OVERSIGHT OF THE U.S. CUSTOMS SERVICE

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

MAY 15, 1997

Serial 105–18

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
47–360 CC WASHINGTON : 1998

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OVERSIGHT OF THE U.S. CUSTOMS SERVICE

THURSDAY, MAY 15, 1997

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

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room B–318, Rayburn House Office Building, Hon. Philip 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 CONTACT: (202) 225–1721
May 1, 1997
No. TR–6

Crane Announces Hearing on Oversight of the U.S. Customs Service

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 oversight of the U.S. Customs Service. The hearing will take place on Thursday, May 15, 1997, in room B–318 Rayburn House Office Building, beginning at 2:00 p.m.

Oral testimony at this hearing will be from both invited and public witnesses. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

The Customs Modernization Act was enacted as part of the North American Free Trade Agreement implementing legislation in December 1993 (P.L. 103–182). Through passage of this Act, the Committee provided the Customs Service with the necessary tools to successfully redesign its processes for the 21st Century. Specifically, the Act allowed Customs to develop a fully-automated commercial environment, redesign and restructure its core business-related activities, and reevaluate the culture and work practices of its employees.

Pursuant to this legislation, the Customs Service announced a major reorganization and modernization plan in September 1994. The original goals stated by Customs for its reorganization effort were to make the agency more effective, improve management practices, and secure more stable sources of funding such as user fees. The plan itself included initiatives to concentrate services at ports of entry, restructure and reduce staffing at headquarters, eliminate regional and district offices, establish Customs Management Centers to manage field operations, and establish regional Strategic Trade Centers to target trade-enforcement efforts.

The Subcommittee held hearings on the progress of the Customs Service reorganization and modernization efforts in January 1995. Extensive legislative and oversight review by the Subcommittee eventually led to passage of the Miscellaneous Trade and Technical Corrections Act of 1996 (P.L. 104–295) , which was signed by the President on October 11, 1996. This Act made several important corrections to the Customs Modernization Act by improving Customs' ability to facilitate trade.

On March 11, 1997, the Subcommittee held a hearing on the Budget Authorizations for fiscal years 1998 and 1999 for the U.S. Customs Service, as well as the Office of the U.S. Trade Representative, and the International Trade Commission. The Subcommittee received testimony from representatives from the business and trade community. Much of the testimony concerned the operations of the Customs Service.

Customs continues to work on the detailed regulatory and operational efforts required to implement the massive organizational change required by the Customs Modernization Act.

In announcing the hearing, Chairman Crane stated: "I applaud Commissioner Weise's work in implementing the Customs Modernization Act so that Customs is prepared to address trade and enforcement issues in the coming century. This hearing will allow the Subcommittee to assess how well Customs has reallocated its resources. I am also interested in the status of the various regulatory packages which Customs has rewritten pursuant to the Customs Modernization Act. It is imperative that the Subcommittee work with Customs to reduce the burden of Customs regulations not only on legitimate imports, but also on our strong and growing export sector."

FOCUS OF THE HEARING:

The hearing will provide both Customs and the trade community with an opportunity to identify for the Subcommittee the status, progress, and concerns related to the changes Customs has made pursuant to the Customs Modernization Act and the reorganization. Other areas of inquiry may include Customs Officers Pay Reform Act, user fees, and the allocation of inspectors, Special Agents, and other personnel resources. In addition, the Subcommittee is interested in Customs' role in interdicting illegal narcotics, as well as its anti-money laundering activities. Specifically, the Subcommittee is concerned about Customs methods for measuring the effectiveness of its efforts in the drug war.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225–1721 no later than the close of business, Wednesday, May 7, 1997. The telephone request should be followed by a formal written request to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade 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 on Trade 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. 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 of their prepared statement and a 3.5-inch diskette in WordPerfect or ASCII format, for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than Monday, May 12, 1997. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement and a 3.5-inch diskette in WordPerfect or ASCII format, with their address and date of hearing noted, by the close of business, Thursday, May 29, 1997, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written

statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit 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 statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments. At the same time written statements are submitted to the Committee, witnesses are now requested to submit their statements on a 3.5-inch diskette in WordPerfect or ASCII format.

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. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS__MEANS/'.

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 Subcommittee will come to order.

Welcome to the Trade Subcommittee's hearing on oversight of the U.S. Customs Service. The history of the Customs Service is closely intertwined with that of the Ways and Means Committee. While Customs revenue are no longer the primary source of revenues for our Nation, we rely on Customs to interdict illegal narcotics and enforce our trade laws at the border.

In keeping with the traditionally close relationship between the Committee and the Customs Service, we have worked with Commissioner Weise over the past several years on many of the same issues in the Customs area. First, we have sought to reduce the burden on American business and industry of the regulations being promulgated by the Customs Office of Rules and Regulations pursuant to the Customs Modernization Act.

One of best ways to reduce this regulatory burden is for Customs to computerize its import-export processes. Computerization will also improve Customs' ability to target and interdict fraudulent imports. We must get a handle on the problem of the transshipment of counterfeit products which threaten the health and safety of the American people, and we must protect America's children from drug smugglers by taking the profit out of their business.

The Ways and Means Committee has already acted through the authorization process to increase the number of Customs special agents, particularly those dedicated to antimoney laundering activities. Protecting our children from the threat of drugs means properly staffing and compensating the men and women who protect our borders.

