STATEMENT OF COLLEEN M. KELLEY
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ON

CUSTOMS TRADE FACILITATION
AND ENFORCEMENT
IN A SECURE ENVIRONMENT

BEFORE

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

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Chairman Tanner, Ranking Member Brady, distinguished members of the Committee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 24,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 327 land, sea and air ports of entry across the United States.

Customs and Border Protection Entry Specialists, Import Specialists, Fines Penalty and Forfeiture Specialists, Customs Auditors and Attorneys and other trade compliance personnel are the frontline of defense against illegal imports and contraband. These employees enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stemming the flow of illegal imports, such as pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency—collecting $32 billion in duties and fees on imports valued at more than $2 trillion in 2007.

TRADE ENFORCEMENT AND COMPLIANCE STAFFING

When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import duties and ensuring importers fully comply with applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues. This revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and manpower, devoted to CBP's trade functions. Lack of sufficient focus and resources costs the U.S. Treasury in terms of customs duties and revenue loss and costs American companies in terms of lost business to unlawful imports.

Because of continuing staffing shortages, inequitable compensation, and lack of mission focus, experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving or have left the agency. Twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

Background on CBP Revenue Function Staffing

When Congress created the Department of Homeland Security, the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service…on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347**.)** Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied.

CBP satisfied this statutory requirement by freezing the number of many maintenance of revenue function positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11 and significantly less than the need as stated in the U.S. Customs Service Optimal Staffing Levels Fiscal Years 2000-2002 (February 25, 2000), known as the Resource Allocation Model (RAM).

For example, according to the U.S. Customs RAM, in FY 1998, the optimal staffing level for Import Specialists at the U.S. Customs Service was 1,249 and, based on workload in FY 2002, the optimal staffing level for Import Specialists was 1,489 (pages 2, A-1 and M-1 through M-12.)

In actuality, in March of 2003 when CBP stood up, there were only 984 Import Specialists on-board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of revenue maintenance function positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP stood up. Section 412(b) of the HSA reflected Congress' concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fear that it would continue and be exacerbated by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the "March FY 2003 Staff On-Board" numbers of revenue maintenance function positions (Appendix 1), including such vital trade facilitation and enforcement positions as Entry and Import Specialists, as a ceiling rather than a floor.

CBP's Resource Allocation/Optimization Model

CBP's adherence to the March 2003 Import Specialist employment number as a ceiling has become evident in the most recent iteration of the SAFE Port Act mandated Resource Allocation Model. Section 403 of the SAFE Port Act required CBP to complete a Resource Allocation Model (RAM) by June 2007, and every 2 years thereafter, to determine optimal staffing for commercial and revenue functions. It directed that the model must comply with the requirements of section 412(b) of the Homeland Security Act (HSA) of 2002 and required the CBP Commissioner, not later than September 30, 2007, to ensure that the requirements of 412(b) of the HSA were fully satisfied. The CBP positions covered by Section 412(b) include Entry Specialists, Import Specialists, Drawback Specialists, National Import Specialists, Fines and Penalty Specialists, Attorneys at the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists.

The rationale for this provision arose from a Government Accountability Office (GAO) report (GAO-05-663) that stated, "as of June 2003, CBP has not increased staffing levels [at the POEs]" and "CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide…" Further, GAO observed that "not identifying optimal staffing levels prevents CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests."

The former U.S. Customs Service's last internal review of staffing for Fiscal Years 2000-2002, dated February 25, 2000, shows that the U.S. Customs Service needed over 14,776 new hires just to fulfill its basic mission (U.S. Customs RAM, page 2 and A-1)--and that was before 9/11. Since then, the Department of Homeland Security was created and the U.S. Customs Service was merged with the Immigration and Nationalization Service and parts of the Agriculture Plant Health Inspection Service to create CBP. CBP was given an expanded mission of providing for both the first line of defense against domestic terrorism and making sure trade laws are enforced and trade revenue collected.

The first Section 403 RAM, dated July 6, 2007, stated that "CBP has over 8,200 employees that are involved in commercial trade operations. The Model suggests that to carry out these commercial operations and to adequately staff the needs for priority trade functions, the optimal level of staff in FY 2008 would be over 10,000 employees" (page 12 of CBP Report to Congress on Trade Resource Allocation Model.) According to the 2007 RAM, 1,100 Import Specialists would be needed for optimal performance in FY 2010, an increase of 116 over the HSA Floor (see page 16).

In 2009, CBP renamed the Resource Allocation Model, the SAFE Port Act mandated Report to Congress. The report is now called the Resource Optimization Model (ROM). The FY 2009 ROM reduces the FY 2010 optimal staffing levels for some revenue maintenance function positions, specifically the Entry and Import Specialist positions (see Appendix 2). For example, the FY 2009 ROM puts the number of Import Specialist positions needed in FY 2010 at the HSA floor number of 984, rather than 1,100 as stated in the FY 2007 RAM.

