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Testimony

of Frank Vargo

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International Economic Affairs
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before the Committee on Ways and Means Trade Subcommittee

on Customs Trade Facilitation and Enforcement in a Secure
Environment

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COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE

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Good afternoon Chairman Tanner, Ranking Member Brady, and members of the subcommittee.

I am Frank Vargo, Vice President for International Economic Affairs at the National Association of Manufacturers (NAM), and I am pleased to testify before the Committee on Ways and Means Trade Subcommittee on “Customs Trade Facilitation and Enforcement in a Secure Environment.”

The NAM is the nation’s largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Its membership includes both large multinational corporations with operations in many foreign countries and small and medium manufacturers that are engaged in international trade on a more limited scale. Our members depend heavily on imported parts, components, and finished products to compete not only in the U.S. marketplace but also in foreign markets. NAM members have a strong track-record of working with the U.S. government to improve supply chain security and compliance practices.

The NAM is also the secretariat for the Customs and Border Coalition (CBC)—a broad based industry group representing all interests in global supply chains from manufacturers and retailers to customs brokers and carriers. The CBC was formed in December 2008 to create a unified industry voice to the government on policies and changes affecting global supply chains. Over 50 trade associations and 150 companies participate in the CBC.

The CBC strives to work with the Administration and Congress to improve trade facilitation and minimize the negative impact of new initiatives on industry, competitiveness, and jobs. Since its creation, the CBC has established itself as the leading voice on customs issues and has been working closely with both the Senate and House as each body develops legislation aimed at elevating trade facilitation within Customs and Border Protection (CBP).

The NAM is committed to national security. NAM members recognize the importance of preventing the importation of high-risk shipments into the United States, particularly the smuggling of weapons of mass destruction and related materials. NAM members are committed to working with CBP and other U.S. law enforcement agencies to prevent this from happening and to keep America secure and safe from terrorist threats. NAM members have invested significant resources to secure their supply chains and continue to work collaboratively with the government to make the United States secure.

Striking the right balance between enhancing national security and facilitating trade is important to NAM members. Manufactured goods accounted for 80 percent of all imports into the United States in 2009. U.S. manufacturers have global supply chains, source inputs from around the world, and import parts and components on a daily basis. Over the last several years from the perspective of many manufacturers, both legislation and federal regulations have created new import obligations, in some instances, with limited industry consultation or full consideration of the economic implications.

This hearing is a significant step in recognizing:

- the role of economic security;
- the need to implement balanced, vetted, and effective policies to advance the twin goals of CBP;
- the importance of public-private partnerships and providing benefits for importers who have taken extensive efforts to secure their supply chains; and
- the need to improve commercial enforcement to prevent the circumvention of intellectual property rights (IPR) and to implement anti-dumping (AD) and countervailing duty (CVD) orders.

We believe customs reauthorization legislation should seek to prioritize trade facilitation within CBP; improve interagency and Congressional coordination; recognize importers with strong compliance records; increase government and industry collaboration; strengthen intellectual property protections, trade enforcement and import safety programs; and expedite the completion of the many still outstanding modernizations needed within the agency. This is no small task, and we appreciate the ambition of this subcommittee to draft legislation to accomplish those ends. The NAM looks forward to continuing to work with this subcommittee in the development of the legislation and appreciates your interest in consulting with industry on important trade facilitation initiatives.

Improvements to trade facilitation are also critical for achieving the President's goal of doubling exports in five years. The NAM is currently working closely with manufacturers and the Administration to identify steps that need to be taken to double exports. The NAM will shortly submit a document clearly identifying the major barriers to increasing exports. In our conversations with our members, trade facilitation has been identified as an area where changes are needed. Imports and exports are intrinsically linked. Manufacturers import parts and components that are incorporated into final products that are then exported out of the United States. Policies that impede supply chains and make it more difficult to bring goods into the United States or that increase the cost of final goods undermine the competitiveness of manufacturers and negatively impact overall exports.

Equally important is the need for the U.S. government to work with our partners and allies abroad to harmonize customs practices. Disparate policies and requirements globally require companies to create and institute different compliance regimes around the world. It should be a U.S. goal to work towards harmonization in security, safety, and partnership programs to reduce the regulatory burden on manufacturers and create streamlined practices globally. Not only will this help increase exports and make manufacturers more competitive, but it will also improve national security and strengthen America's borders.