In 1993, the Trade Subcommittee helped pass the Customs Officer Pay Reform Act, which sought to eliminate longstanding waste and abuse of overtime. Yet it still provided Customs inspectors with the most generous overall compensation package of employees in the Federal Government. Unfortunately, the practical outcome of certain labor arbitration decisions governing the application of the act are unconscionable. For example, Customs inspectors may be paid premium pay and overtime pay for hours scheduled but not worked due to annual leave or sick leave. I firmly believe, as does the administration, that the law requires Customs inspectors to actually work for any premium pay earned. I also believe the Customs and National Treasury Employees Union should undertake a comprehensive review of the partnership agreement and share that information with this Subcommittee.

I would now like to recognize our distinguished Ranking Member, Mr. Matsui, for any statement he would like to make.

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

I would like to join you in welcoming Commissioner Weise and other witnesses to the hearing on the oversight of the U.S. Customs Service. This will probably be the final appearance of Commissioner Weise before this Subcommittee. As we all know, Commissioner Weise has announced his retirement effective some time this summer.

As Chairman Archer, Chairman Crane, Ranking Member Rangel and I wrote in a recent letter to Mr. Weise, he has been one of the finest commissioners in the long history of the Customs Service. His leadership and professional integrity have set the standards for the Customs Service for years to come. After 25 years of public service, of which some was on this Ways and Means Committee's Trade Subcommittee, he can leave his official duties in the knowledge that he has earned the respect and admiration of this Committee and the public at large.

Mr. Chairman, I would like to enter a copy of our letter to Commissioner Weise in the record of this hearing.

Chairman CRANE. Without objection.

Mr. MATSUI. Thank you.

[The information follows:]

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COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515–6348

April 22, 1997

The Honorable George G. Weise
Commissioner
U.S. Customs Service
1301 Constitution Ave., NW
Washington, DC 20229

Dear George:

It is with a sense of regret that we received news of your decision to retire as Commissioner of the U.S. Customs Service. You have been one of the finest Commissioners in the long history of the Customs Service.

We recognize the difficult task you have faced in leading the Customs Service in interdicting illegal trade, while processing the imports and exports on which our country relies. At the same time you have taken the historical step of carrying out a comprehensive plan for modernizing and reorganizing Customs. Your leadership and professional integrity have set the standard for Customs for years to come. As we have stated in the past, we feel that you have been one of the Clinton Administration's finest appointments. At the same time, we admire your decision to dedicate more time to your family.

After twenty-five years of public service to our Nation, you can leave your official duties confident in the knowledge that you have earned the respect and support of the Ways and Means Committee.

Sincerely,

Charles B. Rangel
Ranking Minority Member
Ways and Means Committee

Bill Archer
Chairman
Ways and Means Committee

Robert Matsui
Ranking Minority Member
Subcommittee on Trade

Philip M. Crane
Chairman
Subcommittee on Trade

Mr. MATSUI. As we all know, the Customs Service and its over 18,000 employees perform a variety of tasks that are essential to the economic health of this country. Its diverse mission includes collecting duties, taxes and fees on imports, enforcing laws intended to prevent unfair trade practices, and protecting public health by interdicting narcotics and other hazardous goods before they enter into the country.

Customs is the source for trade statistics on imports used in monitoring and formulating trade and public policy, which is the primary responsibility of this Subcommittee. In recent years, much has been done both legislatively and administratively to prepare the Customs Service for the challenges of the 21st century. Most notably, the Congress passed the Customs Modernization Act as part of the North American Free Trade Agreement, NAFTA. This act was drafted by this Subcommittee.

Administratively, the Customs Service under Commissioner Weise's bold leadership has formulated and implemented a comprehensive reorganization plan. Most recently, Customs has taken new initiatives to improve its drug enforcement and antimoney laundering capacities. I look forward to hearing the testimony in this hearing of Commissioner Weise, and other witnesses, on these and other issues today.

Mr. Chairman, I believe this hearing is important and timely of the Customs operations, and I look forward to working with you on the Subcommittee on the legislative matters and oversight recommendations that might result from this hearing. And again, I would like to thank Commissioner Weise for all his work over the years, 25 years of public service, and certainly we wish him well and congratulate him.

Chairman CRANE. Today, we will hear from a number of distinguished witnesses, but our first witness, of course, will be George, and George recently did announce that he is retiring at an early age after nearly two decades of service with the Federal Government. Your leadership on Customs is going to be sorely missed, and welcome back to the Subcommittee.

STATEMENT OF HON. GEORGE J. WEISE, COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. WEISE. Thank you, Mr. Chairman, and I wish it were a real retirement. It is kind of a change of careers. It is an official retirement from the government's standpoint, but I am going to need another career before I can really retire.

Thank you so much for those kind words. Clearly, whenever I return to this room and return to appear before this distinguished Subcommittee, having spent a substantial portion of that 25 years on the other side of this dais, it always gives me a great sense of feeling at home, and I have learned so much from the Members of this Subcommittee and very much about the importance of public service and trying to do the best you can with the resources that you are given, to give the American people back what they deserve.

I know you have a number of witnesses today. I have a detailed statement that I would ask to be included for the record. I would like to make some brief remarks and as quickly as possible, get into a dialog and discussion with you and Members of the Subcommittee on issues that are of concern to you.

Chairman CRANE. Without objection, so ordered.

Mr. WEISE. Thank you.