Import Specialist Allocation Model (ISAM)

In 2009, CBP Office of Field Operations updated its Import Specialist Allocation Model (ISAM), "a decision support tool in the allocation of resources." The number of Import Specialists allocated for staffing the ports of entry, however, was determined to be 984 prior to the compiling of the ISAM. The allocation model was done with the staffing number outcome already pre-determined.

In the ISAM, CBP states that the Office of Field Operations "manages a set allocation of 984 for Import Specialists, which is the minimum staffing requirement set forth by the Homeland Security Act of 2002." Since the number of Import Specialist positions is frozen at 984 nationwide, CBP's ISAM proposes a net reduction of 52 Import Specialist positions (from 179 to 127) at New York City area ports, shifting those positions to other ports (see Appendix 3) in order to handle current workload. CBP plans to eliminate positions at the ports with the highest number of Import Specialists—primarily the New York City region--to fill needs in other ports. NTEU is concerned that the ISAM is a zero-sum model that does not address actual staffing needs.

Ports specialize in different areas of trade compliance and have different needs depending on the operation—air, sea, or land ports. Larger ports handle all areas of trade compliance whereas smaller ports might see a large amount of one type of commodity or only deal with a small range of trade compliance issues.

Because of these differences between the ports of entry, rather than using a one-size fits all metric to determine allocation of Import Specialists, the data elements and factors that CBP weighs in determining allocation of Import Specialists should be different for each port depending on what type of operation it is and what the prevalent trade issues are at that port. Then, staffing should be decided using a work to staff ratio based on a formula and weighting of the elements for that port specifically.

"Informed compliance" is not given any weight at all when determining Import Specialist staffing needs at individual ports. Authorized by the Customs Modernization Act (Mod Act), "informed compliance" plays a major role in CBP's trade enforcement and compliance operations. Two new concepts that emerged from the Mod Act are "informed compliance" and "shared responsibility," which are premised on the idea that in order to maximize voluntary compliance with trade laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. Both the trade and CBP share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

It is the responsibility of the importers of record to make sure that what they submit to CBP is correct and it is the job of the Import Specialist, through informed compliance, to verify that what is being submitted is correct. Therefore, when considering Import Specialist staffing allocations at each port, the time the Import Specialist spends meeting with and educating the importing community should be part of the equation. NTEU believes that if done in this manner, CBP's Import Specialist staffing allocations would require increased Import Specialist staffing levels nationally.

Tariff Sharing Proposal

To address the loss of 52 Import Specialist positions at New York City area ports of entry (New York-Newark gains 3 Import Specialist positions, but JFK loses 55 Import Specialist positions), CBP is planning to implement tariff sharing between the port of New York/Newark and the Port of JFK airport. Currently, each port (Newark and JFK) processes all types of entries and all types of commodities via the Harmonized Tariff Schedule (HTS). Going forward, CBP plans to assign to each port only parts of the HTS, not the entire HTS. Tariff sharing will result in each port only processing half the commodities entering its port.

Tariff sharing presents a number of operational problems. Because the HTS will be split, each port will have half the number of commodities teams (staffed by Import Specialists) than they currently have. Certain kinds of merchandise will continue to be unloaded at the port of Newark, but the only commodity team that is trained to process it will be at JFK. And other merchandise will continue to be unloaded at JFK, but the only commodity team trained to process it will be in Newark. CBP proposes that, in these cases where there is no commodity team present at the port to do a physical examination, digital photos of the merchandise can be exchanged between the ports. A digital photo cannot determine lead levels in toys or thread count in textiles. This is a short-sighted solution to an Import Specialist staffing shortage that will affect taxpayers, trade compliant importers, and the federal treasury.

Rather than hire additional Import Specialists at ports of entry where they are needed, CBP instead will shortchange the New York City trade community. It is clear that the FY 2009 ROM, that states that 984 Import Specialists are needed nationwide, does not adequately reflect the optimal staffing levels for Import Specialists as evidenced by the need to implement a tariff sharing scheme at New York City region ports of entry.

Management by Account Model

Congress has expressed interest in the concept of "management by account" as a possible new model for managing the importing process and facilitating trade. Account

Management is not a new concept. The former U.S. Customs Service proposed and began implementing account management in the late1990s as a model for managing its work through accounts—importers—rather than by individual merchandise transactions at the ports of entry. According to Customs, an account manager was to maintain a liaison with the account, provide information under the principle of "informed compliance," help ensure uniform treatment of an account's merchandise at all ports, and help the company identify and resolve any areas of noncompliance. Using account management, an importer (an account) is assessed in the aggregate rather than by each merchandise entry transaction, including analysis of an account's compliance nationwide, coordination of all Customs activities involving the account, and identification and resolution of compliance problems.

