry, rulings, etc.) will be handled by Customs headquarters. National level policies on trade will be determined on the national level.

While we appreciated the briefing, we have not heard anything since. At the meeting the Under Secretary stated that the trade, and especially the COAC, would have an opportunity to review and comment on the regionalization plan. Our biggest concern has been that the regionalization plan was crafted in complete secrecy. While we understand the need for some things to be done this way, this effort should not have been. The critical stakeholders had no input or opportunity to vet the proposed structure.

To this date, we have not seen any additional information besides what was provided verbally at the COAC meeting in February. This is a critical issue that the trade, as well as this committee, needs to be involved in.

Automated Commercial Environment

The retail industry played a critical role in helping secure funding for Customs’ Automated Commercial Environment (ACE). We still believe that this system will help Customs in their future endeavors, not only with commercial entries but also as another tool for homeland security. With that being said, we are not sure of where the ACE system is at this point in development. While the funding and architecture were developed before September 11th, we are not aware as to whether or not the new security requirements (advanced manifest, etc.) are being considered as the system is being built. While these issues are hopefully being discussed in the Trade Support Network (TSN), we fully believe that Customs needs to communicate to the entire trade community on the status of the program. This system was promised under the Customs Modernization Act, which passed Congress in 1994. Almost 10 years later and we do not have a modern system. The current system, the Automated Commercial System (ACS), is over 20-years old and is in need of replacement.

Operation Safe Commerce/Customs Smart Box

As I stated earlier, Target is participating in both Operation Safe Commerce and the Customs Smart Box program. While we believe it is critical to participate in these efforts, we are concerned about the number of agencies who are running different programs looking at the same thing—supply chain security. It is important that both agencies share their learnings from these programs with the trade. This will only help to shape future regulations as well as best practices.

Disaster Recovery Program

While a great deal of work has been done to prevent weapons of mass destruction from entering the United States, we are concerned about what happens if something does occur at a port. If something does occur, will all of the U.S. ports shut down as the airline industry did on September 11th? If not, what are the procedures? Are the Captains of the Port ultimately in charge?

As an example, if something were to happen in the Port of Los Angeles, what would the impact on the Port of Seattle be? Would the port remain open and ships be allowed to enter? Have there been discussions about how to divert ships to alternate ports? Using the above example, if something happens how much extra cargo would the Port of Seattle be able to handle? What about Tacoma and some of the other ports?

We know that the individual ports have their Area Maritime Security Committees and are working on the "what if" situations for their individual ports, but what is the impact on the ports in other areas?

We are not aware that this has been discussed. One only needs to look at the situation caused by the lockout on the West Coast in 2002 to see the potential impact of a port closing. In the span of 10 days, there were hundreds of ships lined up outside of the ports and it took months for the system to recover at the cost of several billion dollars. We would be very interested in participating with the Department and any other agencies involved in disaster recovery planning.

Conclusion

In the post September 11th world, Customs faces many new challenges, witnessed by the name change to Customs and Border Protection. Customs has always had a difficult mission of facilitating legitimate trade while enforcing a very complex and arcane set of rules. This is now further complicated by a new focus on security.

We are encouraged by the progress that Customs has made and the increased partnership with the trade community on new efforts on security, but we would like to see more on some of the traditional Customs enforcement programs. We are also pleased to see Customs working with other agencies, such as the Food and Drug Administration, on ensuring that the trade does not have a duplication of security efforts. We strongly urge Customs not to lose sight of its commercial operations responsibilities. There must be a continued balance of legitimate trade and security by the Department of Homeland Security.

Target Corporation, RILA and its members stand ready to work with Customs, members of this Committee and the rest of Congress and the Administration to help ensure the security and safety of our cargo arriving at U.S. ports.

Thank you for the opportunity to testify today. I'd be happy to take any questions that you might have.

Chairman CRANE. Thank you, Mr. Laden. Mr. Smith?

STATEMENT OF KEVIN M. SMITH, DIRECTOR, CUSTOMS ADMINISTRATION, GENERAL MOTORS CORPORATION, DETROIT, MICHIGAN, ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. SMITH. Mr. Chairman, Members of the Committee, my name is Kevin Smith. I am the Director of Customs Administration for General Motors Corporation. It is a privilege to appear before you today at this hearing on authorization legislation for CBP.

The Committee on Ways and Means has consistently been responsive to the trade community in seeking to balance the sometimes competing interest of commercial facilitation and homeland security. Achieving a balance between these roles is critical to our ability to conduct international business. Due to its importance, the Joint Industry Group and its Members have a strong interest in the development of new Customs automation tools and Customs operations on the Northern border. My remarks today will focus on these areas, although clearly, we have many other interests related to trade and CBP.

The international movement of goods through U.S. ports of entry is a critical issue for companies such as GM because of the high degree of integration required in our North American operations. Motor vehicle production is a highly capital-intensive business that

is also highly competitive on a global scale. It means we must make every effort to use lean and flexible production methods, such as order to delivery, part sequencing, and just-in-time inventory methods. These practices go to the very heart of our cost reduction programs and require a high degree of coordination with our suppliers in North America.

As the Committee is keenly aware, ACE will replace ACS, the present system for processing Customs transactions. The ACE, as envisioned by the Committee and the private sector in 1993 when Congress—ACE was envisioned by the Committee and the private sector in 1993 when Congress passed the Customs Modernization Act (P.L. 103–182). The act provided for a national Customs automation program that was intended to modernize many of Customs' processes and bring them into harmony with the manner in which the private sector conducts its business.

As you know from your continuous oversight activities, much of what the New Car Assessment Program promised has not been implemented, pending the development of the ACE system. Now, 11 years later, construction of ACE is underway. However, the promises of processes compatible with our business still appear to be years away.

In its fiscal year 2005 budget submission, the Administration requested funding comparable to last year and didn't ask for additional funds necessary to complete the project as originally planned. Instead, ACE is now projected for completion beyond 2010.

It is important to note at this point that ACE has attained considerable more importance since 9/11, reflecting the security considerations that have transformed CBP and its mission. While it remains principally a means of processing commercial transactions, ACE has acquired security dimensions of critical importance to the bureau. Building transaction data into cargo selectivity enhances the ability of CBP to assess risk for specific shipments.

While the implementation of Advanced Information Reporting as required by the Trade Act of 2002, CBP is now requiring commercial data hours in advance of arrival. The obvious is becoming increasingly clear. The need to improve the processing of commercial data and the need for security-oriented information are not mutually exclusive and it becomes incumbent on Congress to see that the funding is available, bringing the conclusion of ACE closer rather than permitting it to drift further into the future. Thus, we ask the Committee on Ways and Means to ensure that its authorization reflects both its own vision from 1993 and the demands of homeland security.

On the Northern border of the United States, we are also witnessing the transformation of programs to a risk-based approach. We are strong supporters of these initiatives and cite the Free and Secure Trade Program and the Pre-Arrival Approval System, as examples of how security need not impede the movement of trade. In fact, by working with businesses attaining highly secure and compliant internal processes that can provide required information in advance of arrival, time at the border can be reduced while security improved.

Programs such as these are a long ways from full implementation and need the support of the Committee. We believe that CBP should stay the course on these programs and ask for your support of them, also. In conclusion, I would like to thank the Committee for the opportunity of appearing here today and I would be happy to answer any questions.

[The prepared statement of Mr. Smith follows:]

Statement of Kevin Smith, Chairman, Joint Industry Group, and Director of Customs, General Motors Corporation, Detroit, Michigan

Mr. Chairman, Members of the Committee: My name is Kevin Smith and I am the Director of Customs Administration for General Motors Corporation (GM).

It is a privilege to appear before you today at this hearing on FY2005–FY2006 authorization legislation for the Bureau of Customs and Border Protection (CBP). The House Ways and Means Committee has consistently been responsive to the trade community in seeking to balance the sometimes competing interests of commercial facilitation and homeland security. Achieving a balance between these roles is critical to our ability to conduct international business. We recognize that this hearing affords us yet another opportunity to provide input, as you exercise your jurisdiction over customs revenue and trade policy functions.

Due to its importance, the Joint Industry Group and its members have a strong interest in the development of new customs automation tools and in the operation of commercial trade along the northern U.S. border. My remarks today will focus on these areas, although clearly we have a great many other interests related to trade and CBP.

The international movement of goods through U.S. ports of entry is a critical issue for companies such as GM because of the high degree of integration required in our North American operations. Motor vehicle production is a highly capital intensive business that is also highly competitive on a global scale. Economies of scale are very important in our business, which creates incentives to limit the total number of production locations while at the same time increasing the level of shipping between countries to expand product availability. It also means we must make every effort to use lean and flexible production methods, such as order-to-delivery, parts sequencing and just-in-time inventory control methods. These practices go to the very heart of our cost reduction programs and require a high degree of coordination with our suppliers in North America. As an example our Detroit-Hamtramck assembly plant relies on seats from a supplier in Windsor, Ontario. These seats are built and sequenced in Windsor to specific color and function specifications while the vehicle is being built in the assembly plant. In the cost competitive environment that we operate, the assembly plant has only 4 hours of inventory in the plant. As a result, a border delay of only a few hours can stop production.

As the committee is keenly aware, the Automated Commercial Environment (ACE) will replace the Automated Commercial System (ACS), the present system for processing customs transactions. ACE was envisioned by the Committee and the private sector in 1993 when Congress passed the Customs Modernization Act. The Act provided for the National Customs Automation Program (NCAP) that was intended to modernize many of Customs' processes and bring them more into harmony with the manner with which the private sector conducts its business. As you know from your continuous oversight activities, much of what NCAP promised has not been implemented, pending the development of the ACE system. Now, eleven years later, construction of ACE is underway; however, the promise of processes compatible with our business still appears to be years away. In its FY2005 budget submission, the Administration requested funding comparable to last year and did not ask for the additional funds necessary to complete the project in the seven years originally planned. Instead, ACE is now projected for completion beyond 2010. Recently, the House Appropriations Subcommittee on Homeland Security reported funding at \$305 million, thereby maintaining the previous year's funding level.

It is important to note at this point that ACE has attained considerably more importance since 9/11, reflecting the security considerations that have transformed CBP and its mission. While it remains principally a means of processing commercial transactions, ACE has acquired security dimensions of critical importance to the Bureau. Building transaction data into cargo selectivity and targeting enhances the ability of CBP to assess security risk and identify anomalies for specific shipments. With the implementation of advance information reporting as required by the Trade Act of 2002, CBP is now requiring commercial data up to 24 hours in advance of

arrival. The obvious is becoming increasingly clear: the need to improve and facilitate the processing of commercial data and the need for security-oriented information are not mutually exclusive. And, it becomes incumbent on the Congress to see that funding is available, bringing the conclusion of ACE development closer rather than permitting it to drift further into the future. Thus, we ask the Ways and Means Committee to ensure that its authorization reflects both its own vision from 1993 and the more recent demands of homeland security. Further, we ask your strong advocacy within the Congress and before the Administration to ensure that funding momentum is regained.

We also take this opportunity to commend CBP and the Department of Homeland Security for its attentiveness to the trade community's concerns as ACE is implemented. Through the format of the Trade Support Network (TSN), the private sector and federal regulators together are collaborating on a system that will achieve the objectives of both. The TSN has proven to be a highly effective forum where listening to each other's perspective promises to pay enormous dividends, through the creation of an effective automated system that serves us both.

On the northern border of the United States, we are also witnessing the transformation of programs to more security and risk-based processes. We are strong supporters of these initiatives and cite FAST (Fast and Secure Trade) and PAPS (Pre-Arrival Process System) as examples of how homeland security need not impede movement of trade. In fact, by working with business attaining highly secure and compliant internal processes, that can provide required information in advance of arrival, time at the border can be **reduced** while security is **improved**. Programs such as these are a long way from full implementation and need the support of the Committee. We believe that CBP should stay the course in the development of programs such as these and ask for your support of them also.

Mr. Chairman, the House Ways and Means Committee has been a powerful ally in preserving the appropriate balance between commercial operations and homeland security. We look forward to our continued work with the committee and stand ready to assist wherever possible.

Again, I would like to thank the committee for the opportunity of appearing here today and I would be happy to answer any questions.

Chairman CRANE. Thank you, Mr. Smith. Mr. Powell?

STATEMENT OF PETER H. POWELL, SR., CHIEF EXECUTIVE OFFICER, C.H. POWELL COMPANY, WESTWOOD, MASSACHUSETTS, AND CHAIRMAN OF THE BOARD, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA

Mr. POWELL. Mr. Chairman and distinguished Members of this Subcommittee, I am Peter Powell of the C.H. Powell Company in Westwood, Massachusetts. I am also Chairman of the Board of Directors of the National Customs Brokers and Forwarders Association of America. It is a privilege to testify before your Committee today on the Customs Authorization Act.

First, let me thank the Committee for its years of fine service to the international trade community. We especially commend you for your insistence that CBP maintain a balance between its duties to protect the revenue, facilitate commercial operations, and its new mandate to safeguard our Nation's homeland security.

Let me first observe that every change in commercial operations has its consequences, often at a very basic and technical level. It is incumbent on CBP to understand those nuances and then make balanced decisions. I can state categorically that Customs has gone to extraordinary lengths to understand our business processes. In the months after 9/11, CBP has met continuously with the private sector and bent over backward to solve difficult problems and legis-

tics. Yet having the right intentions and giving the trade community an opportunity for effective input are only part of the equation.

The CBP is suffering from a crisis in resources. First, at the very top of the agency, it is dramatically losing its best management. Customs officials who fully understand the complex world of international trade and transportation logistics, who walk the docks and know the interlocking role that a multitude of functions play in the successful clearance of merchandise, are vanishing and this institutional wisdom is not being replaced. Furthermore, CBP's allocation of manpower at the ports now is focused preferentially on security, not commercial operations. This loss of commercial orientation is symptomatic of a shift that is proving very harmful to the smooth flow of trade.

At this point, let me address CBP's program on security. The agency has been very aggressive at instituting programs for the private sector. The C-TPAT program is illustrative. Customs saw that blending an amalgam of patriotism, good will, self-interest, and influence into a partnership would more rapidly achieve its security goals than any government mandate.

By creating best standards for supply chain security for itself, the private sector set the bar so that it was simultaneously demanding, yet realistic. It has been used deftly by CBP as a carrot that cannot be ignored and must be embraced, and it has avoided the appearance of being the stick that would undermine the good faith features of its participants' compliance. The program must remain voluntary.

It must also be recognized that only 7,200 trade entities out of approximately 400,000 are involved with C-TPAT. Small, periodic importers cannot be realistically included. Therefore, this requires the involvement of intermediaries such as ourselves in order that they are not disadvantaged merely because of their size and limited transactions. Security will depend on more programs in C-TPAT.

A relationship that has proven to be particularly problematic falls beyond DHS's reach. It is the joint implementation of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188) by CBP and the U.S. Food and Drug Administration (FDA). For its part, CBP have gone above and beyond. They have gone beyond the necessary to ensure that BTA implementation would succeed. At the same time, the act mandated a new role for the FDA which required mission identification and implementation in perhaps an unrealistic timeframe. The FDA has not, however, combined its lack of experience with the appropriate willingness to work with the trade to ensure the effective movement of international commerce.

Yet the most forbidding challenge for reaching a balance between the achievable and the necessary in homeland security is the Congress itself. In the clamor for immediate results and in the throes of a partisan election year, there is an inclination in the Congress to establish requirements without consultation, to demand action without concern for its effects on trade, and to expect that somehow a silver bullet can be found.

I believe that often achieving the right answers requires a good faith discourse between the government and the private sector and an evolution toward alternatives. Overly directive congressional

language mandating particular steps in the commercial and regulatory process can be counterproductive. We ask that your Committee, Mr. Chairman, take a lead advocacy role in tempering the instinct of the others to legislate. Mr. Chairman, this concludes my remarks. I would be more than happy to answer any questions.

[The prepared statement of Mr. Powell follows:]

Statement of Peter H. Powell, Sr., Chief Executive Officer, C.H. Powell Company, Westwood, Massachusetts

Mr. Chairman. I am Peter H. Powell, Sr. of the C.H. Powell Company of Westwood, Massachusetts. I am also Chairman of the Board of Directors of the National Customs Brokers and Forwarders Association of America (NCBFAA). It is a privilege to testify before your committee today on the subject of the FY2005–2006 Bureau of Customs and Border Protection (CBP) Authorization Act.

First, let me thank the committee for its years of fine service to the international trade community. We are pleased that you are holding this hearing because it indicates your continuing and immediate role in customs operations at CBP. We believe that, with the creation of the Department of Homeland Security and the realignment of committee jurisdictions in the Congress, there has been confusion and apprehension within the private sector that the Ways and Means Committee would have a reduced role in overseeing the agency. NCBFAA strongly supports your continued and aggressive oversight. We commend you for your insistence that CBP maintain a balance between its duties to protect the revenue and facilitate commercial operations and its new mandate to safeguard our nation's homeland security.

The Balance Between Security and Trade Facilitation

In fact, it is this balance that is the focus of my testimony today. Together with my colleagues in the customs brokerage, freight forwarding and NVOCC industries, I witness on a daily basis how well the balance is drawn. Let me say from the start that we are fully committed to doing everything that is necessary to protect the homeland. Brokers, forwarders and NVOs signed up on Day One, for example, to formulate the concept of C-TPAT (Customs-Trade Partnership Against Terrorism) to enable the advance notification of inbound and outbound shipments, and to provide our expertise as transportation experts to government security efforts.

C.H. Powell Company is a full-fledged participant in Operation Safe Commerce (OSC), a program which provides the foundation for testing supply chain security, "smart box" containers, and uncovering the gaps that undercut our commitment to defeat terrorism. As Chairman of the Board of NCBFAA, I have served on two working subcommittees of the government's Commercial Operations Advisory Committee (COAC), refining the implementation of the 24-hour rule for maritime transportation and developing standards for cargo container security.

Our industry has committed its time and resources to protecting America from terrorism. At the same time, the cost of these measures need not be to sacrifice time of movement and to create cost burdens on shippers and consumers that they cannot afford. Every change in commercial operations has its consequences, often at a very basic and technical level. It is incumbent on CBP to understand those nuances and then make balanced decisions.