I guess I could say that I do sit before you having looked back at the last 25 years, but in particular the last 4 years, with a great sense of what the people of the Customs Service have been able to accomplish with the assistance and support all the way of this Subcommittee.

This Subcommittee, as you said, has had a long association with the Customs Service. Throughout my career I have seen that you have led by example, you have attempted to provide the tools necessary to get the job done and clear guidance on how we could better serve the American people. When I look back and see where we were 4 years ago and where we have come, I have a great deal of pride, not so much in my accomplishments, but of the fine men and women of Customs who have been able to work with the tools you have provided them through the Customs Modernization Act, which was absolutely essential.

But second, if you recall 4 years ago when I took this position, the Customs Service, in my judgment, was in need of tremendous restructuring. It had been more than 30 years since the last restructuring. We were so much distrusted in the Congress, not in this Subcommittee, but our annual appropriation bill forbade us not only from reorganizing and restructuring, but forbade us from spending one nickel of our appropriations on even studying whether we needed to reorganize.

Frankly, we have, with your help, been able to remove that impediment and restructured the Customs Service. We have eliminated district offices. We have reduced the size of our headquarters, we have tried to do everything in our power. We called it "People, Processes and Partnership," a look at not only the way we are structured, but the way we do our work and tried to identify what our core process and core missions were and how we could work together in business community and the people who count on us to do our jobs better. I think if you look at what we were able to achieve in the course of this 4 years, you also would be proud of where we have come.

There are witnesses that will appear later that have some concerns about the timeliness and whether certain things have come far enough fast enough. I think those are important issues for discussion, and I think that that is something that we do need to recommit ourselves to: to coming through on some additional provisions. But we have come a long, long way.

Another area that needs to be looked at in terms of what we have accomplished in the last 4 years is our own financial house. This was in such disarray that when we had our first audit in 1993 by the General Accounting Office, our books and records were in such bad shape that they couldn't even audit them. They basically gave us a disclaimer under the Chief Financial Officers Act. That

means we can't even give you an opinion, the books are in such bad shape.

Now, that doesn't say much for the second largest revenue-generating agency in the government that requires others to have their books and records in fine order, that our books and records were in such bad shape that we couldn't be audited. We have come a long way.

Last year we achieved a qualified opinion, which is the next step to having an unqualified opinion, which means without qualification they can say that your records are in good shape. This year we achieved the unqualified opinion under the Chief Financial Officers Act. We have achieved a great deal in that area as well.

I would venture to say, Mr. Chairman, that in the proud 208-year history of this organization, the oldest organization in the whole Federal Government, if you take this 4-year period and stack it against any other 4-year period in that history you would see we have embarked on the most change and most positive, constructive change. We are not there yet. We are in the process of changing a culture as well as organizational charts. But we have laid a solid foundation.

The thing I am particularly proud of, even though we are going on through this period of change trying to improve the way we do business, are the results we have been able to achieve. We have not been getting a lot of additional dollars—the Vice President talks about making a government work better and cost less. I would venture to say if you look at the results we have achieved over the last 4 years we have an organization that today works better and costs less. Over the last 4 years, our budget has increased by 2 percent, and in real terms when you compare it to inflation, our base resources have been reduced by $100 million. But in that timeframe, in that 4 years, with the commercial responsibilities that we have, now for the first time in the history over the last 3 or 4 years we have a measurement system that can tell you, Mr. Chairman, what the compliance rate is for commercial transactions coming into this country. And we have improved over the last 2 years from a rate of about 80 percent to a rate in this past year of 82 percent. That leaves an 18-percent gap. But the most important figure, if you look at it in terms of revenue, we are today collecting 99 percent of the revenue that is owed the Government. There is a 1-percent revenue gap, and we have been able to achieve those improved enforcement results while at the same time having record seizures as far as narcotics are concerned.

I have stated on many occasions both to the Congress and the public, there is no mission more important that we have to the American people than keeping drugs from crossing our borders. I am the parent of two teenage daughters, my background is in the commercial arena, but no mission has been more important in the last 4 years than keeping drugs out of this country.

We have not solved the drug problem in the United States. At Customs, through Operation Hard Line and Operation Gateway, seizures have increased each year, and last year we seized more than 1 million pounds of narcotics. That is good news and bad news. It is good news in that we are trying to do our job; the bad news is in how serious the problem is. And I am not going to sit

here and pretend that we have accomplished everything we need to. But I do think we have laid the foundation for a successful future.

I also hope that as the Congress looks at balancing this budget in the next 6 years that they look at the challenges the Customs Service is facing. The workload is going up and up and up, and no matter how you measure, in terms of number of passengers, number of entries, number of people crossing the borders, or if you measure it in terms of the threat of narcotics, while our budget has remained relatively static, other organizations. For example, Immigration and Naturalization who works side by side with us, their budgets have grown. Ours has not kept pace.

We have tried to work as efficiently and effectively as we can. We have tried to streamline everything we can. We have tightened our belts and we have acted responsibly to put our resources where the threats are. And we have. Over the course of the last 4 years, the Southwest border has been a primary area of threat, as well as, Mr. Shaw knows, southeastern Florida. We have had a tremendous threat over many years. We have tightened our belts in many other areas.

