

**STATEMENT OF
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Subcommittee on Trade
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Chairman Tanner, Congressman Brady, and other Distinguished Representatives, thank you for the opportunity to appear before you regarding the United States Customs and Border Protection (CBP).

The perspective I will provide today in my individual capacity is based on a 28-year career in the U.S. Customs Service, beginning as a uniformed officer and ultimately serving as the Deputy Commissioner and Acting Commissioner for one year until retiring in February 2000. Since then, I have worked with numerous multinational businesses engaged in cross-border trade and border security issues. I currently serve on the Commercial Operations Advisory Committee (COAC), which is the official industry advisory board to CBP. I request that my full statement be entered into the record, and I will summarize my comments.

CBP is responsible for a myriad of challenging and complex missions to safeguard our nation. CBP must secure our borders against terrorism and criminals, reduce illegal immigration, enforce countless trade laws, interdict contraband, and prevent unsafe products from entering the marketplace – all the while facilitating legitimate trade and travel that are essential for the nation's prosperity and global competitiveness. It is not an easy job and for the most part CBP has succeeded admirably. Although it is understandable that CBP has placed the highest priority on security and anti-terrorism, CBP is not a single mission agency and it plays a critical role in our national economic security. In recent years, the CBP trade enforcement and facilitation missions have not received the emphasis they deserve and America needs.

The international business community engaged in importing and exporting has invested heavily in security programs to support CBP, but these businesses do not feel that CBP has reciprocated in actions to facilitate trade. In fact, it is the general feeling of the business community that CBP has neglected to focus on trade issues, has not adopted modern business practices, and not delivered on critical trade automation that would promote the economic security of America.

Today, I would like to address three issues that go to the heart of this situation:

1. CBP needs to embrace modern business practices that will expedite trade and improve enforcement of trade, revenue, and border security programs.
2. CBP needs to deliver on the promises of the Automated Commercial Environment (ACE) and the International Trade Data System.
3. CBP needs to re-energize and restructure its commercial programs and resources.

CBP needs to rethink and re-engineer its approach with the importing industry

CBP executives will be the first to tell you that it is an impossible task to inspect every import shipment. CBP has testified that it is far more effective for security and trade enforcement to rely upon advance data analysis and to take a more holistic approach with companies to ensure importers incorporate strong internal and quality controls in their global supply chain. This is the fundamental premise behind CBP sponsored programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT), the Importer Security Filing (also known as ISF or “10+2”), and the Importer Self Assessment (ISA).

The difficulty for companies participating in these “partnership” programs is the level of financial investment to fulfill the requirements or qualify for certification relative to the incentives or benefits offered in return by CBP. Many companies do not see the business case that would warrant participation; the incentives simply are too elusive or unquantifiable. Quite frankly, the industry also is skeptical about CBP living up to its promises on partnership programs with the trade.

An example of unfulfilled promises was the CBP Account Management Program which was initiated by CBP in 1994 with the intention to achieve commercial compliance of large importers. The concept was that CBP could be more effective in its trade mission by leveraging an enterprise account model to promote better internal compliance controls in their supply chain rather than a shipment-by-shipment or “transactional” approach. In return for importers participating in this Account Management Program, CBP promised these companies a single point of contact in CBP that could offer “expert advice,” provide greater uniformity of treatment, and resolve industry issues on Customs compliance.

By 1997, CBP had appointed approximately 50 CBP officers as National Account Managers to oversee the compliance of the top tier of importers. However, over a decade later, CBP has reduced the number of CBP Account Managers and industry accounts and the program is diminished in scope and value for the trade community.

During this time, CBP has greatly expanded the number of C-TPAT companies that are in essence “security accounts” and the number of ISA accounts. The clear message for the trade industry is that CBP will support only those programs it views as a priority and that there is no real equity in CBP “partnership” programs.

The Commercial Operations Advisory Committee (COAC), trade associations, and industry groups are attempting to convince CBP that there is value in a true partnership based on the Account Management concept. These groups contend done correctly Account Management can deliver greater effectiveness and efficiencies to CBP and the Government in achieving border security, trade program compliance, and the safety of imported foods and products.

I would like to provide two specific examples of Account Management projects CBP might consider:

1. Centers of Expertise (COE)

The COAC has submitted a Centers of Expertise pilot proposal to CBP that could help CBP achieve improved effectiveness of their trade compliance and enforcement programs as well as promoting greater efficiencies and commodity and program expertise for their commercial staffs. For industry, the goal is to obtain greater uniformity of Customs treatment, less redundant paperwork, and expedited processing of repetitive shipments.