A Crisis in Resources at CBP

I can state categorically that Customs has gone to extraordinary lengths to understand our business processes. From the days immediately following 9/11, this committee and others were instrumental in legislating a balanced approach: protect the homeland but establish clear principles for private sector input and consideration of the demands of trade. The Trade Act of 2001 was an extraordinary achievement in recognizing the tension that exists between security and maintaining the engine of an economy that has made America the most powerful economic force in the world. In the months after 9/11, CBP has met with the private sector and bent over backward to solve difficult problems in logistics. Recently, a group of four associations—the World Shipping Council, the National Industrial Transportation League, the Retail Industry Leaders Association, and the National Customs Brokers and Forwarders Association—petitioned CBP to reverse its position on the "definition of a shipper" and the information required in advance of the arrival of maritime shipments. Our rationale was compelling; CBP's answer was immediate and responsive.

Yet, having the right intentions and giving the trade community the opportunity for effective input are only part of the equation. The Bureau of Customs and Border Protection is suffering from a crisis in resourcing. First, at the very top of the agen-

cy, it is dramatically losing its best management. Years of experience in management at the agency are retiring from CBP in droves, leaving temporary, transitional and inexperienced executives in charge. Customs officials who fully understand the complex world of international trade and transportation logistics — who walked the docks and know the interlocking role that a multitude of functions play in the successful clearance of merchandise — are vanishing and this institutional wisdom is not being replaced. Customs must again be the place that its employees treat as a career, not as the first few items on a resume. Customs must rebuild its top-level infrastructure.

Furthermore, the technical means to accomplish the tasks of security and facilitation are not in place at the nation's ports. The tools on the dock (such as the "VACIS" machines used for non-intrusive inspections) are not available. One authority has said that a container designated for inspection may wait in place for as long as seven days before that inspection is conducted.

And, CBP's allocation of manpower at the ports now is focused preferentially on security, not commercial operations. Personnel are simply not available as commodity specialists for reviewing the classification of merchandise. The term "inspection" now refers to reviewing security, not ensuring the validity of entry data for the collection of revenue. Inadequate resources and a lack of adequately knowledgeable manpower have led to extremely poor communications in the field. When anomalies are discovered, CBP staff cannot, or will not, call the shipper or his broker to obtain the additional detail or more complex data to effectively resolve the matter so that the cargo can be cleared. This loss of commercial orientation is symptomatic of a shift that is proving very harmful to the smooth flow of trade.

CBP's Security Programs

Let me also address CBP's programs on security. The agency has been very aggressive at initiating positive programs for the private sector. The Customs-Trade Partnership Against Terrorism (C-TPAT) is illustrative. Approximately sixty days after 9/11, Customs convened a gathering of approximately 100 leaders from the private sector to evolve a voluntary program to reinforce the security of the supply chain. Premised on the recognition that U.S. federal law had limitations in reaching a supply chain that is substantially located overseas, Customs saw that blending an amalgam of patriotism, goodwill, self-interest and influence into a partnership would more rapidly achieve its security goals than any government mandate. By creating "best standards" for supply chain security for itself, the private sector set the bar so that it was simultaneously demanding yet realistic.

The trade community signed on to C-TPAT in overwhelming numbers and it has become the "gold standard" for international trade. Simply put, if CBP targeting systems positively recognize C-TPAT membership, everyone in the supply chain values doing business with those similarly recognized. But, let there be no mistake. C-TPAT cannot become the judas goat for a government regulatory program. It has succeeded because it is a voluntary, self-imposed discipline on the supply chain. It has both commercial and security advantages. It has been used deftly by CBP as a "carrot" that cannot be ignored and must be embraced. And, with CBP assessment program, it has avoided the appearance of being the "stick" that would undermine the good faith features of its participants' compliance.

At the same time, it must be recognized that only 7,200 importers out of approximately 400,000 can be involved in C-TPAT. Small, periodic importers cannot be realistically included; therefore coverage of these entities requires the involvement of intermediaries such as those within NCBFAA in order that they are not disadvantaged merely because of their size and limited transactions. Yet, it is the single, sporadic container that poses a greater threat than that of a high-volume C-TPAT member. Security will depend on more programs than C-TPAT, programs that complement each other as they reduce risk and increase the government's ability to intercept the one container that could devastate our country.

Accompanying programs like C-TPAT are also other Department of Homeland Security agency programs that often prove duplicative, overreaching or at cross-purposes. Container security initiatives, for example, have emerged from multiple DHS agencies, often with CBP leading the way to the consternation of its fellow agencies. Presently, CBP is fielding its "smart box" initiative, a full year after its on-again, off-again disinterest and then involvement with DOT/TSA's Container Security Group. The private sector has quite appropriately asked itself if all of these separate initiatives would ever be reconciled. Of late however, DHS has responded to its role as integrator of cargo security programs and done an extremely effective job. Recently, in creating its MTSA (Maritime Transportation Security Act) subcommittee of the COAC, in bringing together resources at the departmental and agency levels,

and in convening broad representation from the commercial community, DHS has proven itself to be on-track for resolving our misgivings.

CBP and the FDA: Implementing the Bioterrorism Act

A relationship that has proven to be particularly problematic falls beyond DHS' reach: it is the joint implementation of the Bioterrorism Act by CBP and the Food and Drug Administration (FDA). For its part, the Bureau of Customs and Border Protection have gone "above and beyond" the necessary to ensure that BTA implementation would succeed. At the same time, BTA mandated a new mission for FDA which required mission identification and implementation in perhaps an unrealistic timeframe. It has not however combined this lack of experience with the appropriate willingness to work to ensure the effective movement of international commerce.

An example of late has been a crisis at the Northern Border. Customs antiquated Automated Commercial System (ACS) went "down" for several days, which in turn meant that the BTA's prior notice requirements were not processed, even though they had been filed by shippers. FDA's answer was not to take extraordinary steps to solve the problem created by 5-mile border backups involving often perishable merchandise, but instead to take a doctrinaire enforcement approach that required a second, duplicate filing of prior notices, at substantial cost in time and resources to an already beleaguered industry.

The relationship between CBP, the agency more experienced in the details of border processing, and the FDA appears to be at best "tentative" to trade community observers.

Congress and Homeland Security

Yet, the most forbidding challenge for reaching a balance between the achievable and the necessary in homeland security is the Congress itself. In the clamor for immediate results and in the throes of a partisan election year, there is an inclination in the Congress to establish requirements without consultation, to demand action without concern for its effects on trade, and to expect that somehow a "silver bullet" can be found.

A recent report issued by the Los Alamos National Laboratory illustrates the folly of this approach. For every measure there is a countermeasure that can defeat a security technology. As the security agencies jump through hoops to meet demands for a fool-proof security device—no matter what the cost to the shipping public, the Los Alamos reports shows how the most sophisticated measures can be defeated by a well-financed, technologically-educated terrorist organization.

It is my view that a successful approach to homeland security will be years in development and that we have to be prepared to move incrementally towards solutions. To some extent, this will of necessity be trial-and-error. It will depend on a highly focused, problem-solving approach by government and the private sector, acting in partnership. It will depend on each relying on the good faith of the other in order to solve problems and reach objectives.

Examples of late to Congressional demands for immediate solutions are port security legislative provisions introduced in both Houses of the Congress. One such provision would create a \$5000 fine for a shipper's failure to move uncleared merchandise from the dock after 5 days (presently the requirement is 15 days). The provision further provides that this merchandise must be inspected and entered into general order warehousing if it remains on the dock after that time. The provision ignores such facts as: goods ordered inspected by CBP cannot be moved; inspections often take 7 days to occur; a work stoppage can exceed this timeframe; movement to GO by truck can take another 7 days to occur; and there already exist enormous financial disincentives (e.g., demurrage) to leaving merchandise in place. It is merely a simplistic approach to reducing congestion and learning about the contents of a container. It would come at the expense of a party not in a position to provide a solution. Legislation such as this must be resisted at all costs by those most familiar with the operation of trade and its value to the nation.

An example of the opposite phenomenon has been CBP's evolution in understanding the data that is necessary for effective security risk assessment. When this committee passed the Trade Act of 2001, Congress met the demands of CBP for using manifest data in order to conduct its targeting. While the trade community has always believed that effective targeting required more extensive information than could be provided by the manifest and that this document (a long-standing commercial document) should not be expanded exclusively for this purpose, Customs deemed the manifest a convenient means to acquire data that was available immediately. Since then the private sector has continued to press this point and Customs now agrees that alternate means need to be developed to provide more extensive security data. NCBFAA is pleased with CBP's latest proposal. Entry data would

now be submitted 24-hours prior to arrival of the merchandise in exchange for acknowledgement of this cooperation through the Automated Targeting System (ATS). Customs will also explore the means to acquire commercial data even earlier. For its part, NCBFAA has proposed a "chain of security" data flow that would provide data at the point of container stuffing overseas. We have suggested the submission of purchase order data evolving to a "custody data set."

I believe that, often, achieving the right answers requires this discourse and an evolution towards alternatives. Overly directive Congressional language mandating particular steps in the commercial and regulatory process can be counterproductive. We ask that your committee, Mr. Chairman, take a lead advocacy role in tempering the instinct of others to legislate.

* * *

Mr. Chairman, this concludes my remarks. As I said at the onset, we are grateful for this opportunity to share our views.

Chairman CRANE. Thank you, Mr. Powell. Ms. Kelley?

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

Ms. KELLEY. Thank you, Chairman Crane, Mr. Jefferson, and Mr. Becerra. On behalf of the more than 150,000 Federal employees represented by NTEU, more than 15,000 of whom work in CBP, I thank you very much for the opportunity to share our views with you on H.R. 4418, the Customs and Border Security Act.

This act authorizes appropriations for 2005 and 2006 for CBP at the level requested in the President's budget proposal, \$6.2 billion for 2005 and \$6.4 billion for 2006. While these figures are more than the CBP budget for 2004, these funding levels include the bare minimum for long-term CBP commitments such as ACE, C-TPAT, CSI, and the U.S. VISIT program, as well as for additional hiring.

For the current fiscal year, three important issues affecting CBP personnel have come to the forefront. They are the reduction in the overtime cap for legacy Customs personnel, and for new CBP officers, the current hiring freeze announced by DHS and the lack of pay for employees who are working a sixth day when they are training at Federal Law Enforcement Training Center (FLETC).

For the past several years, the annual appropriations bills have specifically amended the Customs Officer Pay Reform Act (COPRA) (1911, 36 Stat, 901) to provide for a \$30,000 overtime cap for legacy Customs employees. Unfortunately, the fiscal year 2004 appropriation, while stating that all CBP officers will have a \$30,000 overtime cap, does not contain the specific amendment to COPRA and, therefore, it has had the unintended effect of reinstituting a \$25,000 cap for only those employees who are currently covered by COPRA, who are legacy Customs employees and the new CBP officers. The NTEU hopes that Commissioner Bonner, working closely with NTEU and the Members of this Subcommittee, can fix this situation before the end of fiscal year 2004.

A second issue of concern for CBP personnel is DHS's announcement of a hiring freeze for the remainder of fiscal year 2004 because the agency says they are fully staffed. While NTEU acknowledges the recent increase in hiring at CBP, we are also aware of the unfulfilled promises of the USA PATRIOT Act (P.L. 107-56) that called for a tripling of staffing on the Northern border. As of

October 2003, there were 1,589 legacy Customs inspectors on the Northern border, only half of the 3,177 required by the PATRIOT Act.

The third personnel issue is the lack of pay for FLETC training. On January 1, 2002, at the request of FLETC, the legacy U.S. Customs Service implemented a 6-day-a-week training program for all Customs officers. Unfortunately, the legacy U.S. Customs Service and now CBP have refused to compensate legacy Customs officers for the sixth day of the week that they are in training at FLETC, while employees from INS, the Border Patrol, and other bureaus receive overtime pay for that sixth day. Legacy Customs officers and the new CBP officers receive no pay, neither straight time nor overtime, for their work on the sixth day of the training week. I ask the Committee to work with DHS and with CBP to immediately correct this.

With respect to the Committee's ongoing questions about whether trade functions are being given sufficient priority within CBP, NTEU shares the Committee's concerns. The Homeland Security Act of 2002 (P.L. 107-296) included provisions to ensure that the trade functions of the legacy Customs Service remain a priority within DHS.

Unfortunately, the number of import specialists around the country who enforce the statutory, regulatory, and treaty requirements of CBP and other Federal and State agencies by determining admissibility of merchandise and other goods into the United States continues to decrease, from approximately 1,086 full-time positions in 1999 to only 892 positions as of September of 2003, and that is according to a U.S. government Accountability Office report.

Because of the rapidly growing volume of trade coming into the United States and the limited resources for trade facilitation and enforcement, CBP has been relying more on targeting processes than actual physical inspections by inspectors or import specialists to detect trade violations for shipments, thereby increasing the chance for potential trade violations on imported products.

The "One Face at the Border" initiative that was recently announced by Secretary Tom Ridge is of great concern to employees, also. The NTEU believes that combining the border protection responsibilities that were previously held by three highly skilled specialists into one super-inspector position raises serious concerns. Each of the job responsibilities from the three legacy inspector agencies is highly specialized and distinct, including trade facilitation and enforcement.

Prior to the creation of the CBP officer position, legacy Customs inspectors received between 9 and 12 weeks of training just on the Customs Service rules and regulations. Now, the new CBP officer will receive about 14 weeks of training on all port and border agency regulations, and they will be responsible for knowing the specialized work of Customs, INS, and the U.S. Department of Agriculture.

Currently, Customs and INS inspectors are cross-trained to the most basic, primary inspection work for entry into the United States. However, today, if a U.S. Customs legacy inspector is faced with a complicated INS visa at a primary inspection station, they have the ability to send the passenger to a more intensive sec-

ondary inspection where an experienced legacy INS inspector can make a determination as to the validity of a visa.

It is unclear whether experts in INS issues or Customs issues will continue to be readily available for these secondary inspection once the "One Face at the Border" and the super-inspector position, or the CBP officer position, as it is called, is fully put in place, and that will take about a year to a year and a half to happen. The NTEU feels strongly that if the border initiatives such as U.S. VISIT are to be successful, specific expertise must be maintained among the CBP officers' ranks as it relates to Customs and INS regulations.

The more than 15,000 Customs employees represented by NTEU are committed to the varied missions of DHS and CBP, from protecting our country's ports and borders to drug interdiction, to trade facilitation in and out of the United States, and on their behalf, I thank you very much for the opportunity to appear before you today.

[The prepared statement of Ms. Kelley follows:]

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

Chairman Crane, Ranking Member Levin and Members of the Subcommittee, my name is Colleen M. Kelley, and I am the National President of the National Treasury Employees Union (NTEU). On behalf of more than 150,000 federal employees represented by NTEU, almost 13,000 of whom work for Bureau of Customs and Border Protection (CBP) stationed at 317 ports of entry across the United States, I would like to thank you for this opportunity to present our Union's views on H.R. 4418, "The Customs and Border Security Act of 2004". This legislation would authorize appropriations for CBP for FY 2005 and FY 2006 at the level's requested by the President's budget. NTEU is particularly interested in provisions of the legislation which would affect legacy customs inspectors, canine enforcement officers and import specialists, who are responsible for ensuring compliance with import laws and regulations for over 40 federal agencies, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money.

In 2003, legacy CBP employees seized over 2.2 million pounds of cocaine, heroin, marijuana and other illegal narcotics. Customs and Border Protection Officers also processed over 412 million travelers last year, including over 1 million cars and trucks. These numbers continue to grow annually. Over the last decade trade has increased by 137%. Legacy U.S. Customs Service personnel facilitate more trade, and interdict more drugs than any other agency within the Customs and Border Protection Bureau. The legacy Customs Service collects over \$23 billion in revenue on over 26 million entries involving over \$1.2 trillion in international trade every year. The CBP also provides the federal government with its second largest source of revenue. Last year, the CBP deposited over \$24.7 billion into the U.S. Treasury.

FY 2005 Customs and Border Protection (CBP) Budget:

The Administration has requested a funding level for the CBP of \$6.2 billion for fiscal year 2005. While this figure is \$171 million more than the budget for Fiscal Year 2004 it only includes the bare minimum for long-term CBP commitments such as the Automated Commercial Environment, new and more aggressive trade and border security enforcement efforts and additional hiring.

While NTEU fully supports increased *authorization* of funds for the Customs Service, no increase in funds will actually be available to Customs without increased *appropriations*. The discretionary spending caps in the House Budget Resolution will make increased appropriations extremely difficult, if not impossible, to achieve as was made clear during the recent House Appropriations Committee markup of the FY 2005 Homeland Security Appropriations bill. The markup included \$6.6 billion for CBP in FY2005, a \$422 million increase over the President's request, again this is a good first step for FY 2005, unfortunately, the President's request for the CBP represents a token increase from last year's appropriations for all of the agencies transferred into the CBP. NTEU believes that this recommendation is simply inadequate to meet the needs of Customs and other border security personnel, especially

in light of their additional homeland security missions such as the Customs Trade Partnership Against Terrorism (C-TPAT), the Container Security Initiative (CSI), U.S. VISIT and the 24-Hour Rule that requires advanced transmission of accurate cargo manifest information to the CBP.

Three important issues for DHS personnel in FY 2004 are the current "hiring freeze" being instituted by DHS, the reduction in the overtime cap for legacy Customs personnel and new CBP officers and the non payment for working a sixth day of training at FLETC.

Overtime Cap:

With the consolidation of legacy Customs, INS and APHIS inspectors into a single front-line border security position, an issue that needs to be addressed immediately by this subcommittee is the correction of the overtime cap language for all CBP employees. When legacy Customs employees joined together last March to form the Bureau of Customs and Border Protection, the Department and Congress realized the differences in overtime systems between the various border agencies. Unfortunately, the FY 2004 DHS Appropriations bill included a provision that, while intending to provide greater consistency in overtime earnings among the front line CBP workforce, has instead created additional problems for the CBP workforce, more specifically, legacy Customs personnel and the new CBP officers.

Specifically, the FY 2004 DHS Appropriations bill states that all CBP employees are subject to a \$30,000 annual overtime cap. However, for the past several years, the annual appropriations bills specifically amended COPRA to provide for an increase to \$30,000 as an overtime cap. Unfortunately, this year's (FY 2004) appropriation does not contain this amendment and has had the unintended effect of re-instituting a \$25,000 cap for only those employees currently covered by COPRA (legacy Customs personnel and the new CBP officers).

Commissioner Bonner is well aware of this problem, as he indicated in a November 2003 Commissioner's message to all CBP employees stating that, "we believe that this disparity was not intentional and we have begun to take all necessary steps to correct it through the proper channels. At my direction, the CBP Office of Congressional Affairs is now working with the Department to address this inconsistency through a legislative correction." NTEU hopes that the Commissioner, working closely with NTEU and the members of this subcommittee, can fix this situation for legacy Customs employees and new CBP officers before the end of FY 2004.