The final comment I would make before turning it over to the Members for questions and answers, is that I am very frustrated by the media attacks that this organization has taken over the past several years and particularly the past several weeks. If you didn't have a chance to see the "60 Minutes" piece on the Customs Service, I will tell you I think that piece was terribly unfair. There was an allegation that relates to corruption back in 1990 that was fully investigated on three occasions, but the FBI came in and took a new look at it. Eighteen months before the grand jury, 80 witnesses were called, and at the conclusion of that grand jury no indictments were issued. I think that says something for the integrity of the Customs workforce. We take it seriously and pursue vigorously any instances of corruption.

Second, the implication was given that we are more concerned about facilitating the movement of trucks across that border to the detriment of the law enforcement mission. In that piece it was alleged that a memorandum was written that asked for expedited treatment of a trucking company that, based on what our own intelligence analysis showed, had a connection to drug smugglers.

I want the Subcommittee to understand that the memorandum was a fabrication. That memorandum was never generated by the individual who allegedly sent it. It was never received by the people who allegedly received it, and we have done everything we could to make sure that trucking company is given the intense examination they deserve.

I would now be happy to answer any questions that you or any of the Members may have.

[The prepared statement follows:]

Statement of Hon. George J. Weise, Commissioner, U.S. Customs Service

Mr. Chairman and Members of the Committee, it is, as always, a pleasure to appear before this Committee to discuss the activities of the Customs Service. During the authorization hearing on March 11th, I had the opportunity to present a broad overview of the many challenges currently being faced by Customs and the strategies that are being used to meet those challenges. In my opening statement, and during our discussions, a number of important issues were touched on, including our

number one operational priority: the interdiction of drugs and the disruption and dismantling of drug smuggling organizations. These and other important issues deserve further attention. I look forward to discussing some of them with you today.

WORKLOAD

The U.S. Customs Service is responsible for the screening of all merchandise moving across our borders by commercial or noncommercial means. Last year, the Customs Service collected about $22 billion in revenue for the United States in the form of duties, taxes, and fees and seized over one million pounds of narcotics. It did this while processing over 16 million commercial import entries worth approximately $775 billion and over 440 million arriving travelers. It also took on an increased responsibility of screening passengers and cargo to prevent anti-terrorism attacks.

The Customs Service applied hundreds of laws and regulations concerning tariff and trade and performed the initial checks, processes, and enforcement functions for over 40 federal agencies. Customs performs these tasks by covering over 7,000 miles of land border and staffing over 300 ports of entry.

Customs will have to address increasing workload requirements as international trade and travel arriving and departing our land borders or entering through our airports and seaports grows. In FY 1997, it is estimated that Customs will process 17.2 million commercial import entries valued at approximately $790 billon and 372 million land border passenger arrivals, 71 million air passenger arrivals, and 8 million sea passenger arrivals.

RESOURCE ALLOCATION AS A RESULT OF THE REORGANIZATION

As you know, in October 1993, I called together a Customs Reorganization Study Team and asked its members to develop the best approach to enable Customs and its employees to make their maximum contribution to the Nation. Being fully aware that demands for service from its customers will continue to increase despite a tight fiscal climate, the study team sought ways to best use its resources.

In September 1994, they produced a report, People, Processes, and Partnerships which recommended new management approaches and an organizational structure that will enable Customs to meet the challenges of the 21st Century as a more efficient, effective, and adaptable organization. The new management approaches included adopting a process management approach, which requires the identification of core processes, performance measures, and partnerships with customers to improve Customs operations. The new organizational structure would be built from the ground up, with a foundation based on the ports. Central to the plan for the new structure was the concept of reinvestment of the resources freed up by the restructuring of operations. After coordinating with Administration officials and key Congressional leaders, Customs began implementing these changes in late 1994. The organizational change was completed in September 1995, but the fundamental management changes will continue over a long period.

The goal to reduce Headquarters staffing by approximately one-third was also part of the reorganization strategy, and was based on the premise that Headquarters should be focused on policy formulation and oversight, and not deeply involved in day-to-day operational issues. The bulk of the Headquarters reduction will be completed by the end of FY 1997, with the last major component accomplished at the beginning of FY 1998.

Many of the resources freed up by this restructuring have been, and are being, reinvested at the ports and in priority areas such as strategic trade and information technology.

THE CUSTOMS MODERNIZATION ACT

The Mod Act promotes and encourages an atmosphere of open communication and cooperation between the U.S. Customs Service and the trade community. In a sense, the Mod Act stresses the significance of the Customs/Trade partnership, when it introduces the philosophies of "informed compliance" and "shared responsibility." We no longer subscribe to the "just do it" approach. Instead, we have made it a practice to establish new partnership approaches for developing and changing regulations, processes and systems. These approaches emphasize LISTENING to our partners. We solicit input and we listen. To gather input, we conduct public meetings; we attend trade association meetings; and we make drafts of significant system, procedural and regulatory documents available for comment prior to formalizing them. In fact, the National Customs Automation Program (NCAP) of the Mod Act, mandates that for each electronic component, Customs must consult with its trade partners.

The proposed drawback regulations published in the Federal Register this past January represent a major Customs/Trade partnership accomplishment. In a radical departure from the way Customs has traditionally worked with the trade, a team composed of Customs drawback experts, a representative from the Inspector General's Office at Treasury, 11 representatives from several major trade associations (AAEI, the NCBFAA, the API, and the NCITD), and a professional facilitator worked together over an extended period to develop regulations covering the most technical of Customs programs. During this developmental period, the team conducted more than 10 public seminars around the country presenting some 1250 members of the trade community with an opportunity to dialogue with the team. In addition, three drafts of the proposed regulations were made available to the public through Customs Automated Broker Interface and the Customs Electronic Bulletin Board. Copies were also sent out to interested persons upon request. Further, since 1992, Customs met 42 times with various groups representing drawback claimants, exporters, brokers, attorneys and consultants to explain and discuss its proposals.