In fiscal year 1997, Customs identified 7,405 major importers as candidates for the account management program. The national account program was implemented in fiscal year 1997, with 25 full-time National Account Managers. Customs originally hoped to increase the number of National Account Managers to 100 in order to manage 1,000 accounts (about 10 accounts per account manager). Because Customs was not able to obtain funding to increase the number of National Account Managers, it reduced the number of potential national accounts from 1,000 to 378. Customs' continued attempts to obtain funding to increase the number of National Account Managers were unsuccessful. In1999, 25 national account managers were assigned an average of 6.2 accounts each, with a range of 2 to 9 accounts each. According to CBP's most recent ROM (Appendix 2), there were 41 National Account Managers in FY 2008 and that number is expected to rise to 79 in FY 2010.

For port account team members, account management is a collateral function. As proposed by Customs, port account teams are led by Import Specialists and may include additional Import Specialists, cargo inspectors, and other personnel. The size and composition of port account teams vary on the basis of account size and staff availability. Most teams include a minimum of two Import Specialists. The team assigned to an importer is to be from one of the top five ports through which the importer enters merchandise on the basis of import value.

Currently, CBP has a total of 984 Import Specialists based at the ports. Dividing 7,027 candidate accounts by 984 import specialists means that each Import Specialist would need to serve on about 7 teams--if the port account teams were made fully operational. Because a team normally has at least 2 Import Specialists, each Import Specialist would need to serve on about 14 teams, in addition to performing their other duties. This is a sharp contrast to the average of 6.2 accounts assigned to National Account Managers in 1999. (Source: Customs Service Modernization, GAO/GDD-00-23, December 1999.)

Since January 1999, however, only ports where the number of Import Specialists was greater than the number of accounts were allowed to assign additional port accounts. The total number of accounts at these ports was limited to one account per Import Specialist. It was also determined by CBP that Import Specialists who were assigned port accounts were doing twenty-five percent higher graded work and would need to have their journeyman pay upgraded from a GS-11 to a GS-12.

Since CBP was created in March 2003, expanding the "management by account" program has not been a focus of the agency. According to CBP's Commercial Operations Advisory Committee (COAC), "the reality is that the Account Management program in CBP has fallen well short of the original goals and design. It is estimated that CBP has less than 50 full-time National Account Managers (NAMs) and some 400 part-time Port Account Managers, (PAM), (although the PAMs are reputedly only nominally engaged in the program). This small number of account managers is most certainly insufficient to cover the needs of approximately 862,000 importers. In fact, the number is insufficient to cover the top 3000 importers that represent half of all entries filed and 73% of the value of all imports. Allegedly, only the top 30 broker accounts by import line value are assigned to NAMs. After more than a decade, these statistics do not reflect a sincere commitment by CBP to make this program a reality or a success." <u>COAC Report on Account Based Processing,</u> May 7, 2009.

Finally, based on the Import Specialist current staffing total of 984 nationwide, it is clear that CBP does not have enough Import Specialists on staff to assign to port account teams to manage most of the 7,027 candidate port accounts.

Automated Commercial Environment (ACE)

For over 25 years, Customs has used its Automated Commercial System (ACS) to store and process import information and to manage import related activities, such as collecting revenue and capturing trade statistics. ACS allows CBP to identify, track, and control imported merchandise during cargo release and entry summary liquidation processing. It also allows CBP to retrieve import information whenever needed. Under ACS, however, data on imports is captured by port, but is not readily available on a nationwide basis.

In the late 1980s, the former U.S. Customs Service recognized the need to overhaul, streamline, and update its automated data processing capabilities and reorient its business processes. National data on a particular importer were not available without identifying all ports used by the importer and manually combining the data for these ports. At that time, Customs began to develop a replacement for ACS, called the Automated Commercial Environment (ACE). Under ACE, nationwide data will be available on a real-time basis on all importers for use by account managers and other CBP personnel to monitor such data as national compliance rates for individual importers.

Full development and implementation of ACE, since its inception in the late 1980s, has been tortuous. Delay in developing the ACE system to manage import activities has made preparing account profiles and monitoring accounts more difficult and time-consuming.

Today, "some 13,000 ACE accounts…were created, although these accounts are not managed as true Accounts with assigned CBP Account Managers." COAC Report on Account Based Processing, May 7, 2009.