This situation has become even more acute due to the fact that CBP has proposed regulations to make COPRA the sole overtime and premium pay system for all CBP officers and Agriculture Specialists. It is anticipated that the entire CBP inspectional workforce will be transferred under COPRA by July 25, 2004, thereby putting the entire CBP inspectional workforce under the \$25,000 cap mandated by the FY 2004 Homeland Security Appropriations bill.

Hiring Freeze:

An additional issue that has come to the forefront this year is the fact that in March 2004, DHS put a hold on hiring any additional CBP personnel because an accounting review showed that CBP and ICE might possibly exceed their FY 2004 budgets by more than \$1 billion. Fortunately, the funding deficit was a result of combining the various border security budgets and no huge funding deficits will materialize.

However, DHS has announced that despite the budget clarification, it will not be hiring any additional CBP personnel for the remainder of FY 2004 because the agencies involved with border security are "fully staffed." While NTEU acknowledges the recent increase in hiring at CBP, NTEU also is aware of the unfulfilled provisions of the Patriot Act that called for a tripling of staffing on the Northern Border. Figures provided by DHS show that as of October 2003 there were 1,589 legacy Customs inspectors on the Northern Border, only half of the required 3,177 required by the Patriot Act. NTEU would strongly encourage the committee to provide full authorization to hire the additional 1,588 Northern Border security personnel required by the Patriot Act and currently missing from the Northern Border.

Pay for FLETC Training:

On January 1, 2002, at the request of the Federal Law Enforcement Training Center (FLETC), the legacy U.S. Customs Service implemented a six-day a week training schedule for all basic training courses for Customs officers in order to accommodate the higher volume of employees being sent to FLETC as a result of the events of September 11.

Unfortunately, as a result of the six-day a week basic training schedule, the legacy U.S. Customs Service, and now the Bureau of Customs and Border Protection

(CBP) have refused to compensate legacy customs officers and the new CBP officers for their sixth day of basic training at FLETC. Legacy Customs officers and the new CBP officers receive no pay, either “straight time” or overtime pay for their work on the sixth day of basic training. While there may be disagreement as to what overtime system may be appropriate, it is outrageous that these employees are required to work one day a week for no pay at all.

This inequity has become even more egregious for legacy Customs inspectors due to a recent decision of the Bureau of Immigration and Customs Enforcement (BICE), that authorized the retroactive payment of FLSA overtime to legacy immigration inspectors who, like legacy Customs officers had been assigned to a six-day workweek while attending their basic training at FLETC since January 1, 2002. Again, by forcing hundreds of newly trained legacy Customs inspectors and new CBP officers to work a sixth day without any compensation while their legacy INS counterparts receive FLSA overtime is certain to hinder the esprit-de-corps and development of the Department of Homeland Security’s “One Face at the Border Initiative” which has merged the legacy Customs and INS inspectional workforces into one border security position within DHS. The committee needs to work closely with DHS and the CBP bureau to immediately correct this training pay inequity for legacy Customs employees and the new CBP officers.

CBP Trade Personnel:

The Homeland Security Act (HSA) of 2002 included provisions to ensure that the trade functions of the legacy Customs Service remain a priority within DHS whose primary mission has now become homeland security. Section 412 of the HSA clearly states that, “the Secretary of Homeland Security may not consolidate, discontinue, or diminish, reduce the staffing level, or reduce the resources attributable,” to customs revenue (trade) functions performed by employees such import specialists, entry specialists, drawback specialists to name a few.

Unfortunately, the number of import specialists around the country continues to decrease from approximately 1086 full time positions in 1999 to approximately 892 positions as of September 2003 according to a GAO report (GAO-04-345). The decrease in the number of import specialists has had an adverse impact on a number of legacy Customs trade compliance areas such as textile transshipments. Illegal textile transshipment is one form of illegal import activity that occurs when false “country-of-origin” information is provided for imported goods in order to evade U.S. textile quotas and customs duties.

As CBP has shifted its resources and mission priorities to the anti-terrorism and drug interdiction, import specialists’ ability to properly enforce the trade regulations for goods, such as textile imports, has markedly decreased. Because of the rapidly growing volume of trade coming into the United States and the limited resources for enforcement and additional staffing, CBP has been relying more on targeting processes than actual physical inspections by inspectors or import specialists to detect trade violations for shipments such as textiles, thereby increasing the chance for potential trade violations on products such as textiles.

Another issue involving CBP trade personnel, such as import specialists, is the fact the journeyman grade of import specialists has remained at a GS-11. This, despite the fact that most import specialists across the country regularly do higher graded work in the course of their daily duties as their position has evolved from one that was more transaction-based to one that is account-based which requires more specialized knowledge and experience of particular industries such as agriculture, automotive, communications, textile and steel to properly enforce the complex trade rules accompanying each industry.

It is unfortunate that CBP continues to refuse to properly compensate import specialists for their invaluable work on behalf of the Department and the trade community. 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 the trade personnel within CBP that Congress recognizes the high level of expertise that all import specialists possess.

One Face at the Border:

As the subcommittee is aware, on September 2, 2003, Secretary Tom Ridge announced the creation of a new CBP officer position and the “One Face at the Border” initiative. Under this plan, a new position, the Customs and Border Protection Officer (CBPO) would combine the duties of legacy inspectors from Customs, INS and APHIS into a single front-line border security position at the 317 official ports-of-entry across the United States.

NTEU believes that combining the border protection responsibilities that were held by three highly-skilled specialists into a “super inspector” raises some serious

concerns. Each of the job responsibilities from the three legacy inspection agencies is highly specialized and distinct. By utilizing one employee to perform all three primary and secondary inspection functions, will the agency lose the expertise that has made the United States border inspection personnel second to none?

NTEU believes that the CBP officer position was created with the assumption that the basic skill sets for legacy Customs and INS inspectors are similar and NTEU would have to agree with this statement as far as primary inspection is concerned. However, it is in secondary inspections where expertise is needed. It is in secondary inspections where legacy Customs and INS experts “drill down” to seek the facts they have been trained to find.

CBP Officer Training under the One Face at the Border initiative:

Prior to the creation of the CBP officer position, legacy Customs inspectors received 9 to 12 weeks of intensive basic training on Customs Service rules and regulations alone. Now, the new CBP officer will receive only 14 weeks of training for all Customs, INS, and APHIS rules and regulations. Under the new CBP officer training guidelines, legacy inspectors currently on the border will be transitioning into the new position in the summer of this year by way of classroom training, CD-ROM computer teaching and on-the-job training. While the new training will lead to a broader knowledge of the INS, Customs and APHIS rules and regulations of entry for passengers and goods entering the United States, there is a concern as to whether it will provide the specialized expertise necessary to ensure the successful accomplishment of the critical missions of the Department of Homeland Security.

Another aspect of the “One Face at the Border” initiative that needs more thorough scrutiny is the lack of details with regard to the secondary inspection process at ports of entry. Currently, legacy Customs and INS inspectors are “cross-trained” as to the most basic Customs and INS procedures for entry into the U.S. for passengers and goods. However, if a legacy Customs inspector is faced with a complicated visa entry situation at an airport or land border primary inspection station they have the ability to send the passenger to a more intensive secondary inspection where an experienced legacy INS inspector can make a determination as to the validity of a particular visa. It is unclear whether experts in visa issues or other specific Customs and INS border protection matters will continue to be readily available for secondary inspection. This issue is even more urgent in light of the fact that on January 5, 2004, DHS rolled out its new entry/exit visa processing system known as U.S. VISIT. Operating at 115 airports and 14 seaports across the country, and eventually expanding to the 50 largest land border ports of entry by the end of 2004, U.S. VISIT is currently being manned by only legacy INS inspectors because legacy Customs inspectors do not have the on the job experience to thoroughly determine the validity of a particular visa or passport. NTEU feels strongly that if border initiatives such as U.S. VISIT are to be successful, specific expertise must be maintained among the CBP officer ranks as it relates to Customs and INS regulations.

COBRA:

As this committee is well aware, in addition to annual appropriations, the legacy Customs Service also receives funds from a user fee account known as the COBRA account. This user fee account funds all inspectors’ and canine enforcement officers’ overtime pay as well as approximately 1300 legacy Customs positions across the country. The COBRA account is funded with user fees collected from air and sea passengers entering the United States (except from the Caribbean and Mexico), commercial vehicles, commercial vessels/barges and rail cars. The COBRA account’s reauthorization was included as part of HR 2896, marked up by this committee in 2003, and most recently as part of HR 4520, that would extend the COBRA user fees until September 30, 2014. The COBRA fund must continue to be reauthorized or Congress must appropriate additional funds to make up for the loss of the user fees in the future. NTEU strongly urges the committee’s reauthorization of COBRA to ensure that COBRA fees used to pay for legacy Customs inspectors and inspectors overtime remain available to CBP.

Law Enforcement Officer Status:

Legislative action that would help to ensure the retention of legacy Customs and other CBP personnel would include granting law enforcement status for legacy Customs Inspectors, Canine Enforcement Officers and other border security personnel in the CBP. For example, legacy Customs Service Inspectors and Canine Enforcement Officers continue to be the nation’s first line of defense against terrorism and the smuggling of illegal drugs and contraband at our borders and in our ports. Legacy Customs Service Inspectors have the authority to apprehend and detain those engaged in terrorism, drug smuggling and violations of other civil and criminal

laws. Canine Enforcement Officers and Inspectors carry weapons, and at least three times a year they must qualify and maintain proficiency on a firearm range. Yet, they do not have law enforcement officer status. They are being denied the benefits given to other federal employees who they have been working beside to keep our country safe. Legacy Customs employees face real dangers on a daily basis, granting them law enforcement officer status would be an appropriate and long overdue step in recognizing and retaining the Customs personnel who continue to protect our borders from terrorism and drugs. There currently is a bill before the House, HR 2442, which would grant law enforcement status to CBP personnel. Representative Filner introduced this bill and it currently has 156 cosponsors. I would ask the members of this subcommittee to cosponsor this very important legislation.

2Conclusion:

Each year, with trade and travel increasing at astounding rates, CBP personnel have been asked to do more work with fewer personnel and resources. The more than 13,000 Customs 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 to perform their jobs better and more efficiently.

I applaud this Subcommittee for recognizing the twenty-first century needs of the Bureau of Customs and Border Protection and I urge each of you to visit the CBP ports in your home districts. Talk to the inspectors, canine officers, and import specialists there to fully comprehend the jobs they do and what their work lives are like. Thank you for the opportunity to be here today on behalf of the Customs and Border Protection employees to discuss these very important issues.

Chairman CRANE. Thank you, Ms. Kelley. Ms. Saathoff?

STATEMENT OF PHYLLIS SAATHOFF, PRESIDENT, NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES, AND MANAGING DIRECTOR, PORT FREEPORT, FREEPORT, TEXAS

Ms. SAATHOFF. Thank you, Chairman Crane and Members of the Committee, for holding this important hearing and for inviting me to testify before the Subcommittee on Trade. My name is Phyllis Saathoff. I am Managing Director for Port Freeport in Freeport, Texas, and President of NAFTZ.

I appreciate the opportunity to discuss budget authorizations for Customs for fiscal years 2005 and 2006 and related trade issues and how these issues affect the Members of NAFTZ and the U.S. Foreign-Trade Zones program. The NAFTZ is a nonprofit association representing more than 800 Members, comprised of State and local government agencies, public entities, individuals, and corporations involved in the Foreign-Trade Zones program. The Foreign-Trade Zones program encourages domestic warehousing, manufacturing, and processing activity.

Today, there are 260 approved general purpose zones and 534 sub-zones located in all 50 States and Puerto Rico. The total value of merchandise received at Foreign-Trade Zones annually exceeds \$200 billion. Over 2,200 firms utilize the Foreign-Trade Zones program, employing more than 300,000 people.

The Foreign-Trade Zone program creates an interdependent relationship or partnership between CBP in zones. The Foreign-Trade Zones program facilitates the use of Customs services and simplifies the process, while at the same time providing the opportunity for Customs to exercise a higher degree of oversight than occurs with normal imports.

There are several clear examples of the partnership. In 1980, the Customs headquarters and NAFTAZ published the first detailed explanatory manual on Customs matters for Foreign-Trade Zones, which has since been updated through periodic mutual consultations. This successful collaboration on the Customs manual led to joint NAFTAZ–Customs training programs for Customs officers. Unfortunately, these joint training sessions are currently suspended because of limited resources within CBP. We urge funding be restored for this important training. In fact, in the next few years, we see the need for an expanded program, since many senior Customs officials are eligible for retirement and new individuals will be hired.

The NAFTAZ believes that the budget authorizations for Customs for fiscal year 2005 and 2006 need to be approved at the level requested in the President's budget proposal. Adequate funding is critical to maintaining the balance between the trade and security functions of CBP. We are concerned about possible budget shortfalls this year, as we have been disturbed by the recent cutback in nonessential costs and the freeze in hiring. It is most important that the more than 300 Customs ports of entry have necessary staffing to support the rapidly increasing levels of imports.

The security of our borders and ports, their local communities, the personnel employed there, and the immense volume of trade and economic activity that flows through them is of critical interest to NAFTAZ. The NAFTAZ believes that existing Foreign-Trade Zones security requirements complement the requirements of C-TPAT and supports the continued development and expanded access of the C-TPAT program for Foreign-Trade Zones, which already require strict security standards enforced by Customs.

While the program attracted a large number of applicants, we realize that the validation process has been slow and that the promised security as well as trade benefits of C-TPAT have been retarded by the budget freeze. The \$15.2 million requested in the CBP budget for additional supply chain security officers should bring C-TPAT participants closer to receiving the full benefits of the program. The NAFTAZ has worked closely with Customs efforts on the ACE design and implementation process. The success of ACE is a high priority for NAFTAZ. The automation of the Foreign-Trade Zone interface with Customs has been a longstanding shared goal for both of us, but it has never materialized.

From a security standpoint, our Member companies typically have long-established and documented relationships with Customs and their record of behavior is well known and predictable and carry a lower risk profile than lesser-known importers and exporters. The reduced documentation and automation burden provides Customs the ability to shift time and energy from Foreign-Trade Zone activity to other standard import and export firms. We have been told that the ACE implementation schedule Release 6 will include necessary functionality for Foreign-Trade Zones. The NAFTAZ actively supports this timely development.

The NAFTAZ has worked closely with Customs headquarters on a wide variety of outstanding Customs zone management issues. We are currently working with Customs headquarters on certain limited updates and clarifications to the operating procedures and reg-

ulations concerning origin declarations on estimated entries, filing of multiple weekly entries, as well as issues related to weekly entry zone-to-zone transfers and exports authorized by the Trade and Development Act of 2000. Significant progress has been made in working through these regulatory issues.

In summary, NAFTAZ is deeply concerned about the possibility of long-term hiring freezes and staff shortages and delay in important Customs programs, such as the scheduled implementation of ACE and C-TPAT, if adequate budgets are not provided. We urge that the budget authorizations for CBP meet or exceed the President's budget for fiscal year 2005. We must have safe and secure borders and we must have efficient, cost effective, predictable movement of commerce in and out of the United States. Thank you for the opportunity to testify.

[The prepared statement of Ms. Saathoff follows:]

Statement of Phyllis Saathoff, President, National Association of Foreign-Trade Zones, and Managing Director of Port Freeport, Freeport, Texas

Thank you, Chairman Crane, and Members of the Committee for holding this important hearing and for inviting me to testify before the Subcommittee on Trade. My name is Phyllis Saathoff. I am the Managing Director of Port Freeport (Foreign Trade Zone No. 149) in Freeport, Texas and President of the National Association of Foreign-Trade Zones (NAFTZ). I welcome the opportunity to discuss budget authorizations for Customs for FY 2005 and FY 2006 and related trade issues, and how these issues affect NAFTAZ members and the U.S. Foreign Trade Zones program.

The NAFTAZ is a non-profit trade association representing over 800 members comprised of State and local government agencies, public entities, individuals and corporations involved in the Foreign-Trade Zones program. The NAFTAZ plays an important role in facilitating international trade and US competitiveness through the promotion and support of the Foreign Trade Zones program.

The Foreign-Trade Zones program was created by an act of Congress in 1934. Its purpose is to encourage domestic warehousing, manufacturing and processing activity. States and local governments use foreign-trade zones as part of their overall economic development strategy and to improve the international business sector in their communities. In this way, FTZs contribute to the enhancement of the U.S. investment climate for commerce and industry. The FTZ program encourages capital investment in the U.S. rather than abroad and secures American jobs. The benefit occurs only if the activity takes place in the U.S. It substitutes U.S. produced merchandise and labor for foreign imports. Today there are 260 approved general-purpose zones and 534 subzones located in all 50 states and Puerto Rico. According to the latest available annual report of the Foreign-Trade Zones Board, the total value of merchandise received at foreign-trade zones annually exceeds \$200 billion. Over 2,200 firms in the U.S. utilize foreign-trade zones and employment at these facilities exceeds 300,000.

It is not generally understood that the FTZ program creates an interdependent relationship, or partnership, between CBP and zones. The Foreign-Trade Zone program facilitates the use of Customs services and simplifies the process, while at the same time providing the opportunity for Customs to exercise a higher degree of oversight than normal imports. This partnership has grown naturally, and connects zones with not only Customs Headquarters, but with the former Regions and Districts, as well as the Ports nationwide.

There are several clear examples of the partnership. In 1980, Customs Headquarters and the NAFTAZ published the first detailed explanatory Manual on Customs matters on any topic for foreign-trade zones. The Manual has been updated through periodic mutual consultations since then, and is now available in an on-line version. It is a very good example of the public and private cooperation, of Customs and the NAFTAZ developing an important reference work that can be used both by the import and export community and by Customs.

This successful collaboration on the Customs Manual led to a joint NAFTAZ-Customs effort to develop a joint training program for Customs officers. Initially, training occurred at NAFTAZ Seminars and Conventions. Eventually, the training moved to the Customs Training Center in Glynnco, Georgia. Literally thousands of Customs

employees have been trained jointly by Customs and the NAFTAZ in the intricacies of the Foreign-Trade Zone program. Unfortunately, these joint training sessions are currently suspended because of limited resources within CBP. It is hoped that we will be able to restore funding for this important training. In the next few years, in fact, we see the need for an expanded program since many senior Customs officials are eligible for retirement and new individuals hired by Customs to replace them are likely to have little knowledge of the intricacies of the Foreign-Trade Zone program.