In view of Customs extensive consultation with groups of interested persons, Customs published the Notice of Proposed Rulemaking (NPRM) on drawback on January 21, 1997, with a 60-day comment period. After a request for extension of the comment period by the AAEI, Customs granted an additional 30-days for the comment period. The comment period has now expired, but Customs received further requests for extension of the comment period from API, NCBFAA, and NCITD. Customs is now reviewing the comments. Clearly, the process of formulating regulatory packages with meaningful input from the trade takes time.

As of May 6, 1997, to implement provisions of the Mod Act, Customs has published 7 final rules and 1 interim rule in the Federal Register and currently has pending 5 NPRMs published in the Federal Register; 6 NPRMs in review at Customs or Treasury; and 4 draft NPRMs posted on Customs Electronic Bulletin Board. In addition, Customs has published seven notices in the Federal Register announcing various National Customs Automation Program tests.

AUTOMATION

The General Accounting Office (GAO) May 1996 report on Customs modernization efforts raised a number of concerns regarding our efforts to redesign and replace the outdated Automated Commercial System (ACS) with a new, more sophisticated system called the Automated Commercial Environment (ACE). Customs has addressed the GAO's findings and feels confident in proceeding with the ACE project.

- Customs has established a management oversight structure that assigns clear accountability for Customs Modernization Act implementation and the development of ACE.
- Customs has awarded a contract for definition of a Customs-wide technical architecture that will produce, by June 1997, a comprehensive set of deliverables based on requirements from all Customs processes.
- Customs has established an Investment Review Board and is on schedule with producing an investment review process for use by the board beginning in July 1997.
- Customs is ensuring that the ACE project strictly conforms to the Customs Systems Development Life Cycle (SDLC) standard, including the production of SDLC required deliverables such as a security plan, completed in July 1996; a short-term project plan which was completed in April 1997; and a comprehensive ACE project plan to be completed by November 1997 and, after approval by senior Customs and Treasury management, made available to committees in February 1998.

We believe these actions not only respond to GAO's recommendations, but also demonstrate our continuing commitment to a productive, well-managed automation program in Customs. GAO's positive findings in their recent follow-up review of their May 1996 report confirm this commitment.

The primary focus of the ACE project in FY 1997—and the first operational demonstration of ACE—will be implementation of the National Customs Automation Program (NCAP) prototype. Extensive preparatory work has been done at prototype field locations and with the likely trade participants, including the three major U.S. automobile companies. These companies have been partnering with Customs on a number of joint working groups to define prototype procedures. A Federal Register notice was published March 27, 1997, officially announcing the NCAP prototype, describing the requirements for participation, and seeking members of the trade community to participate in the initial test. In response, we have received applications from five major importers.

The prototype will include only a slice of the intended full set of ACE features and will involve a small subset of Customs locations and trade community entities. However, because this prototype will be fully operational (i.e., it will not require parallel entries in the current system) and will handle a relatively high volume of transactions at the involved ports, it will support a meaningful evaluation of the intended benefits of ACE and the underlying trade compliance process. It will allow Customs, Congress, and the trade community to evaluate, in a real-world setting, the potential benefits of ACE within the framework of Customs redesigned trade compliance process.

The NCAP prototype is critical to the future progress with ACE. Only with an operational system can we properly evaluate our development approach and the underlying trade compliance process concepts. Completing the prototype will also give us an excellent yardstick for accurately measuring the time and resources needed to deliver a set of ACE features. This will be invaluable for validating our project planning assumptions. Finally, and most importantly, completing the prototype in a timely fashion will demonstrate the progress toward implementing the Modernization Act which is so urgently desired by Congress and the trade community, as well as Customs.

The hallmark of ACE is that it moves from a transaction-based approach to an account-based system founded on compliance measurement and predicated on reengineered ways of doing business. Companies cooperating with Customs achieve mutually beneficial outcomes, including raised compliance, minimized data requirements at time of release, and the ability to make payments on a periodic basis. As compliance increases, the cost to Customs and to trade will decrease. The benefits of this approach will include uniform treatment, shorter processing time, more efficient information collection and dissemination, and greater opportunities to fulfill our enforcement mission.

LABOR-MANAGEMENT RELATIONS

Just a few days before my last appearance here before this Committee, the GAO released its report on Customs partnership efforts with the National Treasury Employees Union (NTEU), "Varied Reaction to the Labor-Management Partnership Concept" (GAO/T–GGD–97–54). I have looked closely at the report and have found many constructive points which will receive close attention.

GAO's findings were generally supportive of our partnership efforts. Its one recommendation was to develop a formal plan for the evaluation of progress and improvements in organizational performance resulting from the labor-management partnership. Customs has taken numerous steps in the past to evaluate and monitor the effects of the partnership. However, as a result of the GAO findings Customs has begun, and will continue in the future, to pursue a more formal evaluation of partnership.

Another issue has been the payment of premium pay for non-work periods. The current Treasury-Postal Appropriation Act temporarily bars payment of Sunday, premium pay or night differential pay for non-work periods such as leave, for employees of the Customs Service and other agencies under the Treasury-Postal Act. We support this provision, and we support making it permanent for all Federal agencies.