And many technical problems remain. For example, when an Import Specialist has any questions or concern regarding a shipment or the importing practices of a company, they send them a CF-28 Request for Information, a routine business process. It has been reported to NTEU that using ACE, a CF-28 Request for Information takes about 60 key strokes and the system frequently freezes up. Import Specialists have also reported that once inputted, they can't go back and edit a CF-28. And until ACE is fully implemented, CBP personnel must input data into both ACS and ACE.

Congress has worked to strengthen accountability for the ACE program and to ensure that ACE delivers promised capabilities and benefits. NTEU urges Congress to continue to take an active oversight interest in the future development, costs and deliverables of ACE.

FY 2010 CBP Appropriations

There has been a small increase in CBP trade enforcement and compliance personnel pursuant to the provisions of the SAFE Port Act. There was no increase, however, for CBP trade operations staffing in the FY 2010 DHS appropriations bill and again, the FY 2011 budget proposes no increase in full-time equivalents (FTEs) for CBP trade operations personnel.

In its FY 2011 budget request, CBP is seeking $25 million for Intellectual Property Rights enforcement including $14.1 million in human capital investment. This request, however, includes no increase in FTEs to implement this new enforcement program. **NTEU urges the Committee to ask that this requested $14.1 million in human capital investment be used to increase the number of CBP trade operations personnel at the ports of entry.**

CBP Career Ladder Pay Increase

NTEU commends the Department for announcing an increase in journeyman pay for CBP Officers and Agriculture Specialists, initially scheduled to begin in March of this year, but now delayed until late-September 2010. Unfortunately, many deserving CBP trade and security positions were left out of this pay increase, which has significantly damaged morale. The 23,450 armed, uniformed CBP Officers and uniformed CBP Agriculture Specialist will be eligible for the increase, but the approximately 2,000 non-uniformed CBP commercials operations employees will not.

NTEU strongly supports extending this same career ladder increase, from GS-11 to GS-12, to additional CBP positions, including CBP Entry, Import and Paralegal Specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administrative duties should also be increased from GS-7 to GS-9. These upgrades are long overdue and would show CBP trade personnel that Congress recognizes the high level of expertise that these employees possess.

Reestablish Independent Office of Regulations and Rulings

In October 2006, the SAFE Ports Act established a new Office of International Trade, now called the Office of Trade, which consolidated the functions of the independent CBP Office of Strategic Trade and Office of Regulations and Rulings, and certain divisions from within the Office of Field Operations. NTEU supports re-establishing Regulations and Rulings as a separate Office within CBP in order to segregate the activities of CBP Customs Attorneys and National Commodity Specialists so that they can make independent legal rulings and draft trade regulations that affect the international trade community without pressure from policy or operational officials to whom these attorneys now report. Trade facilitation based on the sound administration of the customs laws requires legal and business certainty which only an independent legal office can provide.

Also, in order to retain these highly-skilled customs law practitioners, CBP needs to increase their journeyman pay to a GS-15. Many attorneys in other federal agencies are currently at the GS-15 journeyman pay level, making those positions attractive transfer opportunities. Also, skilled CBP Customs Attorneys can make significantly higher salaries in the private sector. It is not uncommon that attorneys trained by CBP, leave after a few years to find higher paying jobs in both the public and private sector in order to pay off their student loans from law school. CBP Auditors annual rate of basic pay should also be increased to a GS-15. It would also be helpful for CBP to increase funding for the Student Loan Repayment Program.

Study of Dedicated Funding

In 2007, the total value of all imports into the U.S. was more than $2 trillion. Processing these imports meant handling 22 million entry summaries. The recession of the past two years has seen trade volume drop, but this year trade volume is expected to grow by ten percent. In addition to its security and trade missions, CBP works with over 40 federal agencies to help enforce a wide range of laws from consumer product and food safety, to environmental protection.

It is clear that additional CBP commercial operations staffing and training funds are needed. Multiple proposals for additional customs fees are currently being promoted to support a great variety of proposed programs. Security needs, along with important national trade policy goals, require additional financial resources. NTEU encourages the Committee to examine the setting, collection and utilization of fees. This study should determine the relationship between current fees and monies allocated for CBP services and assess the need for additional fees.

Conclusion

Customs revenues are the second largest source of federal revenues that are collected by the U.S. Government. Congress depends on this revenue source to fund priority programs. The Committee should be concerned as to how much CBP trade enforcement staffing shortages cost in terms of revenue loss to the U.S. Treasury. Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties. According to a GAO report on Customs Revenue Functions (GAO-07-529), CBP collected nearly $30 billion customs duties in FY 2006, but did not collect approximately $150 million in antidumping duties alone in 2006. In addition, it is estimated that $500 million in antidumping duties were left uncollected between 2001 and 2006 (See GAO-07-529, page 23 and pages 29-30.)

The more than 24,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of trade and travel into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology so that they can perform their jobs better and more efficiently.