In essence, the concept would be for CBP to evaluate a pilot (COE) program by designating a few specific ports or teams that would specialize in the commercial review and handling of specific trade program area or an industry sector such as automotive, pharmaceutical, or aerospace. All customs import declarations and entries for participating companies would be transmitted via the Automated Commercial Environment to the electronic inbox for CBP review and risk assessment. The designated CBP commodity experts assigned to these Centers of Expertise would be responsible for processing and decisions on all relevant shipments. The COE staffs could develop an in-depth and focused knowledge of the industry sector and the adequacy of the importers' compliance systems and performance. The ultimate goal would be to have an industry-specific or trade program-specific COE develop a knowledge network with CBP risk-management analytical centers as well as other agencies such as FDA, USDA, etc. if these agencies also have responsibilities to oversee the product lines within the industry sector.

This proposal is meant to be a win-win proposition for Government and international businesses.

2. Certified Importer Program (CIP)

There are a number of importing companies willing to demonstrate and certify to the Government that "best practice" supply chain controls can be established and maintained to ensure that their imports are secure, compliant, and safe. These companies already participate in CBP, FDA, USDA, and other border agencies' security, compliance, and safe manufacturing programs. These companies are willing to take the next logical step and to make the necessary investments to demonstrably prove to the Government that their internal controls meet and exceed the agencies' import rules and regulations...provided that the federal agencies streamline the border process.

Some of these companies already have invested in and can demonstrate a high level of compliance with all CBP and other agency rules and programs but the

companies continue to experience delays, inspections, and documentary demands comparable to less-compliant companies.

The concept of a Certified Importer is not unfamiliar to CBP. The agency currently has a “trusted traveler” program whereby international air travelers are expedited at the border based on background reviews (i.e., Global Entry Program). Why cannot this same basic concept be used for importers based on audits, compliance testing, safe manufacturing inspections and certifications, etc?

CBP Commissioner Bersin stated at the recent COAC meeting in Philadelphia that in order to find the needle – bad people or bad things – in the haystack, the size of the haystack first needs to be reduced by segmenting the low-risk shipments from the high-risk. The Certified Importer Program would help CBP do precisely that.

The commitments that some companies are willing to embrace extend to border security, trade compliance, and safe importing standards. Examples of the measures and qualification criteria they are willing to discuss with CBP, FDA, USDA, and other agencies include:

- CBP certification of C-TPAT Tier 2 or 3;
- Successful completion of CBP Focused Assessment or CBP certification of Importer Self Assessment (ISA);
- Full compliance with FDA Prior Registration and Bioterrorism reporting with commitment to participate in Secure Supply Chain Program when established;
- Demonstration and certification that internal good manufacturing practices (GMP), safety testing, quality controls, product management, and recall programs meet or exceed standards of the regulating agencies OR use of a certified third party inspection provider, but not both;
- Establishment and maintenance of a documented and verifiable foreign supplier quality assurance program that assures all imported ingredients and products meet the appropriate government agency safety and quality requirements;
- Company agreement that appropriate government agencies may conduct periodic reviews and audits based on risk factors;
- Utilization of DUNS numbers for ISF and Customs entry filings;
- Extension of quality, compliance, and tracking controls downstream to customers;
- Maintenance of risk signal detection controls with commitment to provide early alerts of discrepancies to appropriate government agencies; and,
- Submission of “Unified Entries” to CBP and electronically filings of Customs entries through the Automated Commercial Environment (ACE).

In recognition of the diligence and demonstrated high-compliance of these Certified Companies, the participants believe the government agencies should provide incentives, to include:

- Pre-admission of certified importer shipments prior to arrival at U.S. ports by all agencies participating in the Certified Importer Program;
- Electronic advance notification of cargo release immediately upon departure of shipment from last foreign port;
- A consolidated electronic advance release by all participating agencies via ACE to confirm that imported goods are admitted into the commerce of the United States;
- Exemption from transaction-based certificates and document requirements at time of entry;
- Elimination of any requirement for third-party certifications of foreign establishments if the certified importer demonstrates equal or better controls;and,
- Exemption from new Government imposed user fees on the basis that certified importers already satisfy high internal self-management standards they are willing to demonstrate through an interagency application.

There are a number of other Account Management initiatives but the above two projects are feasible and achievable, and CBP at a minimum could conduct pilot projects to quantifiably prove the value of the programs.