DRUG ENFORCEMENT EFFORTS

Customs number one operational priority is the interdiction of drugs and the disruption and dismantling of drug smuggling organizations. As part of an overall narcotics strategy, Customs has developed four objectives, the purpose of which is to provide to Customs enforcement officers the tools and systems they need to improve their ability to interdict narcotics and to investigate smuggling and money laundering organizations.

Customs first objective is to develop, collect, analyze and disseminate actionable intelligence to all levels of federal, state, and local narcotics enforcement agencies. Customs has been at the forefront in developing more useful intelligence, especially as it relates to the Southwest border.

A second objective is to develop and provide information and training to trade and carrier communities to prevent the use of cargo containers and conveyances by smuggling organizations. Programs which are helping Customs meet this objective are the Business Anti-Smuggling Coalition (BASC), the Carrier Initiative Program, and the Land Border Carrier Initiative Program. The BASC is a business-led Customs-supported alliance created to eliminate the use of legitimate business shipments by narcotics traffickers to smuggle illicit drugs. The Carrier initiative programs encourage air, sea, and land border carriers to improve their security prac-

tices to prevent narcotics from being placed onboard their conveyances or smuggled in cargo.

Customs third narcotics strategy objective is the development and introduction of technologies to identify concealed smuggled narcotics. Customs recognizes that technology plays a significant role in our ability to remain effective at ports of entry and to thwart smuggling efforts between ports by aircraft and boats. Customs employs a wide range of technological tools to protect our borders, including new and emerging technologies, such as truck x-ray systems, license plate readers, and automated targeting systems.

Customs fourth objective is the implementation of aggressive covert and overt narcotics investigative programs. Customs involvement in various multi-agency operations, such as ONDCP's High Intensity Drug Trafficking Areas (HIDTA) and the Department of Justice's Organized Crime Drug Enforcement Task Force (OCDETF), has helped us maximize our narcotics interdiction results. Customs is also increasing its investigative emphasis in staging and distribution cities. Choosing to emphasize investigations in these cities will add to our body of knowledge, allowing Customs to interdict more at the border based on prior information. This full circle approach is what we call the "Investigative Bridge" and it goes beyond border interdiction and capitalizes on the intelligence and information developed through investigations of smuggling organizations.

It is clear that Customs is making progress in its efforts to combat the illegal flow of drugs. In FY 1996, Customs seized or participated in the seizure of a record 1,000,000 pounds of drugs. This total represents approximately 80% of the heroin, 70% of the cocaine, and 65% of the marijuanca seized or discovered by all Federal law enforcement agencies.

As a result of Operation Hard Line, narcotics seizures on the Southwest border increased 29 percent by total number of incidents (6,956 seizures) and 24 percent by total weight (545,922 pounds of marijuana, 33,308 pounds of cocaine, and 459 pounds of heroin) when compared to FY 1995 totals. The total weight of narcotics seized in commercial cargo on the U.S.-Mexico border in FY 1996 increased 153 percent (56 seizures totaling 39,741 pounds) over FY 1995. Operation Hard Line also checked the dangerous trend of "port running," in which narcotics-laden vehicles were recklessly crashing through Customs checkpoints in order to enter the U.S. without inspection, posing great danger to border officers and innocent civilians.

Following the success of Operation Hard Line on the Southwest border, Customs initiated Operation Gateway to achieve a complete and unified securing of Puerto Rico, the U.S. Virgin Islands, and their surrounding waters and airspace from narcotic smugglers. The Puerto Rico area, according to Customs intelligence reports, has the highest rate of non-commercial maritime and airdrop smuggling activity of any Customs area. Operation Gateway is a cooperative plan that commits a sizable investment of funds, personnel, and equipment by Customs, with support from the Government of Puerto Rico. It is part of Customs overall plan to secure the southern tier of the U.S., from San Juan to San Diego. Since the initiation of Operation Gateway, Customs narcotic enforcement activities in Puerto Rico have increased dramatically. In comparing March 1 through the end of December 1996, to the same nine months in 1995, cocaine seizures have risen 44 percent.

MEASURING DRUG ENFORCEMENT SUCCESS

Customs recognizes the difficulty in quantifying the effect of its enforcement activities. Traditionally, we have relied on seizures to tell the story. But year-to-year seizure statistics alone are an imperfect measure of Customs performance in countering the inflow of narcotics into the U.S.

If, for example, Customs were able to harden the ports of entry to make it virtually impossible to smuggle through a port of entry, our seizure numbers would go down to zero. Based on a traditional measure of success, it could appear that Customs was performing miserably, while in fact it was having its greatest success. Seizure statistics will continue to be an imperfect measure until such time as we can accurately estimate the total amount of narcotics being smuggled into the country.

For our trade and passenger processing operations, Customs has developed estimates of "compliance," that is, statistical projections of the total number of imports or arriving passengers that are in compliance (or, conversely, out of compliance) with the law. These estimates are based on large random samples of imports and passengers. They provide an objective measure of how our outreach, education and enforcement activities together move the trade and traveling community into compliance with the law.