There is also a long history of regulatory cooperation between FTZs and Customs, which I will briefly discuss later in the testimony

Customs Budget Authorization

The NAFTAZ believes that the budget authorizations for Customs for FY 2005 and FY 2006 need to be approved at the level requested in the President's budget proposal. Adequate funding is critical to maintaining the balance between the trade and security functions of CBP. We are concerned about possible budget shortfalls this year, as we have been disturbed by the recent cutback in nonessential costs and the freeze in hiring. It is most important that the more than 300 Customs Ports have necessary staffing to support the rapidly increasing levels of imports.

Our members are also beginning to focus on proposals for FY 2006. A recent article in the Washington Post, (*2006 Cuts In Domestic Spending On Table*, The Washington Post, May 27, 2004) highlighted budget guidance issued by the Office of Management and Budget detailing cuts in several domestic programs, including the Department of Homeland Security. Of course, any cuts to Homeland Security potentially impact Customs and Border Protection. Consequently, the NAFTAZ is deeply concerned about the possibility of long term hiring freezes and staff shortages and delay in important Customs' programs such as the scheduled implementation of Automated Commercial Environment (ACE) if adequate budgets are not provided.

The NAFTAZ supports the enhancement of Customs resources for training, automation, and commercial operations. It is most important that Customs be funded at a level that will provide the necessary controls and structure to implement a safe and secure import and export process.

Reorganization in Department of Homeland Security

The NAFTAZ has followed the reorganization in the Department of Homeland Security and worked closely with Customs, the Department of Homeland Security, and the Department of Treasury, on the delegation of authority from Treasury to Customs. The NAFTAZ has insisted in this delegation that there be no diminution of the trade functions in their transfer from Treasury and that Customs ensures these functions receive sufficient priority. We know this has been a priority of this Committee and our members appreciate your strong support.

For FTZs, the delegation problem had to clearly establish the exact interface among the Foreign-Trade Zones Board, the Department of the Treasury, the Department of Commerce, Customs Headquarters, and Homeland Security. After considerable effort, an arrangement was worked out that retained the legal structure of the Foreign-Trade Zones Board with the two members being the Secretary of the Treasury and Secretary of Commerce, while accommodating the interests of Customs and Homeland Security. Just as it is with every group whose central concern is the unobstructed flow of trade, we remain alert to any changes in this new equation. However, the new arrangement seems to be functioning effectively. Customs continues to work with zones in facilitating trade and we see no slack in the necessary support, activity or oversight.

Customs-Trade Partnership Against Terrorism (C-TPAT)

The security of our borders and ports, their local communities, the personnel employed there, and the immense volume of trade and economic activity that flows through them is a critical interest to the NAFTAZ. The NAFTAZ believes that existing FTZ security requirements complement the requirements of Customs-Trade Partnership against Terrorism (C-TAT) and supports the continued development and expanded access of the C-TPAT program for foreign trade zones.

Foreign-trade zones require strict security standards enforced by Customs. All foreign-trade zones have undergone a physical security review, background investigations of key employees of foreign-trade zone operating firms, and their activities are subject to unannounced "spot checks" at any time, as well as audits. In addition, foreign-trade zone operations are required to be under a special Foreign-Trade Zone Operators Bond that can be accessed by Customs to financially enforce the security responsibilities. The background investigation and physical review of facilities exceeds current C-TPAT requirements. The NAFTAZ has been working with Customs Headquarters for several years to secure the involvement of foreign-trade zone oper-

ations in C-TPAT general-purpose zones. A large percentage of all foreign-trade subzone users are already under the C-TPAT program, because subzone operators qualify as importers under the current membership criteria.

While the program attracted a large number of applicants, we realize that the validation process has been slow and that the promised security as well as trade benefits of C-TPAT have been retarded by the budget freeze and a consequent shortage of personnel. The \$15.2 million requested in the CBP budget for additional supply chain security officers should bring C-TPAT participants closer to receiving the full benefits of the program.

Customs Modernization

The NAFTAZ has worked closely with Customs' efforts on the ACE design and implementation process, committed significant time and resources, so success of ACE is a high priority for the NAFTAZ.

At the request of Customs, the NAFTAZ developed, and funded, a task force to work on the ACE program as it applies to FTZs. Representatives of a broad industry cross section from our membership have spent literally hundreds of hours working on the development of the totally automated FTZ methodology. This is an especially important process to the NAFTAZ, since it will be key in supporting our country's security and trade goals. Also, the automation of the foreign-trade zone interface with Customs, as the committee knows, has been a longstanding shared goal for both of us, but it has never materialized. Even after the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106-36) that was passed in 1999 by Congress mandating the automation of the FTZ admission process, no automation has occurred. However, our ACE task force under ACE has worked diligently. It has been a very great success. In Customs' own words, "the NAFTAZ ACE FTZ Task Force requirements document ENT-043 detail and format is a model for all other ACE requirements industry submissions. It is our view that foreign-trade zones generally provide the ability for Customs to view our members on an account basis with full automation of individual transactional reporting and authorizations, which is a long-term goal of ACE. From a security standpoint, our member companies typically have long-established and documented relationships with Customs, and their record of behavior is well-known and predictable, and carry a lower risk profile than lesser known importers and exporters. By reducing the amount of documentation and paperwork for receipts at zones and Customs entries for shipment imports, zone-to-zone transfers, and exports, both Customs and trade benefit. The reduced documentation and automation burden provides Customs the ability to shift time and energy from foreign-trade zone activity to other standard import and export firms.

Other Customs Issues

The NAFTAZ is also very interested in the smooth administration of Weekly Entry procedures and automation of the zone admission process.

The NAFTAZ has worked closely with Customs Headquarters on a wide variety of outstanding Customs zone management issues. Over the years, we have worked cooperatively with Customs in the updating of the Customs FTZ Regulations. In 1986, a significant revision to the Regulations was produced. We are currently working with Customs Headquarters on certain limited updates and clarifications to the operating procedures and Regulations concerning origin declarations on estimated entries, use of total zone value, misunderstandings on FDA weekly entries, and filing of multiple weekly entries. Very significant progress has been made in working through these regulatory issues and we hope to be able to report total satisfactory resolution of expressed concerns back to the Committee in the near future.

Weekly Entry In 2000, Congress passed the Trade and Development Act of 2000 (Public Law 106-200) that extended weekly entry to all types of FTZ operations, because the Committee fully understood that this action would greatly facilitate the movement of trade and reduce paperwork. Subsequently, Customs Headquarters has raised certain concerns with respect to zone-to-zone transfers and exports that are currently being addressed by Customs and the NAFTAZ. We continue to believe that the statute as written is legally sound. If technical corrections to the statute are necessary, we will be in contact with the Committee.

Automation of Zone Admission Process. In 1999, the Miscellaneous Trade and Technical Corrections Act (Public Law 106-36) directed the Commissioner of Customs to automate the FTZ admission process by 2000. While no action has specifically been taken by Customs Headquarters in this regard, we have been told that the ACE implementation schedule, Release 6, will include necessary functionality. The NAFTAZ has been actively supporting this development.

SUMMARY

In sum, NAFTAZ works with CBP in a mutually beneficial partnership, but this relationship could erode without sufficient federal funding and human resources. We urge that the budget authorizations for the CBP meet or exceed the President's budget for fiscal year 2005, in order to adequately fund important programs such as C-TPAT and ACE as well as Customs training, personnel and commercial operations. The NAFTAZ looks forward to working with Customs to improve Weekly Entry and automation of critical zone management tools, such as the automation of the zone admission process.

We appreciate the opportunity to testify today and look forward to working with Customs and the Committee in the enhancement of FTZ processes and the further development of the Foreign-Trade Zones program.

Chairman CRANE. Thank you, Ms. Saathoff. Now, Ms. Scott.

STATEMENT OF SANDRA SCOTT, DIRECTOR OF INTERNATIONAL RELATIONS, YELLOW-ROADWAY CORPORATION, OVERLAND PARK, KANSAS, AND VICE CHAIR, BORDER TRADE ALLIANCE, PHOENIX, ARIZONA

Ms. SCOTT. Good morning, Chairman Crane, Members. My name is Sandra Scott and I am the Director of International Relations for Yellow-Roadway Corporation. It is the largest North American truckload carrier and we employ more than 50,000 men and women.

However, what brings me here today is my position as Vice Chair of the Border Trade Alliance. The Border Trade Alliance, founded in 1986, has been a consistent advocate on behalf of the cross-border trade community for border and trade agency funding levels that will allow the United States to remain competitive in an increasingly global economy.

The BTA has also been a vocal advocate for innovative programs that expedite the flow of legitimate trade and travel while increasing our Nation's security. In particular, we were strong supporters of the Customs Modernization Act that played a significant role in the subjects we will discuss here today.

Thank you for holding this hearing today and taking the opportunity to hear from those of us on the frontlines of international trade. On behalf of the BTA, I am submitting written testimony that touches on the host of issues that this Committee is reviewing at today's hearing. In my limited time here, however, I would like to stick to the issues of Customs modernization, specifically the importance of the ACE and the International Trade Data System (ITDS).

The BTA has taken great interest in this issue of late, going so far as to play a leadership role in establishing a coalition of key trade community stakeholders, calling attention to the importance of ACE/ITDS. In the past several weeks, I have enjoyed meeting with many of you and your staffs to discuss the importance of this issue.

Why are ACE and ITDS so important? The ITDS offers a single window for commercial data to be provided by the private sector for processing by the ACE and distribution to Federal agencies with enforcement, security, statistical, and revenue collection responsibilities for commercial cargo crossing America's borders. Originally an information technology initiative of the National Perform-

ance Review in 1994, its goal was to provide a government-wide system for the electronic, paperless, collection, use, and dissemination of international trade data.

Now being designed as a fundamental part of the ACE development, ITDS encourages inter-agency information sharing, thus providing much greater efficiencies in data collection and intelligence gathering. This will result in more effective enforcement, security targeting processes, and risk analysis of trade flows. For the trade and for the legitimate cargo, the streamlined sharing of information will accelerate border clearance times, reduce costs, and cut down on inefficient paper-based systems.

The recent legislative action of the Congress in passage of the Bioterrorism Act would have been more easily implemented had the early 1990 start on an ITDS system been provided more structure and attention within the Administration. Currently, participation in ACE/ITDS is voluntary for government agencies. Right now, only 8 agencies are participating in ACE/ITDS, with an additional 10 showing interest in 2004. These are among 79 agencies identified as candidates. For the full benefits to accrue, all these agencies need to join in.

Non-participation in ACE/ITDS by a Federal agency deprives the government's homeland security and cargo facilitation efforts of valuable information. Furthermore, it isolates that agency from data helpful to its own mission. The ITDS, fully supported, would provide a seamless automated approach to our Federal regulatory presence at all borders. The record of non-participation by Federal agencies, whether by design or through oversight, is very disappointing as ITDS is now being developed and implemented as an integral piece of ACE that is managed by CBP and DHS. They cannot require agencies from other departments to participate.

The needed interagency cooperation and collaboration is something that requires the attention and involvement of the highest levels of the Federal Government. That leadership and direction must come from the White House, where there is sufficient span of authority to bring 79 distinct Federal agencies together. Thus, an Executive Order can provide the government-wide operational guidance necessary to place essential agencies under the umbrella of ITDS, ensuring budget and policy decisions needed for the continued growth and success of ITDS.

The BTA suggests that the Customs Border Security and Trade Agencies Authorization Act of 2004 (H.R. 4418) we are discussing here today, may provide a good platform to express a sense of the Congress that full interagency participation in ITDS should be ensured via Presidential Executive Order.

[The prepared statement of Ms. Scott follows:]

Statement of Sandra Scott, Vice-Chair, Border Trade Alliance, Phoenix, Arizona, and Director of International Affairs for Yellow-Roadway Corporation, Overland Park, Kansas

The Border Trade Alliance (BTA) appreciates this opportunity to submit testimony on the subject of Customs budget authorizations and other Customs issues. Since 1986, our organization has consistently advocated on behalf of the cross-border trade community for agency funding levels that will allow the United States to remain competitive in an increasingly global economy. The BTA has also been a vocal advocate for innovative programs that expedite the flow of legitimate trade and travel while increasing our nation's security.

H.R. 4418, Customs budget authorization bill

Regarding H.R. 4418, the Bureau of Customs and Border Protection (CBP) budget authorization bill, the BTA agrees with Subtitle C, Sec. 122, calling for the establishment of "Integrated Border Inspection Areas at the United States-Canada border."

In today's unique environment of increasing trade levels as well as increasing threats, the governments of the U.S. and Canada should be seeking innovative ways to partner to maintain each country's security, as well as their competitive edge in the global marketplace. The establishment of Integrated Border Inspection Areas (IBIAs) between CBP and the Canadian Customs and Revenue Agency (CCRA) would go far in increasing security while reducing redundancies.

Waiting to inspect a cargo load until it arrives into the U.S. from Canada is too late. When a fully loaded truck leaves the Canadian mainland and enters on to one of the bridges connecting our two countries, such as the Ambassador Bridge in Detroit, MI and Windsor, ON, or the Peace Bridge in Buffalo, NY and Ft. Erie, ON, our countries' critical infrastructure is put at unnecessary risk. Without knowing what that truck is carrying, we run the risk each day of allowing passage of someone or something with the potential to do us harm. IBIAs allow each country's respective inspection services to carry out any necessary security applications long before a cargo load arrives at its intended country of destination.

Security is not the only consideration to be made when studying the issue of IBIAs. Too often, drivers cross into the U.S. without proper documentation ready to enter their loads into the flow of U.S. commerce, thus creating unnecessary delays as the various paperwork requirements are worked through with CBP officials. Canada and the U.S. should work together to prevent these bureaucratic inefficiencies before the improperly documented loads arrive at their country of destination.

The BTA is especially hopeful that successful IBIAs will establish a best practice for the establishment of similar facilities on the U.S.-Mexico border, which like our border to the north, processes an ever-growing amount of trade.

In going forward with the IBIA concept, the committee should bear in mind the need to properly staff these facilities during peak periods, as well as the need to develop some expedited processing option for carriers so as to keep the IBIAs from turning into nothing more than parking lots.

The BTA is aware of past wrangling between the U.S. and Canada over the general issue of sovereignty and, more specifically, the question as to whether CBP personnel should be permitted to wear their side arms while on Canadian soil. While not passing judgment on that issue in this space, we are confident that this issue can be effectively resolved between the two governments. There is too much at stake to allow this issue to be the barrier to a better trading environment between our two countries.

Customs modernization: ACE/ITDS

The BTA was pleased to see that the committee has raised questions on the Automated Commercial Environment (ACE) and its relation to the International Trade Data System (ITDS). Our organization has taken great interest in this issue of late, going so far as to play a leadership role in establishing a coalition of key trade community stakeholders calling attention to the importance of ACE/ITDS.

ITDS offers a single window for commercial data to be provided by the private sector for processing by the ACE and distribution to Federal agencies with enforcement, security, statistical and duty collection responsibilities for commercial cargo crossing America's borders. Originally an information technology initiative of the National Performance Review in 1994, its goal was to provide a government-wide system for the electronic (paperless) collection, use and dissemination of international trade data.

Now being designed as a fundamental part of ACE development, ITDS encourages interagency information sharing, thus providing much greater efficiencies in data collection and intelligence gathering. This will result in more effective enforcement, security targeting processes, and risk analysis of trade flows. For the trade and for legitimate cargo, this streamlined sharing of information will accelerate border clearance times, reduce costs, and cut down on inefficient paper-based systems.

Non-participation in ACE/ITDS by a federal agency deprives the government's homeland security and cargo facilitation efforts of valuable information; furthermore, it isolates that agency from data helpful to its own mission. ITDS, fully supported, would provide a seamless automated approach to our federal regulatory presence at all borders.

The record of non-participation by Federal agencies, whether by design or through oversight, is disappointing. As ITDS' operators, CBP and the Department of Homeland Security (DHS) cannot require agencies from other departments to participate.

That leadership and direction must come from the White House where there is sufficient span of authority to bring 79 distinct Federal agencies together. Thus, an Executive Order can provide the government-wide mandate necessary to place essential agencies under the umbrella of ITDS.

The BTA suggests that H.R. 4418, the Customs budget authorization bill, may provide a good platform to express a sense of the Congress that full-interagency participation in ITDS should be ensured via presidential Executive Order.

Also, it would be of great benefit to designate an “owner” of ITDS. As we cited above, while CBP and, by extension, DHS operate ITDS, their power is limited in directing other agencies to buy into and participate in ITDS. We recommend designating a department or agency with ultimate say in the direction ITDS takes.

DHS organization

It is worth noting here that the BTA was and is supportive of the creation of DHS. While the transition to this new department has not been without its hiccups, we are convinced that DHS and its “One Face at the Border” strategy has and will continue to result in more effective border management than the legacy structure of numerous agencies with overlapping jurisdictions competing over the same turf.

Coordination between DHS and those agencies outside DHS can always be improved, and Congress has a role to play in ensuring that cross-agency communication is improved. Case in point, the Trade Act of 2002 and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, otherwise known as the Bioterrorism Act, illustrate the potential disruption that results from competing legal mandates.

Both of those laws called for the submittal of advance cargo manifest information to the proper U.S. enforcement authorities, depending on whether the load contained foodstuffs, prior to that load’s arrival at the U.S. border. The timeframes for submittal of this manifest information outlined in these two laws, however, were different and contradictory.

A common lament in the trade community is the lack of uniformity in processing cargo depending on port of entry and commodity. Congress could do much to promote uniformity by crafting legislation cognizant of the unique structure of DHS and the fact that some of the agencies that play a role in international trade are not part of the DHS structure.

C-TPAT

The BTA is supportive of the Customs Trade Partnership Against Terrorism (C-TPAT). Like others in the trade community committed to C-TPAT, however, we believe that there must be an assurance from CBP of tangible benefits to participants in the program. One such benefit is access for carriers to border FAST lanes, or Free And Secure Trade lanes.

While it is our understanding that CBP has undertaken a significant hiring effort in order to assemble a staff trained to validate C-TPAT companies and facilities, we still have some concern about CBP’s ability to ensure C-TPAT compliance, especially with so many companies seeking FAST access. The committee is well advised to monitor this evolving issue.