The prospects for success are encouraging. The new CBP Commissioner, Alan Bersin, has made a number of public statements indicating that he is receptive to new and innovative ideas and approaches to enhance the facilitation of legitimate trade and to build a constructive relationship with industry. Any actions the Ways and Means Committee can take to encourage the Commissioner to pursue these Account Management concepts would be welcomed by industry.

CBP needs to continue development of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS).

Most people think the Automated Commercial Environment (ACE) is exclusively an information technology project to modernizing international trade and the Customs commercial program. The reality is that it is far more than that. ACE functionality is fundamental to border security, trade program enforcement, and ensuring that U.S. imports are safe for the American public. As a key component of ACE, the International Trade Data System (ITDS) will integrate automated processing for some 26 Participating Government Agencies, thereby providing industry with an electronic “single window” for all Government importation and exportation requirements.

In addition to modernizing CBP core trade, public safety, and security programs, ACE supports or is intended to support a myriad of Government programs and agencies, to include:

- Risk assessments of the millions of international shipments, importers, exporters, and transportation carriers. This includes risk assessment for terrorism, contraband, trade fraud enforcement, intellectual property, food and product safety, and trade compliance and facilitation;
- The core “pipeline” for advanced information required for security programs such as the “24 hour rule,” Importer Security Filing (“10+2”), and others;
- The core “pipeline” of information for ALL federal Agencies with border responsibilities to include FDA, USDA, EPA, DOT, CPSC, and 20+ other agencies;
- The network that can connect and share critical information within and between all Federal border-related agencies with international businesses involved in importing and exporting to the U.S.;
- The portal that all border agencies can use to enforce their public safety missions;
- The network that connect CBP and potentially other agencies with counterparts in other nations for security and compliance missions; and,
- Government initiatives to improve efficiency and effectiveness (such as Account Management in CBP).

The current funding levels for future ACE development are woefully inadequate to deliver the necessary functionality. Some of the critical ACE components that are in jeopardy are the completion of customs entry declaration filings, and the ability of CBP and 26 Other Participating Agencies to review and release shipments, and shutting down the legacy automated system so industry does not have to simultaneously support two computer systems.

We in the international trade community recognize the challenges that CBP has faced in delivering ACE and we wish greater progress had been achieved at this point. Certainly, any information technology system of this scope is subject to cost overruns and delays. However, the Administration and the Congress needs to weigh the importance of ACE in view of the risks to America’s economy, public safety, and our global competitiveness. Just like our highways and bridges, ACE is an infrastructure that cannot be neglected without jeopardizing our future prosperity.

CBP needs to re-examine its organizational structure for its commercial and revenue mission

The CBP Office of International Trade (OT) was established in the fall of 2006 with responsibility for trade policy and programs to include the development of a national trade strategy for trade compliance, enforcement, and facilitation. The effectiveness of the Office has been questioned by members of Congress and the trade community.

Although I typically do not believe that “re-arranging the boxes” is the solution for most problems, perhaps it is time to reconsider whether the current organizational structure is designed optimally. One of the concerns is that many of the trade and commercial staff and resources in the field offices of CBP report organizationally to the Office of Field Operations (OFO) instead of the Office of Trade. As a consequence, the Office of Trade can create policies and programs but they have to rely upon the Office of Field Operations to ensure the directives are implemented by the commercial personnel in the ports.

The intent of the current organizational structure was to have one unified command for the port field units to report to Headquarters; however, OFO has about 26,000 employees, almost half of CBP total staff. The priorities of OFO are numerous although anti-terrorism tops the list. As a consequence, many people in the trade community feel that the commercial staff and programs in the ports do not always get the focus and support that is needed.

One option to re-energize CBP’s trade focus is to realign the commercial staff and units in the ports under the direction of the Office of Trade. This could ensure a more direct line of reporting and accountability to the Headquarters office in charge of policy. This option has a possible downside of requiring CBP to have a “matrix” organizational structure. Inasmuch as all field resources need local direction and support from the Port Directors and Directors of Field Operations, these management officials would have a bifurcated reporting structure to both OFO and OT. Notwithstanding this challenge, this was the traditional and historical organizational structure of the U.S. Customs Service prior to the late 1990’s and it worked well for many years.

Mr. Chairman and members of the Committee, this concludes my prepared remarks, and I sincerely appreciate the opportunity to be invited to appear before the Committee.