In contrast, the incidence of narcotics smuggling is not predictable or sufficiently frequent to permit the use of random sampling to estimate the total number of possible narcotics smuggling incidents. Customs is working with the Office of National Drug Control Policy to identify different measurement approaches to the interdiction of narcotics and the disruption and dismantling of narcotics smuggling organizations. ONDCP has expressed interest in exploring ways to show that Customs efforts, in such operations as Hard Line and Gateway, are causing displacement in smuggling efforts.

Customs is also exploring the development of measures that can provide an overall picture of its "impact" on smuggling organizations. Conceptually, this means combining intelligence feedback from all agencies, with seizure data, displacement data (air, marine, and at ports of entry), investigative data (narcotics and related money laundering), and other law enforcement agency assessments.

Since 1982, Customs Air Program has been using an "Air Threat Index" to gauge its effectiveness in deterring the use of general aviation aircraft for smuggling drugs across the border. This index, which was designed by Stanford Research Institute, is a composite measure of various indicators of general aviation smuggling activity. Annually, these indicators are tallied, weighted according to their reliability in indicating general aviation smuggling activity, and compared to the baseline 1982 level.

As you can see we are looking at a number of alternatives to more effectively measure enforcement effectiveness. We look forward to resolving the measurement issue through further consultations on our strategic plan required by the Results Act. These consultations, begun last year, with Congress, other federal agencies, and interested parties need to result in a set of organizational measures that are acceptable to the Congress, the Administration, and to external parties interested in the Customs Service's enforcement performance.

ANTI-MONEY LAUNDERING ACTIVITIES

While the interdiction of drugs and the disruption and dismantling of drug smuggling organizations remains our highest priority, Customs also focuses on the most significant international criminal organizations whose corrupt influence impacts global trade, economic and financial systems. Our efforts are not limited to drug-related money laundering but the financial proceeds of all crime.

Customs has implemented an aggressive strategy to combat money laundering. Customs money laundering investigations yielded $258 million in currency seizures in FY 1996. Customs also made the largest cash seizure to date at the U.S. border—$15 million in Miami, Florida.

Through our strategy, we will continue to enhance our asset identification and forfeiture capabilities with advanced training and the use of more sophisticated computer software for analytical purposes. Customs will also continue to develop information through interaction and training with foreign law enforcement personnel, prosecutors, judges, and legislators through domestic and international anti-money laundering awareness seminars. Finally, Customs will proceed to develop information on international money laundering organizations by participating in long-term advisor programs and cross-border reporting and information exchange programs pertaining to the movement of monetary instruments. Again, the focus will be on detecting the movement of all illicit proceeds, not just narcotic proceeds.

In addition, Customs is currently working with the Financial Crimes Enforcement Network on a regulatory initiative to make foreign bank drafts reportable. This would curtail a frequently used money laundering technique and help investigators trace criminal proceeds that have been reinvested or repatriated back to the U.S.

This concludes my statement for the record. Thank you again for this opportunity to appear before the Committee. Mr. Chairman, we would be happy to answer any questions you may have.

Chairman CRANE. Thank you very much, George.

Let me ask first about the National Treasury Employees Union's recommendations that the overtime cap be raised from $25,000 to $30,000. What are your thoughts on that?

Mr. WEISE. Mr. Chairman, as you know, this Subcommittee worked for quite a long time in putting together the Customs Officers Pay Reform Amendment, COPRA, legislation that allows for

the funding of the Customs inspectors' overtime. An awful lot of work went into that and we have had limited experience. It has only been in effect 2 years now.

I believe that if given the opportunity to work, it is a very equitable program. We ought to give it an opportunity to work, and then look at the whole program before we go making individual changes. Obviously, the inspectors who work side-by-side with the Immigration and Naturalization Service, INS, inspectors are concerned about parity and know the INS inspectors have a $30,000 overtime cap. They feel they are getting discriminate treatment. But the INS inspectors do not have the same benefits of the COPRA bill, and I think we ought to be concerned about parity and equity between the inspectors. I am proud of the work the Customs inspectors do.

But my response is we oughtn't take a piecemeal approach. If we want to look at the payment of inspectors, we ought to look at the overtime cap in a comprehensive way, at the whole program.

Chairman CRANE. How about the issue that I touched upon in my opening statement, relating to Customs employees that are on annual leave or sick leave being eligible for overtime pay? Do you think Congress should do something about that?

Mr. WEISE. Mr. Chairman, I don't believe that any individual ought to be paid a premium pay for not working. I think that is a basic premise. As much as I support the workers in the Customs Service, I don't support that.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

George, you have issued, what, six or seven regulations on the Customs Modernization Act. Could you tell me when the implementation of all those will occur, and then, second, whether the importers have any concerns and what kind of concerns they may have about each of those six or seven—what is it, seven?

Mr. WEISE. What I would like to do is supply for the record where we stand with respect to each element of the Modernization Act and speak in more general terms, if I may.

I share your frustration and the frustration of the business community. When I took this position 4 years ago, I wanted everything to be finished within the 4 years before I left. I have been frustrated that it has taken us a little longer, but I want to give the Subcommittee some of the perspective as to some of the reasons that it has taken us longer than expected.

First of all, having served in the capacity I did sitting behind the Members of this respected Subcommittee, one of the things I recall is the business community coming in under prior administrations, talking to us about how often the Customs Service seemed to move too quickly, too hastily, implementing new systems, particularly in the automation arena, that didn't have compatibility with the domestic companies' systems. So to one extent we have perhaps erred on the opposite side.