This statement addresses the following five areas as outlined by this subcommittee in the hearing announcement: (1) what is needed for the successful and more timely implementation of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS); (2) whether, and if so how, advanced data security initiatives such as “10+2” and security programs like the Customs-Trade Partnership Against Terrorism (C-TPAT) can provide security and better facilitate legitimate trade; (3) whether the concept of “management by account” provides a possible new model for managing the importing process and facilitating legitimate trade; (4) a review of CBP’s structure, policies and operations, and whether they are adequately supporting its trade facilitation and commercial enforcement functions; and (5) CBP and Immigration and Customs Enforcement (ICE) challenges in revenue collection and customs enforcement.

I. Customs Modernization

Inefficient, unpredictable, and unclear customs procedures and practices contribute to unnecessary financial costs and delays for exports and imports. To address these concerns and others, in 1993 Congress passed the Customs Modernization Act (Mod Act) to modernize and simplify the administration of the customs laws and provide safeguards, uniformity and due process rights for importers. A major component of modernization included implementation of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), which provide real time trade data to both the government (enhancing compliance and enforcement) and industry (enhancing clearance).

The 1993 legislation specified 30 key provisions that were to be incorporated into ACE to achieve the goals articulated above. Yet, after nearly two decades and millions of dollars the majority of those provisions remain incomplete or uninstalled. According to CBP, if ACE were fully implemented it would enable both the government and industry to:

- electronically submit and retrieve import transaction data through an intuitive, standards-based, secure Web portal;
- streamline CBP business processes;
- reduce requirements for paper documentation;
- strengthen Screening and Targeting (S&T) systems; and
- provide the technology backbone for ITDS, which would provide a “single window” for submitting trade information to Federal agencies that share responsibility for facilitating international trade and securing America’s supply chain.

However these benefits have yet to be realized as only a handful of the provisions outlined in the Mod Act have been even partially implemented. The lack of implementation has a serious impact on border security and expediting legitimate trade. We recommend that CBP accelerate the implementation of ACE and the ITDS and for Congress to set measurable and specific timelines to drive completion of the programs as well as sufficient funding.

II. Trade Facilitation

Today the subcommittee is seeking to understand if programs like the Importer Security Filing (ISF—or as it is better known – “10+2”) or C-TPAT can promote both national security and trade facilitation. The short answer is yes. Unfortunately, the long answer is that the programs have not achieved both because most programs fail to use risk-management principles in distinguishing low-risk importers with best-in-class compliance programs from unknown, first-time importers with unvetted supply chains.

Over the last several years, there has been a proliferation of new importer requirements that have negatively impacted trade facilitation. New programs require importers to focus limited resources on developing new compliance programs, to change long-standing supply chain practices, and to create new operating procedures. Companies have risen to the challenge and worked with CBP to validate the safety of their supply chains and products. However, more could have been done to mitigate the negative impacts on supply chains, efficiencies, and competitiveness through greater collaboration with industry as the programs were developed. This is true for 10+2, the Lacey Act, and importer and consumer product safety programs.

In 2003, CBP created the C-TPAT and Importer Self Assessment (ISA) programs that promised benefits to companies that implemented best-in-class compliance programs throughout their supply chains. While companies have seen some benefit from participating in the programs, most do not feel that the benefits received live up to the promises made by CBP when companies committed to joining the programs. Companies are particularly unsatisfied with the interplay between participation in the programs and the one-size fits all approach to the new security and safety programs unveiled in recent years. Risk-management is ultimately built upon distinguishing low-risk parties from high-risk parties. Industry has taken the steps necessary to allow CBP to distinguish importers from each other in terms of risk, yet for the most part the requirements for security programs, admissibility, and entry fail to recognize low-risk from high-risk.

Manufacturers have spent considerable time, money, and human capital on implementing C-TPAT, ISA, and numerous other “partnership” or “trusted trader” programs throughout their supply chains. In return for their investments, companies would appreciate greater recognition from CBP in the form of tangible and measurable benefits, which are outlined below.