We are also concerned with the paltry number of small and medium sized businesses who have gotten C-TPAT certification. We recommended a concerted marketing campaign by CBP to ensure that the small and medium sized carriers and importers that make up the bulk of international traders are aware of C-TPAT and ultimately take the steps necessary for certification. Certification ensures they receive the benefits possible under the program while CBP ensures an increasingly secure international supply chain. We must guard against creating a system of the “haves” and “have nots” of international trade, characterized by large trusted shippers whose shipments receive expedited service, and small to medium sized shippers whose security apparatus remains in question and whose shipments do not reach their destination in a timely fashion.

The failure to bring small and medium sized companies into the C-TPAT fold also has a direct effect on less-than-truckload (LTL) carriers—the bulk of whose customers are small and medium sized—and their C-TPAT-certified customers. According to C-TPAT criteria, carriers cannot access the FAST lanes at land border ports of entry with loads that are not C-TPAT certified. Thus, a carrier with loads from both C-TPAT and non-C-TPAT customers cannot access the FAST lane, which results in a penalty to the C-TPAT-certified business.

We are also concerned with the C-TPAT Status Verification Interface, or SVI. SVI is touted by CBP as a mechanism for C-TPAT members to query a CBP system electronically with a secure identification number which other companies are also part of C-TPAT. However, in its current design SVI is flawed in that the user must

have access to another company's identification number in order to verify C-TPAT participation. We recommend altering SVI to permit querying by company name.

Finally, the BTA and others in the trade community would like to see statistics from CBP indicating whether FAST lane access is indeed faster than using a regular cargo lane. There is anecdotal evidence suggesting that FAST does not offer carriers the speedy access advertised by CBP. If CBP's statistics indicate that FAST is not resulting in faster crossing times, then we in the trade are happy to work with CBP to fix the problems with FAST. We also recommend posting FAST lane crossing times on CBP's Web site along with the data for non-FAST lane crossing times. This would result in an easy one-stop source for border crossing data.

Once again, the BTA appreciates the opportunity to submit testimony to the committee on these issues of great importance to the cross-border trade community. We offer our organization's years of collective knowledge on border trade issues as the committee continues to consider these important topics.

Chairman CRANE. Ms. Scott, excuse me for interrupting, but we are down to just 5 minutes on the recorded vote on the floor. Let me reassure all of you, any printed statements you have will be made a part of the permanent record and we thank you for your participation, and we look forward to working with you on a continuing basis. With that, the hearing stands adjourned.

[Whereupon, at 11:56 a.m., the hearing was adjourned.]

[Submissions for the record follow:]

Statement of American Association of Exporters and Importers

The American Association of Exporters and Importers ("AAEI") appreciates the opportunity to offer its comments on budget authorizations for U.S. Customs and Border Protection ("CBP") and the Bureau of Immigration and Customs Enforcement ("ICE") for fiscal year ("FY") 2005 and FY 2006, as well as both current and prospective CBP trade security and trade facilitation measures.

As the Subcommittee knows, 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 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 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 commends Chairman Crane and members of the Subcommittee on Trade of the Committee on Ways and Means in their effort to guide and support the critical trade functions of CBP through the introduction of H.R. 4418 and conduct of these hearings, in which connection we are privileged to submit this testimony. It has long been this Subcommittee's role, under the auspices of Ways and Means jurisdiction, to provide leadership in shaping federal government programs essential to America's commercial operations. We appreciate and applaud your continued vigilance. The Subcommittee's understanding of the supply chain, commercial valuation, and a myriad of related issues impacting the trade community has proven invaluable over the years. Indeed, the Subcommittee's role has been integral to ensuring major substantive advances over the years, including development and consideration of the Customs Modernization Act ("Mod Act") more than ten years ago. AAEI appreciates these efforts and thanks both the Subcommittee and the full Committee for their efforts.

1. Balancing Vital National Priorities

We would also like to thank the Subcommittee for the opportunity to present our views on CBP's efforts to maintain a balance between trade security and trade facilitation. AAEI supports CBP's national security mission as part of the U.S. Department of Homeland Security ("DHS" or the "Department"), and recognizes that, in creating DHS, Congress was mindful not to impede legitimate trade. AAEI believes that Congress should monitor the trade-related activities of CBP to ensure that DHS maintains a balance between national security and global trade.

As CBP Commissioner Bonner has recognized, CBP is striving "to increase security while simultaneously preserving and, when possible, even improving the more

efficient movement of legitimate trade and travel.” While AAEI has consistently supported CBP’s efforts to strike a balance between increasing America’s security while improving trade, we are increasingly concerned that trade facilitation, and in some instances the trade community itself, are not viewed by some within our national security leadership as an equal partner. We share the Subcommittee’s concern that priorities be balanced. We, for instance, are particularly concerned that interested parties including much of the trade community and even Congressional committees have, on more than one occasion, been unable to initiate constructive dialogue with CBP and DHS on vital facilitation issues. In examining this state of affairs, we suggest that a significant part of the problem results from the security community’s perception of its role. 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.

A second significant factor is the lack of resources, both dollars and manpower, devoted to the facilitation and operations aspects of CBP’s functions. Here we acknowledge the huge brain drain that is occurring across federal government agencies as senior government employees retire in record numbers, but the situation the trade community confronts goes well beyond that. The experienced customs professionals at all levels who long have made the system work are leaving or have left or, as we so often hear, are so discouraged that they are resigned to frustration. The solution to these and related problems will require long-term dedication on the part of DHS and clear oversight by the Subcommittee.

2. CBP Regionalization

AAEI has strongly supported Administration efforts to create and administer DHS and commends the extraordinary work necessary to do so over the last three years. It is clear that DHS continues to evolve to meet the challenges before it. Based on information derived from the FY’04 budget plan as well as meetings with government officials, AAEI understands that the Department has proposed a plan to regionalize core Department functions. As conveyed to the trade community, the concept of “regionalization” entails the designation of a single DHS official as responsible for a specific geographic area of the nation. That individual would be charged with coordinating government resources in response to a terrorist “incident.” Although DHS has not issued a formal notice seeking comments on any specific proposal, Department officials have indicated to members of government advisory committees that such a reorganization plan is currently under review at the White House.

Importantly, unlike other recent CBP trade security initiatives such as the Customs-Trade Partnership Against Terrorism (“C-TPAT”), the regionalization plan has, to date, been created without the benefit of substantive trade community input. We are, therefore, concerned that ongoing plans to regionalize CBP, without coordinated and cooperative substantive input from the trade, could amount to a step backward for trade facilitation. As AAEI has expressed to the Administration on previous occasions, we have several specific concerns regarding the regionalization of CBP including: (1) CBP’s failure to utilize available private sector expertise and liaison, leading potentially to inefficient or impractical regulatory outcomes and a potentially negative impact on trade; (2) the strong likelihood that disorder and confusion may again detrimentally impact commercial decisions regarding product import and export; and (3) implementation of regionalization and the potentially enormous drain on available DHS resources may directly impact CBP’s ability fully to implement badly needed modernization, personnel, and training upgrades.¹

The trade community recognizes strong DHS efforts to ensure vital uniformity in policies and programs among the nation’s ports but reminds the Subcommittee that even today, we are still too far from meeting this goal. We, in all facets of the industry, see this lack of uniformity by commodity, by port, and even by time of the month. We also see a lack of uniformity of purpose and procedures mushrooming as seemingly uncoordinated agency action is initiated by those traditionally interested in product integrity or enforcement issues rather than trade facilitation.

In order to address these concerns, AAEI submits four points concerning the regionalization concept. First, AAEI supports the government’s efforts to provide critical first responder and crisis management structure to DHS. In particular, AAEI supports the government’s initiative to vary the color-coded threat level advisory system according to local conditions so as to cordon a region of the country based on specific intelligence.

¹ See, April 14, 2004 letter from AAEI President Hallock Northcott to the Honorable Josh B. Bolton, Director, Office of Management and Budget.

Second, AAEI reminds the Subcommittee about the inefficiencies that resulted from the U.S. Customs Service's regional structure prior to passage of the Mod Act in 1993. The inconsistent treatment of identical or similar merchandise and the lack of uniformity in trade compliance procedures at various ports of entry created "port shopping" by frustrated importers. The concepts of "informed compliance" and "reasonable care," as well as the headquarters and port structure embodied in the Mod Act, were designed to provide greater predictability and uniformity in the administration of customs laws and to facilitate trade. Many multinational companies have integrated these trade compliance principles into their global operations and are seeking uniformity in the treatment of their goods on a worldwide basis. AAEI believes that CBP's functionality has, with significant trade community cooperation and guidance from this Subcommittee, progressed substantially over the past 11 years. The trade community is, therefore, reluctant to support any efforts that may nullify the efficiencies gained over the past several years.

Third, AAEI is concerned that, without continued vigilance, certain "onerous" aspects of any regional structure activated in response to a national security incident will become a permanent layer of DHS organization beyond the immediate aftermath of such an incident. Over time, the regional structure could diminish the important role that CBP Headquarters plays in the uniform administration of the customs laws and in overseeing trade facilitation. As noted below concerning section 102 of H.R. 4418, AAEI believes that maintaining adequate funding for CBP's commercial activities is crucial to striking a balance between national security and facilitating trade.

Fourth, because no proposal has been shared with the trade community, AAEI is unsure what type of event or activity would be considered an "incident" for the purpose of activating the regional structure contemplated by DHS. Therefore, on behalf of the trade community, AAEI is seeking further information and, perhaps more importantly, the opportunity for meaningful input on the DHS proposal. That input must incorporate those diverse aspects of the community that would potentially be dramatically impacted by the proposal and should be both coordinated and truly cooperative. In the absence of such coordination and cooperation, it would be unreasonable to expect the trade to lend its full support to CBP Regionalization.

3. Customs-Trade Partnership Against Terrorism ("C-TPAT")

Turning to C-TPAT, we observe that this program was initially launched by CBP as a voluntary program designed to be flexible and adaptable to the needs of each importer while meeting the government's objective of securing corporate supply chains quickly. To date, C-TPAT has indeed endeavored to serve as a government-private sector partnership program that addresses supply chain security. The trade community was involved in the design and creation of the program, and continues to advise CBP on its implementation. We note, however, that in the experience of a significant number of AAEI members, C-TPAT has failed to yield measurable trade facilitation benefits even as the program has increased compliance costs.

Accordingly, AAEI recommends that Congress require CBP or the General Accounting Office to conduct a study in order to calculate the costs incurred by the trade community in implementing C-TPAT as well as other current programs. This study should also have as its objective the measurement of the benefits to border security resulting from the trade community's adoption of C-TPAT's security recommendations. AAEI notes that the Mod Act shifted responsibility for trade compliance (*i.e.*, the proper classification, valuation, and marking of imported merchandise) to importers utilizing the principles of "informed compliance" and "reasonable care," and envisioned that CBP would expand the number of agency personnel responsible for trade facilitation and compliance. However, many of those resources have been shifted to trade security. AAEI is also concerned that CBP's inspectors and operations personnel do not have uniform standard operating procedures for contacting C-TPAT certified importers to resolve security issues arising during the clearance of shipments. Currently, security related anomalies or incidents may result in a differing response from CBP officials depending upon port of entry. AAEI recommends that CBP implement uniform procedures establishing how security issues involving C-TPAT certified importers will be resolved. This should be followed by training on such procedures for operational personnel at all ports. As with all of AAEI's recommendations, the Subcommittee should bring its expertise to bear in determining the funding levels CBP would need to support such efforts.

One other area of concern relates to the maintenance of confidential business information. AAEI members who have joined C-TPAT would like reassurance that their confidential information is not being shared with other government agencies, both domestic and foreign, without their consent. Such prohibitions would include

lawful disclosure requests made under the Freedom of Information Act. *See*, 5 U.S.C. • 552 and 19 C.F.R. • 103.5.

We understand that CBP has seriously debated altering the fundamental nature of C-TPAT from a voluntary program to a mandatory trade security requirement. We are concerned that if this occurs, compliance costs would continue to grow in the absence of improvements in trade facilitation. We note also that it would be important to understand the overall impact upon the flow of goods and services of a mandatory C-TPAT program. AAEI does not support making C-TPAT a mandatory program. Rather, AAEI recommends that CBP implement uniform procedures for handling security issues involving C-TPAT certified importers and conduct further training of its personnel on C-TPAT. The trade would not support any trade security program that dictates inflexible standards and, in addition, does not provide a sufficient return on its investment in supply chain security measures without commensurate trade facilitation by CBP.

In the Subcommittee's efforts to explore the larger issues, it is worth noting that AAEI strongly encourages the Subcommittee to continue its oversight of related World Customs Organization and International Maritime efforts. We believe that integration and, where appropriate, coordination can provide significant benefits for U.S. commercial operations interests.

4. Automated Commercial Environment and the International Trade Data System

We next address the state of the Automated Commercial Environment ("ACE") and integration of the International Trade Data System ("ITDS"). First and foremost, AAEI considers ACE to be a crucial part of customs modernization and necessary for the government to keep up with the volume of transactions and merchandise. It is an essential component of our nation's trade environment. As such, it is essential that significant effort be devoted to ACE. In this regard, AAEI is prepared to contribute to the Subcommittee's continued inquiries.

Since the formal launch of ACE and its Trade Support Network ("TSN"), AAEI believes that important issues have been well explored, many sectors of the industry have significantly contributed, and overall, significant progress has been made. Many of our members are extremely pleased with progress to date. ACE's ongoing implementation and solid growth are very encouraging to those of us whose organizations have waited many years for progress on this front. We congratulate both the responsible government officials and the private sector TSN representatives for their efforts to bring this project to fruition.

Industry recognizes that ACE will be central to the way in which the trade interfaces with the government. It is going to be at the heart of CBP's entry, revenue collection, security, and compliance risk management functions, among others. Its future is being resolutely shaped in daily meetings and conferences both here in Washington and elsewhere. But while ACE implementation has always seemed far off into the future, this is no longer the case. ACE is happening now. We are on the cusp of critical decision-making, programming, and implementation that will significantly affect the trade for years to come. Anticipated ACE releases will:

- Open ACE account status with web portal access to over 1,000 new participants;
- Enable monthly payment of duties;
- Integrate partner government agency requirements (e.g., APHIS, FDA); and
- Implement entry and entry summary processing.

It may also be useful for the Committee to recognize that this is a critical juncture for the programming into ACE of key Mod Act functionalities, including monthly summary filing (IASS) and Reconciliation.

Frankly, though we are highly supportive of ACE efforts and the ACE Trade Support Network process, we have a number of serious concerns. For instance, in reviewing member involvement we are keenly aware that a number of company/firm members of the TSN already feel overwhelmed with ACE information, sometimes making it difficult to distinguish and absorb the most important developments. As development and implementation move forward, the situation promises to become even more challenging. Imagine, if you will, the many affected organizations across the country that are perhaps only dimly aware of progress to date.

But beyond these significant concerns with communication and education, we fear that ACE, already behind schedule, will be significantly delayed by resource shortages and changing priorities. We are concerned that, over the next three years, the next phases of ACE will focus predominately on law enforcement and security rather than on trade facilitation. We are also concerned that the original intention of many provisions under working group review may have been significantly modified

over time and have not been fully vetted by the larger trade community. Finally, we are very concerned that it is a 10-year-old system, replacing another 20 plus year-old system, which, optimistically, won't be in place for another five to seven years. Thus, we encourage the Subcommittee's interest in ACE's progress and will be happy to assist wherever possible.

As the Subcommittee has emphasized over many years, information and data sharing are vital to the modern customs system. ACE will enable importers to meet not only "reasonable care" requirements for CBP, but also mandates imposed by other government agencies by allowing access to one set of trade data in "real time." Integration of ITDS as a single window for the maintenance of trade data collected by the federal government furthers the Congressional intent of the Mod Act and these other goals (*i.e.*, compliance with multiple agency requirements) of the trade community. *See*, H.R. Rep. No. 103-361(I), at 128 (1993), *reprinted in* 1993 U.S.C.A.N.N. 2678.

The trade community has a long-standing interest in working with the government to build a single data standard for federal agencies involved in regulating trade. While the trade community recognizes the government's need for trade data in order to secure the nation, importers are now subject to different and sometimes conflicting information and transmission requirements by various federal agencies. For example, Congress has mandated that both CBP and the Food and Drug Administration ("FDA") collect advance cargo manifest information prior to the shipment of imported products. *See*, Trade Act of 2002, P.L. 102-210, 116 Stat. 933, as amended by section 108 of the Maritime Transportation Security Act of 2002, P.L. 107-295, 116 Stat. 2064; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, P.L. 107-188. Unfortunately, because these agencies issued their "prior notice" regulations pursuant to two different statutes, the agencies promulgated regulations with different requirements (*i.e.*, different time periods for submitting the same data, utilizing different online systems). Such inconsistencies significantly increase the administrative burden of compliance on the part of importers.

Based on a recent report by CBP concerning the status of ITDS and ACE, several government agencies will begin integrating their operations into the ACE/ITDS design. *See*, *ITDS On Track to Help Create "One Screen at the Border,"* 3 Modernization Monitor at 3 (Spring 2004), at <http://www.cbp.gov/xp/toolbox/about/modernization/>. Many of these agencies (*i.e.*, Federal Communications Commission, Animal and Plant Health Inspection Service, Food and Drug Administration, U.S. International Trade Commission, and Census Bureau) are involved in regulating trade or transportation. In particular, Census collects and maintains data utilized in U.S. trade statistics. The report indicates that another 15 federal agencies will begin working in ITDS in 2004. Since over 100 agencies are involved in international trade and a significant number have trade security responsibilities, the ITDS initiative remains vital. In implementing this effort, the Association strongly encourages the Subcommittee to maintain vigilance over proprietary data protection and to install strong "firewalls" prohibiting inappropriate data distribution within and among U.S. Government agencies, international organization, foreign government entities, and private sector organizations.

AAEI believes that by strongly encouraging all federal agencies to utilize ACE for trade data transmission requirements, Congress will give these agencies a stake in the successful development and implementation of ACE. Moreover, using ACE as the primary portal through which trade data is submitted to the federal government, Congress will be saving both the government and the private sector time and money in focusing limited resources toward a single, universal system. Frankly, however, unless the Congress and senior Administration officials provide serious incentives we suspect that this system may simply limp along without meeting its true potential. Failure to fully employ this system would be a shame.

Modernization of CBP's trade compliance tools and procedures is key to ensuring that CBP is able to achieve its dual role as a national security and trade enforcement agency. However, trade facilitation should not be separate from trade security and enforcement. The movement towards an account-based compliance system can only occur if Congress makes ACE the centerpiece of such a system. This, in turn, requires Congress to enact the necessary statutory changes to arcane U.S. customs laws. Therefore, AAEI supports the Subcommittee's efforts to make certain statutory revisions designed to provide CBP with the necessary tools to complete the legal framework for development of ACE (*i.e.*, allowing the filing of reconfigured entries, expansion of the protest period, and changing the official liquidation notice) as described more fully below in Section VI of this Statement.

5. Additional Trade Facilitation Concerns

In its essential role within DHS, CBP has continued to serve as the nation's lead agency in trade enforcement. Nevertheless, AAEI believes that, with its post 9/11 focus on security and law enforcement concerns, Customs, and now CBP, have not been able to provide the trade with the necessary guidance for compliance in certain areas. There are many examples⁹⁴⁷²; one which involves a subject long of direct interest to the Subcommittee is the elimination of quotas on textile and apparel products as a result of the Uruguay Round Agreement on Textiles and Clothing.

Although CBP has posted information on its website concerning the integration of textiles and apparel made in WTO member countries, CBP has not issued rules for the transition to a quota-free environment. Many importers are currently ordering merchandise for importation at the end of 2004. However, CBP has not indicated how it will treat textile and apparel items which may be shut out of the 2004 quota limits.

In previous years, importers had the option of delivering the merchandise to a bonded warehouse until the quota category reopened. Importers are purchasing visas for merchandise that is not guaranteed entry in 2004 and may be worthless because the quotas will be eliminated in 2005. This scenario imposes a significant economic cost to the trade, but it is not the only hazard facing importers in this area. Other potential issues relating to merchandise subject to quota are:

- What is the timeline and status of the programming changes that will be needed to remove current requirements in the Automated Broker Interface ("ABI") for those categories that will be fully integrated on December 31, 2004?
- Can importers/brokers pre-file entries prior to December 31, 2004?
- Will "live" entries be eliminated for those products (and countries) that are fully integrated at the end of 2004?
- Will visas still be required for shipments arriving after January 1, 2005?

AAEI will continue to work with CBP and other government agencies to ensure the smooth transition to a quota-free environment, but the trade needs more guidance from the government concerning how this transition will proceed.

6. Specific Provisions of H.R. 4418

As stated above, we are supportive of H.R. 4418 and, in particular, those provisions that promote trade facilitation. Nonetheless, for the benefit of the Subcommittee, we provide the following selected comments regarding provisions not addressed above.

A. Establishment of Cost Accounting System

Section 102 of H.R. 4418 requires CBP to establish and implement a cost accounting system in order to track expenses incurred for both commercial and noncommercial operations.

AAEI supports this provision because it will provide both Congress and the trade community with metrics by which they can gauge whether CBP's trade operations and functions have sufficient priority and budget resources. Moreover, AAEI supports Congress requiring all federal agencies with trade-related functions to implement a cost accounting system in order to aid in Congressional oversight and budgeting for trade operations. An example of the usefulness of a cost accounting system would be to measure the administrative cost of the antidumping program, including the annual distributions made under the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA" or the "Byrd Amendment"). Since the government currently does not have a cost accounting system for CBP, the International Trade Administration of the U.S. Department of Commerce, or the U.S. International Trade Commission, the domestic industry receives all the antidumping and countervailing duties collected by the government. A cost accounting system for such agencies would provide the Congress and the trade with the administrative costs for all trade programs so that user fees can be quantified and tailored to specific services provided by the government.

B. Study and Report Relating to Customs User Fees

The proposed bill also includes a requirement that the Controller General conduct a study analyzing whether each user fee levied by CBP approximates the cost of the services that CBP provides to the trade.

Since the new trade security environment requires new revenue sources in order to secure the nation's ports and global supply chain, AAEI supports the study of user fees. Previous user fees levied on the trade community have been highly problematic due in part to the nature of the assessment (*i.e.*, Harbor Maintenance Fee assessed on the value of the merchandise) and certain constitutional infirmities (*i.e.*,

the U.S. Supreme Court invalidated the Harbor Maintenance Fee as an unconstitutional tax on exports). As the Subcommittee is aware, AAEI has devoted considerable time and energy to policy reform affecting both problem areas. Also, we have repeatedly noted that user fees have provided huge surpluses to the government's general revenue fund instead of being dedicated to funding the fees' legislative purpose. Regrettably, general revenue allocation has not provided equitable return to the trade community or the national interest.

AAEI notes that several bills introduced in Congress have provided for a fee assessed on carriers or imports in order to fund port security plans. Such a user fee has been stripped from the final legislation previously passed by or currently pending in Congress (*e.g.*, amended version of "Maritime Transportation Security Act of 2004" (S. 2279) reported in the U.S. Senate on May 20, 2004). Moreover, other bills have included user fees which are not dedicated to CBP's commercial operations or divert funds from existing user fees to support other (*i.e.*, non-trade-related) government programs. AAEI requests that Congress carefully calibrate any user fees to the actual cost of services provided by the government so that no segment of the trade community is unduly burdened with the costs of government operations that benefit the nation as a whole. We suggest that consideration be given to tying this directly to the merchandise purchasing fee or other appropriate vehicle.

C. Entry of Merchandise

The legislation pending before this Subcommittee amends the customs statute to permit the filing of reconfigured entries and extends the period to reconcile such entries to 21 months. *See*, section 111 of H.R. 4418. AAEI supports this provision as a step towards realizing Congress' stated policy of an account-based system for import transactions. It is one step in accomplishing the Association's overall effort of which the Subcommittee is well aware. *See*, H.R. Rep. No. 103-361(I), at 127, 136 (1993), *reprinted in* 1993 U.S.C.A.N.N. 2677, 2686.

D. Limitation on Liquidations

In addition to changes relating to reconfigured entries filed under an import activity summary statement, Section 112 would amend Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) to replace the phrase "amount of duty asserted at the time of entry by the importer" with the phrase "amount of duty asserted by the importer." AAEI does not oppose this change in the statute.

E. Protests

Section 113 of H.R. 4418 permits a protest to be filed within 180 days instead of the current 90-day deadline. Section 113 also expands the list of items that may be protested to include those items previously covered by 19 U.S.C. § 1520(c), which would be repealed by Section 115. AAEI supports this provision to foster the fair administration of the customs laws and to complement the movement to an account-based system to reconcile import transactions by providing more time to contest the tariff classification, valuation, or origin of merchandise.

However, neither the current 90-day period nor the proposed 180-day period for protests is sufficient to permit importers and their representatives enough time to fully research certain issues (*e.g.*, issues not the subject of a Request for Information or Notice of Action, issues discovered as part of an internal review, as well as clerical errors or mistakes of fact, which are generally less apparent after liquidation of an entry), and to present to CBP legal arguments supported by sufficient underlying facts and circumstances. On a number of occasions, importers and their representatives have had their protests denied because they filed their protests in a timely fashion, but were unable to submit what CBP believed were sufficient reasons for allowing the protests within the current 90-day window. In some instances, the U.S. Court of International Trade has upheld CBP's denial of protests on jurisdictional grounds because sufficient underlying reasons for allowing a protest were not submitted within the 90-day protest period. *See, e.g., XL Specialty Ins. Co. v. United States*, Slip Op. 04-61 (CIT June 8, 2004). Therefore, while AAEI supports an extended protest period, it also recommends maintaining 19 U.S.C. • 1520(c) in its current state, primarily because without it, importers would be left with no remedy in correcting clerical errors or mistakes of fact outside the protest period.

Finally, AAEI notes that there are many questions and issue areas where simple "updating" can make a substantial difference in the conduct of daily business. In particular, we would like to call to the Subcommittee's attention an arcane area of customs law that should be addressed as part of trade modernization and facilitation review. Currently, Bulletin Notices of Liquidation, which consist of thousands of entries listed in computer generated printouts and available for review only at customhouses throughout the United States, are considered the official notification of liquidation. *See*, 19 C.F.R. § 159.9. As it is impractical to expect importers to trav-

el to a local customhouse to check liquidation status, they should be permitted to rely on the "Courtesy Notice of Liquidation," which is typically mailed by CBP to an importer, as the official liquidation notice. Ultimately, however, once ACE is fully operational, mailed "Courtesy Notices of Liquidation" should be replaced by electronic notification.

Returning to current practice, on many occasions the Courtesy Notices of Liquidation and the Bulletin Notices of Liquidation reflect different liquidation dates for various reasons (*e.g.*, CBP "red-lines" or cancels liquidations on the Bulletin Notice without importers being aware of such action, CBP mistakenly liquidates entries which are the subject of litigation and the liquidation of which is legally suspended by operation of law). Because these differences between Courtesy Notices and Bulletin Notices of Liquidation occur far too often and are directly related to the changes sought to be made by Sections 113 through 115 of H.R. 4418, AAEI recommends that Congress change the statute to provide that the Courtesy Notice of Liquidation serves as the official Notice of Liquidation and that CBP be required to maintain permanent records of the date that such notices are mailed to importers. Finally, AAEI notes that CBP considered, but did not adopt, interpreting 19 U.S.C. § 1514 in a way that would preclude importers from protesting "no change" liquidations (*i.e.*, where CBP liquidates an entry based on the classification and declared value contained in the entry). AAEI requests that the Subcommittee note in its Report accompanying H.R. 4418 that CBP should not interpret § 1514 to preclude protests on "no change" liquidations and entries deemed liquidated by operation of law.

F. Review of Protests

Section 114 amends Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) to provide that importers may request accelerated disposition of a protest at the time the protest is filed, rather than having to wait 90 days as is currently required. AAEI has been involved in this effort and supports the provision, as it will allow importers flexibility in obtaining a decision quickly from CBP in order to appeal a decision to CBP Headquarters or file a summons with the Court of International Trade, particularly when a large number of entries are involved in a single legal issue.

G. Establishment of Integrated Border Inspection Areas at U.S.-Canadian Border

Section 122 of the legislation authorizes the establishment of an integrated border area at the U.S.-Canada border, and would foster a high degree of cooperation between the customs agencies of the two countries in order to inspect vehicles before accessing bridges and tunnels traversing the nation's northern border. Because the United States and Canada currently cooperate closely in both trade facilitation (*i.e.*, Free And Secure Trade or "FAST") and trade security (*i.e.*, Partnership in Protection or "PIP"), AAEI supports legislative efforts to authorize customs officials to operate in each country in order to maintain a seamless, but secure border. Indeed, our members have been active in forging private sector cooperation and coordination. AAEI would, however, very much welcome the opportunity to work with Congress and CBP to ensure that appropriate limitations are placed on the legal authority exercised by such Canadian officials while stationed in the United States. AAEI suggests that the agreements forged between foreign governments and CBP for the Container Security Initiative may serve as a useful model for this program.

H. Interpretation of Textile and Apparel Provisions

Section 125 of the proposed legislation directs CBP to interpret preferential treatment of textiles in various trade agreements (*i.e.*, the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) broadly in order to maximize the benefits to eligible beneficial countries. AAEI supports Congressional efforts to ensure that the potential of these agreements is fully realized by their intended beneficiaries.

VII. Summary

AAEI greatly appreciates the Subcommittee's efforts to ensure that trade facilitation is recognized as an equal partner to trade security, a goal that is evident in many of the provisions of H.R. 4418, and we are generally supportive of the proposed legislation. We also appreciate the opportunity to comment on important issues beyond the specific provisions of H.R. 4418, such as whether CBP's programs and policies similarly recognize the importance of a relationship of equals. We believe that the Subcommittee's continued oversight and active promotion of conjoined security and facilitation priority programs can make an enormous difference.

While CBP has put forth an extraordinary effort in improving trade security, it is quite clear that there is a growing belief among AAEL members that the agency views trade facilitation as of secondary importance. We therefore support all efforts by Congress to promote the twin goals of trade security and trade facilitation, which are complementary administrative and enforcement functions. Clearly, we look forward both to supporting this Subcommittee's active involvement and to continuing our partnership with CBP in pursuit of these goals.

Statement of American Trucking Associations, Inc., Alexandria, Virginia

Introduction

Mr. Chairman and members of the Subcommittee, thank you for providing this opportunity to comment on the FY 2005 and 2006 budget authorizations for the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. Both of these agencies are important to cross-border trucking security and facilitation.

We would like to take the opportunity to address several issues relevant to these agencies and their efforts at protecting our borders and facilitating the movement of goods and people. Specifically, we will discuss the creation of the Department of Homeland Security's creation and organization and its effect on the Bureau of Customs and Border Protection, the Free and Secure Trade/Customs-Trade Partnership Against Terrorism program, customs modernization issues, US-VISIT, and several other programs of interest.

American Trucking Associations (ATA), Inc., with offices located at 2200 Mill Road, Alexandria, Virginia 22314-4677, is the national trade association of the trucking industry. Through our affiliated trucking associations, and their over 30,000 motor carrier members, affiliated conferences, and other organizations, ATA represents every type and class of motor carrier.

The trucking industry plays a critical link in the economic interdependency among the United States, Canada and Mexico, moving about 74 percent of the value of freight between the United States and Canada, and about 83 percent of the value of U.S.-Mexico freight.¹ The increasing trade volumes that have been generated among the three North American Free Trade Agreement (NAFTA) partners have not only been good for the economic well being of our countries, but have also allowed our customers throughout North America to diversify, expand and improve their asset utilization and access new markets for their products. According to U.S. government data, in 2002, 6.8 million trucks entered the U.S. from Canada, while 4.4 million entered from Mexico, resulting in more than 13 million truck crossings a year on the northern border, and more than 8 million crossings on the U.S. southern border.

Creation of DHS-DHS, CBP and Trade Functions

ATA supported the concept of a unified agency within the U.S. government to deal with national security in the wake of the events of September 11, 2001. In addition, we strongly support the "One Face at the Border" concept. Of course, a massive government departmental reorganization, such as that experienced by the Department of Homeland Security (DHS), which blended 22 agencies, would be expected to produce some growing pains. This has been true of the creation of DHS, and the integration of CBP.

Prior to the terrorist attacks in 2001 and prior to its integration into DHS, CBP, as the U.S. Customs Service, had already begun work to make the international trade environment more secure and compliant with a new automated import-export system, the Automated Commercial Environment. In addition, after the terrorist attacks in 2001, the agency worked with the trade community and the Commercial Operational Advisory Committee (COAC) to create the Customs-Trade Partnership Against Terrorism (C-TPAT), a voluntary security program for, among others, all international transportation providers. The trade community felt confident in working with CBP and that programs like C-TPAT and the Automated Commercial Environment (ACE), discussed below, would fairly balance the agency's two primary missions—security and trade facilitation.

ATA supports coordination of CBP policies under the DHS's Bureau of Transportation Security, which has provided strong and consistent guidance. The confusion over policy direction and authority that marred the first months of the creation of

¹ Bureau of Transportation Statistics, U.S. Department of Transportation

DHS has, fortunately, abated under the direction of BTS. However, the CBP dual missions of trade facilitation coupled with national security considerations must be constantly and zealously balanced. For that reason, ATA also strongly supports CBP's province over operations, regulations, and issues pertaining to international trade at our borders and ports. This is important to continuing the kind of consistency, expertise and institutional knowledge that will benefit both trade and national security. ATA also supports CBP's continuing efforts to communicate in an open forum with the trade community through its Trade Support Network and other venues, and its willingness to consider the operational realities of international trade when promulgating new security or trade regulations.

In reality, since the terrorist attacks in 2001, the DHS agencies have struggled with balancing national security with trade facilitation. The US-VISIT program, discussed below, exemplifies a program that over-emphasizes national security to the expense of trade facilitation. We encourage both Congress and the agencies to work closely with the trade community in order to avoid further congestion at our borders that negatively affects our national economy.

Customs and Border Protection Programs

ATA believes that CBP's success with providing security at the borders must be examined in the context of several programs that the agency either created or administers. These programs are discussed below.

Free and Secure Trade/Customs-Trade Partnership Against Terrorism (C-TPAT)

ATA supports the FAST/C-TPAT program as an important voluntary trade-government security program, and has encouraged its cross-border members to enroll. C-TPAT was originally created and developed within the COAC, with CBP consulting with trade for feedback prior to finalizing the program. For the motor carrier industry, the program at our borders is Free and Security Trade/C-TPAT. The program requires a certain level of security measures to be taken by motor carriers in their hiring practices, their operations, and in securing their facilities. The FAST portion of the program serves two functions: 1) to certify the drivers, by doing extensive background checks in both the U.S. and Canada; and 2) to promote electronic transmission of driver, freight and equipment information to CBP, as required under the Trade Act.

Unfortunately, for cross-border less-than-truckload motor carriers, the promise of this excellent program cannot be fully realized. Unless all the freight on a trailer is from a C-TPAT enrolled importer, the benefits of the program for LTL carriers are relatively few. This, in turn, mitigates the effectiveness and intent of the FAST/C-TPAT program for these carriers, who, according to CBP, haul about 20 percent of cross-border freight.

ATA strongly supports the concept of FAST lanes, which were originally promised to carriers at the ports of entry but slowly became "desired results" rather than reality, further diminishing the return on investment for the enrolled carriers. ATA supports more investment in better border infrastructure that would make FAST lanes a reality, fulfilling the promise of better security and trade facilitation for our member carriers. Because truck traffic at the border will only increase over time, it makes good sense to pay attention to this issue now, rather than later, in order to avoid threatening the economic health of the U.S.

As to the effectiveness of the FAST/C-TPAT program, we can safely say that to date there have been no major terrorist incidents stemming from cross-border freight entering into the United States. We would call this a 100 percent effectiveness rate. But because the program is still in its infancy in many ways, our expectation is that it will grow and change over time to meet the needs of CBP and of the trade community. ATA believes CBP is headed in the right direction with this kind of strong voluntary partnership security program. We support periodic audits of FAST/C-TPAT motor carriers to ensure the integrity of the program, provided the audits do not become overly burdensome.

When the ACE automated truck manifest is finally activated, along with the implementation of the Trade Ade regulations, both discussed below, we will be more able to fully evaluate the effectiveness of all of the border programs created to facilitate trade and provide for national security.

Customs Modernization (Automated Commercial Environment/International Trade Data System) (ACE/ITDS)

ATA has supported the concept and creation of the ACE system since it was first proposed. However, building the system has faced a series of challenges in the areas of funding and design. We continue to support ACE as a critical program that will facilitate trade and provide security at our nation's borders.