Another reason the programs have not been as successful in promoting national security and trade facilitation is that the impact on trade is rarely evaluated fully before a new program is unveiled. A recent example of this occurred during the 2008 debate over 10+2. The initial economic analysis performed by CBP was returned to CBP by the Office of Management and Budget (OMB). CBP’s analysis concluded that implementation of the program across all industry would only cost \$44 million and only result in a half-day of delay in supply chains for the first year whereas industry estimated that the program would collectively cost \$20 billion and result in two to five days of delay. Based on its own estimate, CBP did not fully evaluate alternative methods proposed by industry that were less burdensome without diminishing the national security objective.

Trade agencies, such as Commerce and Treasury, looked at the disparity between the CBP and NAM analyses and conducted their own assessment, which they provided to OMB. Their estimate was close to the NAM's conclusions. As a result, the 10+2 rule was sent back to CBP for further consideration, and is still an "interim final rule."

Companies have since been implementing the 10+2 program with great difficulty, cost, and disruptions to just-in-time manufacturing. Based on reports from the Trade Partnership, Inc and American Shipper, implementation has mirrored the NAM's analysis that the program would cost \$20 billion dollars and add at least two days to supply chains. Companies are seeking to comply to the best of their ability with the new rule, but are hopeful that CBP will carefully consider the comments submitted in 2009 for the structured review prior to announcing the final rule. We continue to believe there are better ways to reach CBP's goal with substantially less cost and supply chain disruption.

To improve trade facilitation, the NAM recommends that Congress and CBP:

1. **Create new tangible and measurable benefits:** Importers have made significant investments to secure their supply chains and establish robust internal controls. For existing programs (e.g., C-TPAT, FAST, ISA), CBP should work with the Commercial Operations Advisory Committee (COAC) to develop tangible and measurable benefits for participants such as only holding a single container for inspection instead of an entire shipment or lowering bond liability. We encourage this subcommittee to include legislative language specifically calling for CBP to work with COAC to create such benefits.
2. **Create new trusted importer programs:** In addition to developing real benefits for existing programs, CBP should also develop a new voluntary program to facilitate trade across the multiple agencies with hold and release authority. A trusted importer program would allow willing companies to demonstrate and certify to the government that they maintain "best practice" internal and quality controls to ensure imports are secure, compliant, and safe. In return for being certified as meeting or exceeding government regulatory requirements, companies should receive expeditious and streamlined processing of its goods entering the United States.
3. **Create a "Universal Importer Profile" (UIP):** CBP should implement a new voluntary program that moves away from a transaction-by-transaction and program-by-program approach to security, safety, and enforcement. More efficiently for both security and trade facilitation, for each company, the UIP would contain all the relevant information on a given supply chain so that CBP could scan against it for security or safety concerns prior to entry—thus eliminating the need to submit individual declarations or forms. The UIP would create increased visibility into a company's supply chain for the government while facilitating trade for companies that choose to participate in the program. The NAM originally proposed this concept in 2009 as an alternative to the transaction-by-transaction approach built into the 10+2 rule. We continue to believe it would be a good alternative option to 10+2 for companies who opt to take advantage of the UIP and we believe it also is applicable across many other import regimes such as the Lacey Act.