ACE began its life in the mid-1990's as a trade facilitation tool for CBP, but quickly added national security to its intended use after the terrorist attacks in 2001. ATA and some of its members worked for several years prior to the terrorist attacks on the ACE Multi-Modal Manifest (MMM), which was intended to serve as a manifest information collection tool for CBP so the agency could screen freight, people and equipment entering the U.S. Work on the MMM continued after September 2001, accelerated by an infusion of money from Congress, and continues to this day. In tandem with this development, CBP has beefed up its Automated Targeting System in order to more effectively screen freight, personnel and equipment data for informational anomalies.

Unfortunately, for the motor carrier industry, the truck portion of the MMM, which would provide an automated truck manifest is not yet a reality. Originally slated to become fully functional in September of 2002, we are still waiting for our electronic truck manifest, which is most likely to be up and running in the Spring of 2005. This delay is the result of a number of small setbacks in the previous foundations built in the ACE system. We hope to see no further delays.

Judging from CBP's experience with the air, ocean and rail Automated Manifest Systems, we can safely say that these systems are in a constant state of flux, with constant changes demanded to refine the system, and we expect a similar experience with the ACE MMM. We are aware that the ACE MMM may require adjustments and changes ranging over a number of years.

The one remaining fly in the ointment for ACE is the ITDS, the front-end data collection system for a number of government agencies with an interest in international trade. Despite the fact that the concept of ITDS has been around since the mid-1990's, progress has been slow in getting government agencies with an interest in collecting information or data on international trade committed to built into ACE. At this point, ATA believes some sort of mandate—either from Congress, DHS or the President—is necessary to speed this process along. An infusion of money into the ITDS Board of Directors and the individual agencies that have an interest in international trade would certainly help in the effort to promote ITDS participation, which in turn would enhance national security and trade facilitation.

To ensure the success of ACE/ITDS, ATA supports adequate funding levels from Congress. ATA believes that both ACE and ITDS are examples of successful government-industry partnerships. We believe these projects should serve as a model for other government agencies dealing with cargo and security issues, both domestically and internationally. This kind of cooperative effort allows agencies regulating our industry to know about our businesses, just as we learn about the business of government.

Trade Act of 2002

The Trade Act ties the FAST/C-TPAT program to a time-definite prenotification requirement for motor carriers. The Act requires motor carriers (and other transportation providers in other modes) to send information on freight, drivers and equipment electronically to CBP prior to arrival at the border. For motor carriers that are C-TPAT certified, with FAST-certified drivers, carrying freight from a C-TPAT importer of record, the prenotification time is one-half hour. For either non-C-TPAT carriers or freight that is not from a C-TPAT certified importer of record, the prenotification time is one hour prior to the truck's arrival at the border. This time gives CBP the opportunity to run the data on freight, driver and equipment through its Automated Targeting System in order to spot anomalies and identify the need for a security or compliance inspection.

When the ACE truck manifest is completed, motor carriers will be able to use it to transmit the required freight, driver and equipment information to CBP. Until that system

development is completed, the trucking industry will use either a FAST/NCAP electronic manifest, which is currently used by only a few importers at the northern border, or the Pre-Arrival Processing System (PAPS), a bar-coded system. Both of these systems serve to provide the required pre-arrival information so that CBP can target shipments for security and compliance.

Other Programs That Affect CBP

Because CBP is the lead agency at the border, it takes on the responsibility for a administering regulations for other agencies. Some of these programs are discussed below.

US-VISIT

ATA has some concerns about the practicality of requiring a separate entry-exit system for truck drivers at our northern and southern borders, as would be required by the US-VISIT program. The trucking industry is concerned about how US-VISIT

will impact or interact with technologies to facilitate enforcement efforts while also expediting the movement of cargo and people across our borders. If the implementation of US-VISIT results in increased delays in getting commercial and regular vehicles through our ports of entry, the increased congestion and traffic could have a negative environmental impact in and around border towns and cities impacting border communities and have a serious effect on the U.S. economy.

The task of enforcing DHS's US-VISIT program at our borders will fall to CBP. ATA recognizes that the implementation of the US-VISIT program is mandated by various statutes, including sections of the Data Management Improvement Act (DMIA), the USA PATRIOT Act, and the Enhanced Border Security and Visa Entry Reform Act of 2002. We anticipate implementation of US-VISIT at the 50 busiest land border ports of entry (POE) by the end of 2004 as stipulated in the DMIA. These US-VISIT requirements would have a tremendous impact on the U.S. economy, if we consider that 400 million individual transactions take place at land border ports of entry on a yearly basis, and more than 20 million total truck crossings take place every year at our northern and southern borders.

ATA supports government agency sponsored programs that allow trucking companies to provide secure, efficient, effective and safe cross-border operations. We believe the end goals of security and efficiency are not mutually exclusive, but we must be careful to design systems that do not impede our economic security and growth.

The FAST/C-TPAT program for carriers and drivers has already established a high level of security for known entities, and this should satisfy the requirements of the US-VISIT program. ATA believes that drivers and carriers in this program should qualify to transport international commercial shipments without having to provide both biometric identifiers and have a digital picture taken every time upon entry, and then to provide the biometric identifiers again upon exit.

Food and Drug Administration—Bioterrorism Act of 2002

ATA has worked with both the FDA and CBP to make the provisions of the Bioterrorism Act practical for our industry while not sacrificing national security. The task of enforcing the BTA regulations at our borders will also fall to CBP.

The BTA requires importers of record to submit information on food shipments carried by truck two hours prior to reaching the border. This timing does not match the CBP timing under the Trade Act, and we foresee a great degree of unnecessary confusion if this discrepancy is not corrected. CBP has been working with FDA to establish an adequate targeting program so that the FDA's BTA prior notice time requirements can be coordinated with transportation providers' prenotification time requirements under the Trade Act.

ATA is concerned about the effect of the BTA on cross-border trade facilitation. On August 12, 2004, the FDA enter into the full compliance for its prior notice requirements under the BTA, and trucks that arrive at the border without prior notice having been filed or with inadequately filed prior notice will be stopped, held or turned around. The BTA requirements have added a tremendous burden to an agency (CBP) that already carries a great deal of responsibility at our borders. ATA supports additional funding to allow the CBP to carry out its enhanced mission at our nation's borders and ports.

Hazardous Materials Background Checks

ATA supports the use of the driver's FAST card to meet any needed security requirements at the border. An additional background check for drivers carrying hazardous materials has been proposed. If DHS requires an additional layer of security at the border by adding this background check requirement for drivers carrying hazardous materials, this extends the monitoring responsibilities of CBP even further. The requirement is duplicative, and is a perfect example of the need to coordinate requirements within the DHS agencies. Cross-border truckers that enroll in the FAST program do not need this additional security measure, and the requirement, for them, is not only duplicative but also costly and unnecessary.

Conclusion

The tasks of ensuring both the security of our country and the integrity of our economy are daunting. ATA commends DHS and CBP for their efforts at integrating these two tasks, and hopes the agencies will continue to work with industry to achieve them. To achieve this, we offer the following:

- ATA supports DHS's efforts to better coordinate and provide policy consistency for customs' functions and guard against duplicative requirements.
- ATA supports CBP as the lead agency in dealing with border and port security and trade facilitation.

- ATA supports a strong balance between trade facilitation and national security.
- ATA supports CBP's FAST/C-TPAT program as an important facet of Trade Act compliance and national security.
- ATA supports the ACE/ITDS project as supporting the dual missions of national security and trade facilitation.
- ATA supports the continued importance of trade facilitation and national security with CBP and other agency programs at our ports and borders.
- ATA supports additional funding from Congress in order to build needed infrastructure at our land border ports of entry.
- ATA supports adequate funding from Congress to empower CBP's efforts at protecting the homeland and ensuring the health of our economy.
- ATA supports the use of the FAST card for border security.

Thank you for allowing us to comment on these issues of great importance to cross-border motor carriers. If you have any questions about any of the information in this statement, please call Martin Rojas, Executive Director of Safety, Security and Operations at (703) 838-7950 or Margaret Irwin, Director of Customs, Immigration and Cross-Border Operations at (703) 838-1745.

Customs and International Trade Bar Association
Washington, D.C. 20009
June 25, 2004

Congressman Philip M. Crane, Chairman
Subcommittee on Trade
Committee on Ways and Means
1104 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

The Customs and International Trade Bar Association ("CITBA") welcomes the opportunity to submit these comments for the hearing record in lieu of a personal appearance. CITBA is an association of attorneys practicing primarily in the area of customs and international trade law. These comments are in response to the Advisory from the Committee on Ways and Means, Subcommittee on Trade, of June 7, 2004 (No. TR-5), announcing the above-captioned hearing on budget authorizations and another Customs issues, such as reorganization of the Department of Homeland Security ("DHS"), security and trade facilitation, and customs modernization.

User Fees

CITBA supports the language in Section 103 of the bill that would require a study and report on the collection and use of Merchandise Processing Fees imposed under the Consolidated Omnibus Budget Reconciliation Act of 1985. For too long, it has been impossible to determine whether the amount of such user fees approximates the cost of the services provided by the Bureau of Customs and Border Protection ("CBP" or "Customs"). Moreover, the revenues collected have gone into the general revenue without any method of ascertaining whether they have gone to funding that agency's commercial operations. CITBA strongly supports tying the user fee collections directly to Customs operations. Enacting Section 103 would also help blunt any criticism or complaint by our trading partners that these user fees may be inconsistent with U.S. obligations under international trade agreements.

Technical Amendments on Entry and Protest

Subtitle B of the bill provides for various amendments to the laws governing entry procedures and administrative review of Customs decisions. CITBA strongly supports these amendments, which reflect a consensus among private sector and government experts as to the minimum level of statutory changes required to implement upcoming developments in the customs modernization plan. As the Subcommittee is well aware, initial releases under the Automated Commercial Environment are underway. The Trade Support Network, a joint government-industry partnership designed to ensure that ACE fulfills both sectors' requirements, has identified technical amendments, now embodied in Subtitle B of H.R. 4418, needed to permit the realization of the new system's benefits. For example, Subtitle B would authorize line item liquidation when data is aggregated for periodic reporting, would improve on the periodic payment procedures, and would simplify the administrative review process. While all of the amendments may be "technical" in nature, they are

critically important to providing the proper framework to capture the benefits of the modernization effort, and CITBA urges that Subtitle B be enacted in this, or in any other, appropriate legislative vehicle as soon as practicable.

Homeland Security Regionalization Plans

As the legal representatives of countless importers, exporters and related service providers, we are keenly interested in ensuring that the laws, policies, procedures and practices of CBP are uniform and consistent throughout the United States. While generally that is now the case, this was not always so. The Subcommittee on Trade was instrumental in the last decade in encouraging the Administration to achieve uniformity in the wake of the Customs Modernization Act of 1993. Eventually the Treasury Department did away with the old Customs regions system, under which some regions occasionally had acted autonomously and inconsistent with national policies or procedures.

Like our colleagues in other professional or trade organizations, we recognize the need for the Department of Homeland Security to create a regional structure to better organize the legacy disparate agencies and to provide for appropriate incident response management. However, we do have concerns about the impact a new regional structure might have on day-to-day CBP operations. We understand that DHS officials have acknowledged these concerns and have pledged to address them in the regionalization plan roll-out. To date, however, no details have emerged and the trade community continues to be apprehensive about the matter. CITBA urges the Subcommittee to stay involved in development of the DHS regional structure planning, and to help ensure that we do not revert inadvertently to the days when traders received inconsistent treatment in different U.S. ports of entry.

Conclusion

CITBA expresses its appreciation to the Subcommittee for inviting discussion of these and other important issues concerning Customs commercial operations and homeland security. We stand ready to continue to work with the Congress and the Administration in seeking modernization of customs processes and enhancement of our border security.

Respectfully submitted,

Melvin S. Schwechter
President

Statement of Grocery Manufacturers of America

The Grocery Manufacturers of America (GMA) appreciates the opportunity to present our views on Customs budget authorization and other issues. Of particular concern to our member companies is the efficient operation of inspection services at the Canadian border. For the last several months, GMA member companies have reported significant delays at the border as well as inconsistent enforcement policies on regulated products coming into the United States. GMA respectfully requests that there be increased attention and sufficient resources allocated to ensure the proper balance between border security and trade efficiency at the Canadian border.

Agricultural Quarantine Inspections and Border Delays

Earlier this year, GMA wrote to Assistant Commissioner of Customs, Jayson Ahern, regarding our concerns with the reduction of the hours available for agricultural quarantine inspections at the port of Buffalo and the equally inefficient hours in Detroit. A twenty-eight hour weekly reduction had imposed significant costs on some of our member companies that import regulated commodities through these ports. As a result of the decrease in hours, companies experienced border delays, significantly increased inventory costs and increased carrier costs. A copy of this letter and Mr. Ahern's response is attached.

To address our concerns, the hours available for AQI inspections at the Port of Buffalo Peace Bridge were improved to seventy-five hours per week (8:00 AM to 11:00 PM Monday through Friday). We are concerned, however, that wait times significantly in excess of two hours still persist at the border and our companies continue to need to pay considerable border clearance waiting fees to carriers. As recently as a few weeks ago, one of our companies reported having to wait in excess of two days for an AQI inspection at the Canadian border. The US driver of the truck would have been better off to have returned to the United States empty than to wait for proper clearance with his load. Incidences like these have led to in-

creased reluctance of carriers to transport regulated commodities, which in turn forces companies to turn to less experienced and potentially less secure providers. In addition, carrier costs have increased from fifteen to twenty percent for regulated commodities and additional fees are incurred for each hour a truck must wait at the border. We believe that Customs must work to reconcile the clear demand for services with sufficient personnel to alleviate significant wait times and other impediments to trade at the border.

Our companies have suggested that the use of intermodal rail transport for the movement of "regulated" products into the United States could reduce traffic and ease the burden on the northern ports. Last February, GMA companies, rail carriers and customs brokers met with an inter-agency team of officials to discuss such a proposal. We understand that as of yet no decision has been taken on this proposal.

We believe that our detailed and comprehensive plan will ensure that the movement of regulated products is properly controlled. Unfortunately, this effort may be undermined by the USDA's insistence that they will not forgo the right to *stop a train at any time* even if an agreed movement of regulated product procedure is implemented. Rail carriers have indicated that the uncertainty of schedules under the USDA approach may preclude their carrying regulated products. They argue that since automotive parts and equipment use the same rail routes and rely on just in time delivery, they cannot afford to have trains stopped and inspected on a random basis. Rail carriers are simply not willing to put auto industry business at risk. We hope that Customs will work to reconcile these conflicting concerns in order to proceed with this new approach to ease the burden at our borders.

Inspections and Cargo Security

Another difficulty we have encountered is with the inconsistent enforcement of policies with respect to the replacement of seals on vehicles that are broken upon inspection. In some cases, the seals are replaced and the new seal number recorded on the bills of lading. However, in other instances, inspectors will record that they will not replace the seal. In other cases, drivers are told bluntly that the inspectors simply will not replace the seals. Sometimes product is removed from the vehicle for purposes of inspection or analysis and not returned to the vehicle. The removal is not being documented on the bills of lading.

This presents a major food safety and security issue for companies, since many retail and foodservice customers will not accept shipments of product from vehicles with no seals, or broken ones. The lack of seals and omission of notating when product has been removed from a vehicle, for purposes of examination or analysis, which are not properly returned results in undocumented receipt shortages. This is not conducive to the various security programs importers have implemented nor is it conducive to government sponsored security initiatives importers participate in such as the Customs-Trade Partnership Against Terrorism (C-TPAT).

We believe that inspectors should be directed to replace broken seals on vehicles following inspections; notate on the bills of lading, or in some other form, the new seal number, what product and quantity has been removed from the vehicle (and not returned), where the shipment has been cleared for entry.

Conclusion

Thank you for the opportunity to present our views today. We are hopeful that US Customs will work to increase the hours of operation of agricultural quarantine inspectors, adopt a workable intermodal transportation system for regulated products and ensure the consistent enforcement of policies with regard to replacement of broken seals and documented removal of product. We look forward to working with the Committee and US Customs to ensure that there is an appropriate balance between border security and trade efficiency at our northern ports.

Statement of John T. Hyatt, International Freight Forwarders and Customs Brokers Association of New Orleans, Inc., Metairie, Louisiana

We appreciate the opportunity to address certain issues, which are the purview of your Subcommittee on Trade, and also of concern to our membership. Our organization consists of 43 member firms which operate in the Service Port of New Orleans and process entries (in addition to New Orleans,) at Baton Rouge, Birmingham, Chattanooga, Gramercy, Gulfport, Huntsville, Jackson, Knoxville, Lake Charles, Little Rock, Memphis, Mobile, Morgan City, Nashville, Pascagoula, Shreveport and Blountville (Tri-Cities.)

In the post 9/11 era we have seen a number of initiatives rolled out by legacy U.S. Customs designed to secure the supply chain and thwart terrorist infiltration of cargo transport. We applaud these efforts, but at the same time feel as if we are working at cross-purposes. Local Customs officials have been most helpful when we seem to hit bureaucratic walls. We were advised that a “point” system was established at the ATC (Automated Targeting Center) and promised less enforcement exams as each element of the supply chain became C-TPAT certified (carrier, importer, broker.) From anecdotal evidence we don’t really see a diminution of these types of examinations. More troubling, it appears that in some cases, carriers and terminal operators may be using the excuse of “security” to create new profit centers. There should be some oversight (perhaps from the FMC,) requiring these entities to justify such charges based on cost analysis.

We realize that there were some “growing pains” with the merger of legacy agencies into the Bureau of Customs and Border Protection and it may be too early to judge its success. Only recently has legacy Customs and USDA/APHIS standardized manning levels and work rules which should now allow 24/7 coverage for cargo inspection purposes, permitting more expeditious examinations within carrier free time periods. In the past, carriers had allowed additional free time due to government “holds.” That no longer obtains. Additionally, container demurrage charges have increased dramatically from \$20/day to between \$75 and \$100/day. Thus, manning levels to ensure speedy releases are crucial to the trade.

It is unfortunate that the U.S. Coast Guard was not also included in BCBP as its efforts seem to be duplicative and increasing the overall cost to the trade, i.e., opening sealed containers on vessels at sea, not resealing with any CG “seal,” causing BCP shore side to assume that container integrity had been compromised.

Within the past generation U.S. international trade has grown from just 5% of GNP to over 25%. International trade is a vital part of our economy. Being mindful of this, we must ensure that at the same time we seek to secure our borders we do not jeopardize our economic well being.

Statement of National Retail Federation

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 20 million employees—about one in five American workers—and 2003 sales of \$3.8 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

Most of NRF’s members import products into the United States or rely upon imported products to fill out their merchandise assortments. Many of our members are also participants in the Customs-Trade Partnership Against Terrorism (C-TPAT), and a very significant number are regarded by U.S. Customs as significant importers. For this reason, NRF has a strong interest in making sure that there are adequate resources to support the activities of the newly formed Department of Homeland Security (DHS), and its Bureau of Customs and Border Protection (CBP).

NRF and the retail industry would like to impress upon this committee that while homeland security is an important national priority, there are still key trade compliance functions within CBP that must be adequately supported and monitored. We continue to be concerned about the balance between the agency’s twin missions of security and trade facilitation, and urge the Committee to continue oversight of the agency to ensure that tariff collection and trade compliance do not become secondary considerations.

We have several issues that we would like to address as part of these hearings: 1) Transition issues surrounding the removal of textile and apparel quotas at the end of this year; 2) The plans to regionalize CBP and its potential impact on trade compliance programs; 3) Issues relating to non-intrusive cargo exams; 4) Contingency plans in the event of a security “event” at one or more of our blue water sea-ports; and 5) Government funding for security.

Transition Issues for Textile and Apparel Imports

Under the terms of the World Trade Organization Agreement on Textiles and Clothing (ATC), U.S. quotas on imports of textiles and apparel from most WTO members will be lifted on January 1, 2005, and trade in these industrial products will revert to the basic rules under the WTO that apply to all other industrial goods. There are only a handful of exceptions—China, which has special rules negotiated as part of its accession agreement to the WTO, and those nations that are not WTO members.

Under the decades-old quota regime, importers are required to provide a paper “textile declaration,” which provides details on the origin of the goods and a “visa,” which is usually not electronic and is issued by the exporting country. Without these documents, no textile or apparel shipment can be entered into the commerce of the United States. These documents are provided to support the quota system, which limits imports by country and by textile category (a three-digit category system that is separate and distinct from the Harmonized Tariff System used to determine duty rates).

These documentation requirements exist solely for the purpose of administering quotas, and, therefore, there is no overriding reason to continue them past January 1, 2005, for freely traded goods. No other industrial good, subject to the regular NTR rules, requires a visa provided by the exporting country. No other industrial good, subject to regular tariffs, requires a detailed origin declaration. NRF believes these requirements for textile and apparel imports should be dropped by U.S. Customs as of January 1, 2005.

Eliminating these requirements would clear the way to automate trade in these product categories. Indeed, integrating these products into the normal way of conducting import transactions would free up needed resources to devote to security or other, more pressing, trade compliance issues. There is no reason to waste precious government resources on import documentation necessary to support a quota regime that has expired. Dropping these requirements will not reduce the statistical information obtained by Customs or Census, nor will it lead to greater trade fraud.

Nevertheless, U.S. Customs has yet to provide any guidance to the trade on how documentation requirements will be modified or what transition mechanisms they plan to put in place leading up to the end of the quota system on January 1, 2005. Given the fact that we have known for ten years that these quotas will expire at the end of this year, it is curious that less than six months before the event, U.S. Customs has yet to issue any guidance at all.

NRF strongly urges the Committee to exert oversight and direction over this process to ensure that the import procedures applicable to textiles and apparel, come January 1, 2005, are the same procedures that apply to all other normally traded industrial products.

Regionalization of CBP

Many years ago NRF and other import groups worked with Congress to ensure that certain trade compliance aspects of U.S. Customs—rulings, regulations, and import specialists in particular—were centralized. At the time, there were concerns that trade compliance issues were being unevenly applied at different ports of entry, touching off so-called “port shopping” to find the port with the easiest compliance requirements.

NRF strongly believes that certain aspects of trade compliance—especially those involved with helping importers classify merchandise for duty compliance—should remain centralized. More important, the application of trade compliance laws and regulations should be even-handed and guided on a national basis.

For these reasons, we have been deeply concerned over reports coming out of DHS that the department is preparing to implement a major decentralization plan for CBP. Details of this decentralization are unknown to us, but we continue to hear from U.S. Customs officials that the agency believes it must decentralize to meet its new security objectives. We urge this committee to ensure that such a decentralization will not apply to trade compliance activities of CBP.

Vehicle & Cargo Inspection Systems (VACIS) Issues

In the wake of the events of September 11, 2001, Customs has significantly increased the number of cargo inspections it undertakes. The vast majority of these inspections are non-intrusive and use Vehicle & Cargo Inspection System (VACIS) technology, which scans containers through the use of gamma ray imaging.

The use of VACIS exams is preferable to full physical cargo examination. However, it is clear that many seaports do not have a sufficient number of these systems. More important, the use of these systems has raised important health and

safety concerns among long shore workers that call into question their efficacy and long-term viability as an inspection tool.

It may be possible to move a VACIS system from one place to another as it is currently being employed. However, the system is designed to operate as a stationary piece of equipment. The system is set up at a location and trucks drive through it during which an x-ray is taken of the international shipping container. When used in this fashion, a VACIS system can process a container in a very short time, and significantly improve the ability of the United States to inspect cargo.

However, most VACIS systems are not being used this way. Longshore workers have raised concerns about the long-term health effects on drivers who must drive a truck through this system. Consequently, most VACIS systems are now being used in a mobile mode where trucks are lined up and the VACIS machine is moved over the truck. This significantly slows the rate of inspection, results in many system failures and breakdowns, and is adding to congestion and air-pollution at the nation's ports.

Congress should conduct further oversight with respect to the use of these systems. They must be certified as safe for the workers who must use them. If they are safe, then the government ought to take steps either to compel port workers to cooperate with these exams, or devote enough resources to employ its own truck drivers. Congress cannot hope to increase the number of non-intrusive exams without having significant supply-chain impacts if the technology is not well-accepted by the workers who must use it, or if there are significant health or safety concerns about its use.

Emergency Seaport Contingency Plans

Most of NRF's members who are large importers have fully embraced the C-TPAT program. They, more than anyone, understand the need to secure the supply chain from factory to store in an effort to avoid any kind of security problem related to international transportation. Our hope is to avoid any security "event" related to international cargo, because such an event would have catastrophic impact, not only on the nation's retailers, but also the entire U.S. economy. For this reason, we believe we need more than just preventive measures, we also need contingency plans relating to our nation's seaports.

Our members have been told many times by officials at DHS and the Department of Transportation that a single incident in one of our seaports could result in every seaport in America being closed to trade for a period of time.

We have only to look back on the events of 2002, when a labor dispute resulted in a ten-day closure of every port on the West Coast, to understand just how costly and devastating such a closure might be. Within one or two days, trains bearing export cargo stopped rolling. Grain elevators filled. U.S. freezers reached their capacity by the third day as fresh products were diverted to frozen. Exporters lost foreign sales as perishables rotted on the docks. By day five, manufacturers were shutting down factories and sending workers home. Even after the ports were reopened, it took months to sort out the backlog. And during the initial phases of the reopening, cargo was literally stranded at ports of call and forced to sit there for weeks on end because of government red tape.

We know what would happen if another terrorist incident were to occur. But DHS appears to have no national contingency plan for actually dealing with the commerce of the United States should an event occur. Nor do we have a clear understanding of the conditions that have to be in place in order to reopen our ports after an incident. Finally, we need some attention to emergency rules, such as emergency suspension of the Jones Act, that will allow the diversion of cargo from one port of call to another in an instance where a single port is shut for an indeterminate period of time, but other seaports remain open.

We call on Congress to insist that DHS and DOT collaboratively develop contingency plans for reopening ports after an incident, and for handling cargo diversion in emergency situations.

"Paying" for Cargo Security

From time to time it has been suggested that the trade community ought to "pay for" security in some way, usually through some kind of tax on import or export containers. The argument is often made that airport security is funded through passenger taxes. It has even been suggested by a few people that such a tax be used to support the funding needs of DHS itself.

NRF strongly opposes any taxes or user fees that are applied to seaport containers. The trade community already makes a significant contribution to the U.S. treasury through Customs Merchandise Processing Fees and import tariffs. In fact, the trade-related revenues generated by trade activities are in excess of \$20 billion

each year. NRF strongly feels that the proceeds of the MPF should be specifically earmarked for U.S. Customs trade compliance and trade facilitation programs since those fees are collected directly from the trade ostensibly for those purposes. We understand that the most recent reauthorization of the MPF includes such an earmark, and we would urge the Committee to continue its support for such an earmark.

We do not support specific earmarks for tariff collections; however, we urge Congress to keep these revenues in mind as we move forward with budget authorizations, and, more important, appropriations. Ensuring that DHS and CBP have sufficient resources to facilitate trade and meet security concerns ought to be a high federal priority. The fact that significant revenue is generated by international trade should be an important factor in setting spending priorities.

In closing, NRF thanks the committee for holding these hearings and urges it to continue its oversight activities of DHS and CBP trade compliance activities. If you have questions about NRF or its positions on these issues, please contact Erik Autor, Vice President and International Trade Counsel at (202) 626-8104.

U.S. Association of Importers of Textiles and Apparel
Washington, D.C. 20037
June 14, 2004

Honorable Philip Crane, Chairman
Subcommittee on Trade
House Committee on Ways and Means
Washington, D.C. 20515

Dear Mr. Chairman:

The upcoming hearing to consider the Fiscal Year 2005 budget for the Bureau of Customs and Border Protection (CBP) and H.R. 4418, the Customs and Border Security Act of 2004 provides an important opportunity for the Subcommittee to address significant issues related to the elimination of quota restrictions on January 1, 2005.

One effect of the elimination of quotas under the World Trade Organization should be to guarantee that textiles and apparel are treated the same as other manufactured products, which are traded free of admissibility restrictions and/or additional paperwork requirements. This development will mean significant changes in the way that textile and apparel imports are handled at the point of entry into the United States. If the transition from strict control to a more efficient system is to work smoothly, a great deal must be accomplished before the end of the year by both CBP and the inter-agency Committee for the Implementation of Textile Agreements.

We respectfully urge the Subcommittee to use the hearing next week to press CBP officials to move forward with promptly addressing the necessary changes in customs entry procedures.

Because of the quota regime, importers of textiles and apparel have not been able to take advantage of many of the improved entry procedures available to importers of other types of merchandise. This creates additional work for importers and it certainly creates additional work for CBP, which has been required to operate parallel entry systems, one for textiles and apparel and another for most other merchandise. The end of quotas in 2005 will change all of that.

USA-ITA has opened a dialogue with CBP on these issues. These discussions have centered on the following:

- Elimination of the "live" entry requirement;
- Elimination of the extended conditional release period
- Paperless entries made available to all textile and apparel imports;
- Elimination of the quota charge statement; and
- Elimination of the textile declaration.

CBP has indicated that it will eliminate the quota charge statement, but is not able to make additional changes without CITA's approval. We respectfully urge the Subcommittee to question the extent to which CBP is compelled to await CITA approval, and to require CBP to initiate steps to modify its regulations.

1. Live entry

Currently, textile and apparel products are subject to a so-called "live entry" requirements, which means that the entry must be reviewed and duties paid before the goods may be released. While this may be justifiable where quotas apply, so that

a determination of the availability of quota may be made before entry, it makes no sense once quotas are eliminated. The Subcommittee should require that CBP make the necessary changes to implement an elimination of the live entry for non-quota textile and apparel products as of January 1, 2005.

2. Conditional Release Period

For all goods entering the United States, the initial release by CBP is conditional, subject to a demand for redelivery to CBP within 30 days should CBP determine that entry requirements were not met. However, for textile and apparel products, CBP's regulations, at 19 CFR section 141.113(b), the conditional release period is extended another 180 days—six months—during which CBP may demand redelivery of merchandise or, in the event of a failure to redeliver, assess liquidated damages. Clearly, this exceptional treatment of textile and apparel products can no longer be justified once the quotas no longer apply. Thus, the Subcommittee should instruct CBP to modify its regulations to eliminate the extended conditional release period for textile and apparel products not subject to quota.

3. Availability of Paperless Entry

Today, textile and apparel products must be accompanied by a variety of piece of paper. These include a quota charge statement and a textile declaration. With the requirement of a presentation of these piece of paper, it is impossible for apparel importers to participate in the paperless entry process available to all other importers of consumer goods.

It would seem to go without saying that once products are not subject to quotas, importers of such goods should not have to present a statement asserting whether they paid for any quota applicable to those goods. However, in the absence of a definitive statement from U.S. Government officials, uncertainty dictates that importers continue to obtain that statement from suppliers and include it with their entry package. CBP should be required to state with certainty that this document is not required for products no longer subject to quota.

The various textile declarations are a particular concern. These are declarations that state that a textile product is a product of a single country (single country declaration) or of production in multiple countries (multiple country declaration) or that a textile product is not subject to quota restrictions at all (a negative declaration). If these pieces of paper continue to be required for release, none of the improvements in the clearance of textile products—or the treatment like all other goods—will be realized. The regulation requiring textile declarations, 19 CFR section 12.130(f), was created in the context of the quota regime and was intended to ensure that quota admissibility requirements were satisfied. These admissibility requirements will be eliminated on January 1, 2005. The Congress should therefore direct CBP to eliminate the textile declaration requirements from its regulations concurrent with the end of the quota system.

If the textile declarations are not eliminated, CBP will have to continue to operate a separate entry system for textiles and apparel. The added expense and loss of efficiency that this caused might have been justified while quotas were in place; however, the end of the quota regime cancels any justification.

Sincerely,

Laura Jones

U.S. Business Alliance for Customs Modernization
Washington, D.C. 20005
June 17, 2004

Congressman Philip M. Crane, Chairman
Subcommittee on Trade
Committee on Ways and Means
1104 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

The U.S. Business Alliance for Customs Modernization (BACM) welcomes the opportunity to provide this statement in lieu of a personal appearance at the June 17 hearing of the Subcommittee on Trade, Committee on Ways and Means, concerning budget authorizations for U.S. Department of Homeland Security (DHS) agencies and other customs issues. BACM is a coalition of two dozen of the largest U.S. importers and exporters. Our members file over two million customs entries valued at over \$130 billion per year. BACM is dedicated to modernization of U.S. Customs

laws, regulations and policies and is committed to the facilitation of trade to the greatest extent possible consistent with homeland security and trade compliance. A full list of the BACM member companies appears at the end of this statement.

Balancing Security and Trade Facilitation

BACM fully supports the Bureau of Customs and Border Protection (CBP or Customs) in its critical new mission of securing our borders. Our member companies were among the first partners with the agency in its supply chain security initiatives. In fact, several BACM companies were among the charter members of the Customs-Trade Partnership Against Terrorism (C-TPAT), and we have worked closely with CBP on implementation of the advance notice requirements on inbound and outbound shipments.

But these programs and measures are not without cost. Every change in commercial operations has its consequences. It is incumbent upon CBP to understand these nuances and to make balanced decisions. We commend the Subcommittee for your insistence that trade facilitation and protecting the revenue remain at the forefront of CBP's mission, along with its new mandate to safeguard our homeland security.

With respect to the C-TPAT program, every single BACM company is a participant. As part of the government's "layered" border security system, it has effectively and dramatically enhanced the security of the global supply chain. We have no doubt that the success of this program is due to the fact that it is voluntary, and without a "one-size-fits-all" template. It is critical that C-TPAT remain the voluntary partnership that it is, with guidelines rather than unrealistic standards, and that CBP be provided adequate funding for the program.

Department of Homeland Security Regional Management Structure

As large importers utilizing many ports of entry throughout the U.S., BACM members are keenly interested in ensuring that the laws, policies, procedures and practices of CBP are uniform and consistent throughout the United States. While generally that is now the case, this was not always so. The Subcommittee on Trade was instrumental in the last decade in encouraging the Administration to achieve uniformity in the wake of the Customs Modernization Act of 1993. Eventually the Treasury Department did away with the old Customs regions system, under which some regions occasionally had acted autonomously and inconsistent with national policies or procedures.

As we have clearly stated to the Administration, we recognize the need for the Department of Homeland Security (DHS) to create a regional structure to better organize the legacy disparate agencies for incident response management. However, we do have concerns about the impact a new regional structure might have on day-to-day CBP operations. We understand that DHS officials have acknowledged these concerns and have pledged to address them in the regionalization plan roll-out. To date, however, our offers to provide input into the planning process have not been accepted, no details have emerged, and we and the trade community as a whole continue to be apprehensive about the matter. BACM urges the Subcommittee to stay involved in the development of the DHS regional structure planning, and to help ensure that we do not revert inadvertently to the days when our companies received inconsistent treatment in different U.S. ports of entry.

Section 103: User Fees'

Section 103 of H.R. 4418 would require a study on the extent to which the amounts of user fees imposed under the Consolidated Omnibus Budget Reconciliation Act of 1985 approximate the cost of the services provided by the Bureau of Customs and Border Protection. BACM supports this provision, because it is currently impossible to realistically align the level of the fees with the costs to provide services. Moreover, the fees collected have gone into the general revenue without any method to ascertain whether they have gone to funding CBP's commercial operations. BACM strongly supports tying the user fee collections directly to Customs operations.

Subtitle B: Technical Amendment

Subtitle B of the bill provides for various amendments to the laws governing entry procedures and administrative review of Customs decisions. BACM strongly supports these amendments, which reflect a consensus among private sector and government experts as to the minimum level of statutory changes required to implement upcoming developments in the customs modernization plan. As the Subcommittee is well aware, initial releases under the Automated Commercial Environment are underway. The Trade Support Network, a joint government-industry partnership designed to ensure that ACE fulfills both sectors' requirements, has identi-

fied technical amendments needed to permit the realization of the new system's benefits. For example, Subtitle B would authorize line item liquidation when data is aggregated for periodic reporting, would improve on the periodic payment procedures, and would simplify the administrative review process. While all of the amendments may be "technical" in nature, they are critically important to providing the framework to capture the benefits of the modernization effort, and BACM urges that Subtitle B be enacted in this or any other vehicle as soon as practicable.

Conclusion

BACM wishes to extend its appreciation to the Subcommittee for providing this opportunity to address the commercial operations aspect of CBP's mission. As some of the first private sector participants to partner with CBP to secure the supply chain after 9/11, our actions have shown our commitment to the new security paradigm. At the same time, we must continue with customs modernization and trade facilitation efforts, and CBP must continue its revenue protection function. BACM believes that with government-industry partnerships and the use of "smart" technology and programs, our nation can achieve both security of our borders and efficiency of customs commercial operations. We are committed to working with you and the Administration to achieve these goals.

Sincerely,

Timothy Van Oost
Chair