4. **Support mutual recognition and greater global collaboration and harmonization:** CBP should promote and adopt a more global approach to supply chain security by seeking greater harmonization of trusted trader programs among major trading partners and minimizing unilateral programs. U.S. companies operate in multiple countries and it is important that their investment in the U.S.' programs be recognized by other governments. The U.S. government should establish full mutual recognition between the Canadian Partners in Protection program, the European Authorized Economic Operator, and C-TPAT; and should work to do the same with other major trading partners. We also encourage work with the World Customs Organization (WCO) on the proposal currently being considered within the WCO to create a common set of tangible benefits for companies participating in mutual recognition programs.
5. **Create new programs for small and medium-sized enterprises (SMEs) and Less than Truck Load (LTL) shipments:** CBP should work with SMEs to develop new programs to recognize the steps they have taken to secure their supply chains. The facilitation programs currently operated by CBP are primarily available to or utilized by large companies who typically ship full truck loads. More emphasis should be placed on creating trusted trader programs for SMEs and the carriers they use to move their goods. Specifically, we believe CBP should establish:
 - a pilot for a trusted shipper program for less-than-truck load and non-asset third party logistics providers;
 - a trusted shipper program to provide LTL carriers access to the FAST lanes by using the one hour pre-arrival notice to determine risk levels associated with the shipment before it arrives at the border; and
 - a modified trusted shipper program for SMEs that cannot justify the expense of the current trusted shipper programs.
6. **Collaborate more closely with industry as new programs are contemplated and created:** Industry believes that our legitimate concerns are not always given consideration when new initiatives or programs are being considered, and that alternate approaches that could achieve the same end goal are not reviewed or considered. We ask for CBP to work more closely with COAC to create a more cooperative process for moving forward. Additionally, we encourage this subcommittee to include language similar to that included in S.1631 which instructs CBP to work with the COAC and other agencies to determine the impact on international trade before publicly proposing or adopting a proposed change to a customs regulation, interpretation, or practice.

7. **Carefully consider the use of security data for some commercial targeting purposes:** Lastly, a discussion of advanced data and trade facilitation would not be complete without addressing the firewall established in the Trade Act of 2002 between commercial and security data. Specifically, the act provides that security data is to be used exclusively for ensuring cargo safety and security. There are some in Congress and the government that are advocating removal of the firewall. The trade community advocated strongly for the firewall in 2002, as there are many differences between security data and commercial data including timing, potential for change in terms of sale in transit, identity of the filing entity, and the standard of care. Those differences remain and must be addressed before removing the firewall. However, manufacturers recognize that there may be some value in using this security data for enhanced targeting in certain areas, and that modifying the firewall should not be an impediment to implementing other priorities such as account management or tangible benefits for security investments like C-TPAT so long as the enforcement firewall remains in place.

We believe before a decision is made, it is imperative for Congress to work with CBP and industry to evaluate how and to what degree 10+2 data would enhance commercial targeting for IPR and AD/CVD violations. If it is determined that the information could enhance commercial targeting, we could support adding “commercial targeting” as one of the permissible uses of the security data instead of removing the firewall as a whole. Maintaining the enforcement firewall while permitting the use of 10+2 data for commercial targeting purposes would honor the agreement made to manufacturers in 2002 and would allow CBP to improve its commercial targeting capabilities.

III. Account Management

Account management (AM) was developed by U.S. Customs in 1994 as a key driver to achieve commercial compliance of large importers. The theory was that by focusing on the internal compliance controls and processes of large commercial enterprises, such importers would achieve a higher degree of trade compliance than through a “transactional approach” which meant assessing or inspecting each shipment or reviewing each entry declaration by these companies. Unfortunately, the program has not been fully implemented, and thus the transactional approach is still in place.

CBP estimates that it has less than 50 full-time National Account Managers and some 400 part-time Port Account Managers (PAMs). 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. After more than a decade, these statistics do not reflect an adequate commitment by CBP to fully implement this program.

To address these short-comings, in May 2009, the COAC presented a report to CBP on expanding account-based processing. At the time, CBP committed to reviewing the document and reporting back to the COAC on the next steps. However since last May, few steps have been taken on the COAC report and in fact CBP has stated that it does not believe it has the necessary legal authority to expand account-based processing. The COAC paper lays a foundation for expanding the current account-based management system to all commercial, product safety, and security operations.

Expanding the program would result in significant benefits for both CBP and industry by creating robust government-business partnerships, increasing risk-based management, facilitating trade, and improving compliance. It is the opinion of the NAM that CBP should begin moving forward on the COAC proposal and this subcommittee should work with CBP to identify and rectify any legal impediments to its implementation. This subcommittee should also play a larger oversight role in seeing that CBP moves forward in this area.

IV. Customs Trade Policy

Since U.S. Customs was moved to CBP within the Department of Homeland Security (DHS) in 2003, CBP has been reorganized many times in an effort to improve its focus on trade facilitation.

To successfully raise the level of attention given to trade facilitation, this subcommittee should address not only the structure of CBP, but also personnel, resources, interagency coordination, and outreach to industry. Ideally, a changed approach would permeate from the top of the organization down to the offices and individuals responsible for day-to-day operations.

- **Structure:** Currently there are several ideas as how best to restructure CBP. There are conflicting views as to which will have the best result. The one thing that there is agreement upon is the need for a trade advocate within the high ranks of the agency. The NAM recommends that CBP should create a senior level position charged with the trade facilitation mission. The position should have a direct line not only to the CBP commissioner but also to the Office of Policy within DHS.
- **Personnel:** The individuals in the key positions within CBP also play a significant role in carrying out CBP's dual mission. Their backgrounds and perspectives are important. There is a prevalence of senior individuals that have enforcement backgrounds, and it is important that there be more individuals in senior political and career positions having experience in managing global supply chains. More oversight or guidance is needed from Congress to provide greater balance by including individuals with appropriate trade experience in the private sector.
- **Resources:** The Office of International Trade (OIT) must have the necessary resources to carry out its mission. The Office of Field Operations (OFO) currently oversees the majority of staff charged with carrying out the agency's day-to-day operations. However OFO does not focus on trade facilitation. Any reorganization of CBP should provide greater resources to OIT. This should include resources for more import specialists to carry out trade activities as well as placing entry specialists at the ports to help facilitate goods as they enter the United States.
- **Interagency Coordination:** CBP is relatively isolated from the other agencies charged with administering U.S. trade policy and authority at the border. CBP should work more closely with those agencies to improve trade facilitation.

Specifically, CBP should work with the other agencies including the Department of Commerce, U.S. Trade Representative, the Food and Drug Administration, and United States Department of Agriculture, to name a few, to determine the impact on international trade before publicly proposing or adopting a change to a customs regulation, interpretation, or practice. The Senate customs reauthorization bill creates a Customs Review Board to facilitate interagency coordination. Manufacturers support its creation and encourage this subcommittee to include similar language in its bill.

- **Increase outreach to and input from industry:** CBP should do more to work with industry. Reorganization should address this concern and create new mechanisms that allow for direct input from, and dialogue with, industry prior to the publication of a proposed rule. Once a change is published in the Federal Register as a proposed rule, CBP is barred from communicating with industry directly on the proposed policy change. Therefore new mechanisms for industry consultation are needed at the beginning of the process.

Changes are also needed to the COAC. After the creation of the DHS, the COAC charter was changed to have it report to both the Department of the Treasury and DHS. Several years ago, DHS changed its role and delegated chairing the COAC meetings to CBP. Although officials from Treasury and DHS still participate in COAC meetings, the meetings are chaired by the Commissioner of CBP, which creates potential tension for the advisory committee.

We believe the independence and authority of COAC should be strengthened. The committee should report directly to DHS and Treasury. Although CBP officials should participate in COAC meetings and subcommittees, the public meetings should be chaired by DHS and Treasury officials at the Assistant Secretary level or higher. COAC could collaborate with CBP on proposed agendas to assure availability of spokespersons, etc. but should have the final decision on topics to be discussed.

V. Enforcement and other issues

In addition to improving facilitation efforts within the agency, numerous other changes are needed to address administrative, enforcement, and regulatory problems. We have identified the major priorities for manufacturers below.

- **Intellectual Property Rights (IPR):** It is critical that CBP sharpen its focus on IPR issues. Counterfeiting and piracy are huge and growing problems for American manufacturing. Counterfeiting and piracy certainly threaten American manufacturers and their employment, but also threaten the health and safety of American consumers with fraudulent and unsafe products like automotive and aerospace parts, pharmaceuticals, and food. We agree with Ambassador Kirk when he said recently “Intellectual property theft in overseas markets is an export killer for American businesses and a job killer for American workers here at home.” Manufacturers offer the following three recommendations to improve IPR enforcement:

1. Reverse a 2008 decision preventing officers from sharing information with rights holders: In the past, CBP officers shared identifying information with the rights owners to assist in making the genuine/counterfeit determination. Identifying information may have included the serial number of the product, date of manufacture stamped on the product, lot code, batch number, universal product codes (UPC), or other unique information found on the products or packaging (“Identifying Information”). The rights owner could, for example, inform CBP that even though a product’s label successfully mimicked the genuine article, the label’s lot code number was inconsistent with the package’s date of manufacture and therefore the product is counterfeit. With such assistance, in the past, CBP was able to make informed and confident seizure determinations.

In August 2008, Customs officers were specifically instructed to not share Identifying Information with rights owners. We would urge that CBP reverse the mid-2008 guidance from CBP’s General Counsel’s office barring front-line Customs agents from sharing information, including photos on suspected infringing shipments with the U.S. rights-holders. CBP has expressed to us that it does not have the legislative authority to reverse the 2008 decision. This subcommittee should include statutory changes in the customs reauthorization legislation to remedy this problem. The NAM, along with several other associations, sent a letter last year to the Congress with proposed statutory language to provide CBP with the authority to share identifying information with rights holders.

2. Enhance the IPR Enforcement Capabilities of CBP and ICE: IPR enforcement should be enhanced by requiring a Joint Strategic Plan that addresses IPR enforcement by:

- establishing IPR risk-based targeting to help port inspectors work smarter;
- creating of a list of persons who have had a history of attempts to import infringing goods;
- directing the creation of a list of “trustworthy” partners, instituting reforms that reduce unnecessary barriers for sharing information and samples between rights holders and CBP;
- granting CBP inspectors flexible administrative seizure authority so they can respond effectively;
- streamlining the recordation process to facilitate the development of a more robust IP database; and
- educating travelers by adding a “no counterfeits/pirated goods” statement to the customs declaration.

3. Significantly Increase CBP Educational Outreach to SMEs on Protecting Their IPR:

The NAM appreciates the efforts CBP and other arms of the U.S. Government are making but more needs to be done to educate SMEs, especially “new-to-export” firms, on the basic legal, policy, and law enforcement environments overseas. In developing and implementing this stepped-up educational outreach program, we encourage CBP to work closely with other relevant U.S. Government agencies (e.g. the Patent and Trademark Office, the Commerce Department’s International Trade Administration, the U.S. Trade Representative, the Department of State, and the Department of Justice) as well as with leading business organizations, including the NAM. The NAM recently discussed with CBP the possibility of utilizing webinar technology as a possible forum to disseminate information to SMEs.

- **Increased Resources for the Enforcement of Antidumping and Countervailing Duties (AD/CVD):** The NAM has reports from a number of our member companies that have dumping or countervailing duty orders in place on imports, especially from China, that the orders are not being adequately enforced by CBP. The Chinese companies have been evading the duties by transshipping through Hong Kong, Taiwan, or other Asian nations.

The case of one NAM member company illustrates the problem. The company filed an antidumping case concerning products from China, South Africa and Vietnam in December 2007 and received a favorable ruling in February 2009. However even before the final antidumping duty order was imposed by the Commerce Department, the company began to suspect the preliminary duty order was being evaded by transshipment of the products through third countries. The volume of the products from Hong Kong, at the less-than-fair-value Chinese pricing, skyrocketed overnight. Prior to July 2008, there had been no Hong Kong-made products of that type, but by September 2008 they shipped over 47,000 units to the United States. The impacted U.S. company hired a private investigator in Hong Kong, who found no evidence of manufacturing in Hong Kong. The company passed this and other pertinent information along to CBP.

After a few months, the Hong Kong volume dropped, but there was a corresponding increase in units from Taiwan and Malaysia (again, no prior manufacture of the product in those countries). The company now has evidence that “manufacturers” in Hong Kong, Malaysia and Taiwan are actually being supplied with the product manufactured in China. The company has regularly provided CBP with specific names and instances of transshipment, but to date the product continues to come into United States without being subject to the duties.

Not only is the antidumping duty order being evaded to the detriment of the U.S. company and its employees, but there are also significant revenue implications, with the loss of well over \$50 million in antidumping duties that should have been paid. Similar situations have been reported by other NAM members. Despite expensive investigation and evidence produced by the companies, these transshipments continue. NAM member companies tell us they believe the problem is one of resources at CBP.

- **Simplify Duty Drawback:** Duty drawback allows the refund of duties paid on imports that are subsequently exported by a manufacturer. More specifically, U.S. importers may claim duty drawback for imported merchandise that is not itself re-exported if they instead export unused domestic merchandise that is “commercially interchangeable” with the imported merchandise. Duty drawback is extremely important in making U.S. manufacturers internationally competitive. It ensures that they are not charged U.S. import duties for merchandise which is ultimately resold and consumed in another nation.

The current drawback statute is difficult for CBP to administer and is so complex that many U.S. manufacturers do not take advantage of this important benefit. Simplification will reduce costs, streamline the administration of the program, and allow manufacturers not already using drawback to take advantage of the program. CBP and industry have worked together to develop a solution to this problem. In 2007 bipartisan legislation was introduced to make a change to the 8-digit U.S. Harmonized Tariff Schedule (HTS) subheading for all industries. This modification has already been implemented for some industries. For instance, under the petroleum duty drawback program, imported and exported products qualify for drawback under the existing “commercial interchangeability” standard, or if they are referred to under the same eight-digit HTS classification. The 2008 Farm Bill conference report included language that permitted similar changes to the standard for wine products in an attempt to bring fairness to the industry.

We ask for this subcommittee to include language in its customs reauthorization legislation to institute the change for all industries. Implementation of an 8-digit duty drawback program is a good step towards reducing production costs in the United States and contributing toward the President’s objective of doubling exports by 2014.

- **Returned Goods and Government Property:** Many NAM members have numerous imports every year on which duties are paid for U.S. Government (USG) Property returns which currently do not qualify for duty-free treatment under any of the existing provisions. For example, manufacturers pay millions of dollars in duties per year on parts returned from Iraq / Afghanistan and military bases in Germany and Korea. The NAM recommends that Congress amend the Harmonized Tariff Schedule (HTS) to create a new provision for returned USG Property (9801.00.11) and to expand the current scope for U.S. Goods Returned (9801.00.10) to include goods exported from the United States within 3 years in addition to goods manufactured in the United States.
- **Make Permanent the First Sale Rule:** In 2008, CBP proposed to revoke the First Sale rule without consulting Congress. With this subcommittee’s leadership, such action was delayed because of language included in the Farm Bill prohibiting CBP from implementing any change to the First Sale Rule until January 1, 2011. NAM members depend on predictable rules and we are concerned that revocation may be contemplated again. We ask this subcommittee to maintain the First Sale Rule and to ensure that CBP does not attempt to revoke the long-standing policy again.
- **Formal Withdrawal of the Notice of Proposed Rule Making (NPRM) on Uniform Rules of Origin:** NAM members encourage this subcommittee to work with CBP to formally withdraw the pending NPRM on Uniform Rules of Origin be withdrawn. The NPRM seeks to implement a unilateral change in the process for determining country of origin that will cost NAM members millions of dollars each. Now is not the time to increase the cost of doing business and decrease the competitiveness of American manufacturers.

- **Improve enforcement through education and a balanced, streamlined approach:** The NAM believes that any changes to customs enforcement should complement, not duplicate requirements already in law and conform to our international obligations. Additionally, CBP and industry need to work together to strengthen enforcement and establish a solid partnership. To do so, CBP should devote resources to education and training for industry, its own employees, and foreign counterparts. Imports and exports are intrinsically linked and a regime that is overly complicated with multiple layers of control is not only damaging to the U.S. economy, but also undermines CBP's efforts to improve enforcement.

Imposing additional requirements and increasing penalties does not necessarily equate to better enforcement. It is imperative that before any new enforcement regimes are contemplated, such changes are reviewed and evaluated to make sure they do not burden legitimate imports, create duplicative requirements, result in World Trade Organization (WTO) inconsistencies, or undermine trade facilitation programs.

- **Movement of Empty Trailers:** The NAM supports the creation of a reciprocal arrangement between the U.S. and Canada that would change the interpretation of rules governing the movement of empty foreign-based truck trailers by Canadian drivers and, reciprocally, U.S. drivers in Canada. Providing greater flexibility in our cross-border operations would help modernize supply chain practices and improve productivity between two critical trading partners without sacrificing safety.

I want to thank the subcommittee for this opportunity to testify on the customs issues of most importance to manufacturers. We look forward to working with you as the subcommittee moves forward on this legislation. Please consider the NAM and CBC as a resource as you move ahead.

Thank you.