We have, with respect to all the provisions of the Modernization Act, reached out with a true partnership request to the business community that would have to live with these provisions, to make sure we were taking their needs into account. As a matter of fact, before we issue a proposed regulation of rulemaking, we are put-

ting out on an informal basis a draft that is seeking input so we can take that input into account before we actually move to implementation.

The second thing that has complicated and delayed some of our moving forward as swiftly as I would like is that, as I indicated before, we have been completely redesigning the basic processes of how we do our work, and we are doing that again in close consultation and partnership with the business community. In doing so, it, for example, has slowed up our progress in implementing the ACE, the automated commercial environment, because we had the old, automated commercial system, which basically automated a manual system. What we want to make sure is when we get ACE into effect, we are redesigning a system from the ground up and moving to more of an account-based system than a transaction-based system. We need to have that developed and designed before we can automate it. We are designing it together. So this is taking longer than we would have liked.

As I said before, if you compare this 4 years of change to any other 4 years, you will see it is rather dramatic. We have changed to the point where one of my senior managers described it as trying to change a tire on an automobile going 60 miles an hour, and we had to consolidate to a certain degree.

There is only so much change one can handle at once. I think we have laid the foundation and we are going to see with this schedule that I will provide to you that we are more likely to get modernization implemented.

[The following was subsequently received:]

STATUS OF MOD ACT IMPLEMENTATION

The Mod Act promotes and encourages an atmosphere of open communication and cooperation between the U.S. Customs Service and the trade community. In a sense, the Mod Act stresses the significance of the Customs/Trade partnership, when it introduces the philosophies of "informed compliance" and "shared responsibility". We no longer subscribe to the "just do it" approach. Instead, we have made it a practice to establish new partnership approaches for developing and changing regulations, processes and systems. These approaches emphasize LISTENING to our partners. Yes, we solicit input and we listen. To gather input, we conduct public meetings; we attend trade association meetings; and we make drafts of significant system, procedural and regulatory documents available for comment prior to formalizing them. In fact, the National Customs Automation Program (NCAP) of the Mod Act, mandates that for each electronic components, Customs must consult with its trade partners.

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As one can see, the process of formulating regulatory packages with meaningful input from the trade takes some time. As of May 6, 1997, to implement provisions of the Mod Act, Customs has published 7 final rules and 1 interim rule in the **Federal Register** and currently has pending 5 NPRMs published in the **Federal Register**; 6 NPRMs in review at Customs or Treasury; and 4 draft NPRMs posted on Customs Electronic Bulletin Board. In addition, Customs has published seven notices in the **Federal Register** announcing various National Customs Automation Program tests.

Mr. MATSUI. Thank you.

I have no further questions.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you. You looked good sitting behind the Subcommittee and look even better where you are.

I congratulate you on your position and we are certainly glad to have had you there as long as we have.

I want to talk about several issues. One, as I understand it, and I am in total agreement with you about the funding level for Customs, and I do know that your resources are spread thin and I hope that is something we will address. As you know, in south Florida, I have great concern about the loss of some of our marine facilities for Customs, and I understand that is being taken care of and we will have them back to the water.

Also, I am going to ask some questions in the area of pleasure boating and switch to the problems we have in some of our ports down there.

For a number of years now, there has been virtually no Customs inspection of boats returning from the Caribbean into south Florida. That perhaps is true from other parts of the country. What do you see that we can do about that, because as I understand it, from talking to some of your people in the field, that the boaters are sort of getting the feeling there is no sense in even calling in to tell them you are back because they never called in to tell you they were leaving? And that seems, it is sort of a shrug of the shoulder and doesn't seem to accomplish much but saying we are back. What do you say?

Mr. WEISE. There is no question that what you have identified is a tremendous challenge for us.

I recall in 1993, the first year I was Commissioner, during the first budget cycle, I was facing a prospect that people within the administration—this was an OMB process initially—but we had a real fight on our hands in the Congress as well basically we were suggesting the complete elimination of not only our marine program, getting rid of all of our boats, but getting rid of our air program as well. The reason was our seizures in recent years had not been what they had been, because we had been successful in shutting down that area of smuggling. We, in effect, became a victim of our success. We considered it a success at the end of that budget cycle that we were able to maintain only a 25-percent reduction in our air program but we took a 50-percent reduction in our marine program. We went from about 150 to 75 boats.

One of the things, as I said, is the fear once you take the boats out of the water, the threat is going to recur. I know you are seeing it in your part of the country, in Puerto Rico, in California as well as we have tightened San Diego and the land border. We are seeing more boats come around us, in Brownsville, Texas, too, and the Gulf. We are trying to get more dollars and more boats in the water, but we need to work smarter than just having boats out there trying to randomly pick up smugglers. We need to work more closely with the DEA and others and try to get the best intelligence we can.

I hate to say this on the public record, but I don't know how we can ever have the kind of resources in this environment that really deal with the sheer volume of pleasure boaters we have in an effective way, but we have to have enough of a presence to be a deterrence, to give people a long pause before they attempt to smuggle. We have to catch enough of them to discourage that type of smuggling.

Mr. SHAW. I would submit that we are not at that level.

Mr. WEISE. I agree with you.

Mr. SHAW. And I think we need to go and actually have some check-in requirement at the ports around the country, and always do some intelligence over in the island to see who is there and see if they do report back in. And if there is some random check-in as to what boats are in Bimini or Nassau and they have—somebody receives a letter that says, I hear you are back, why didn't you call us, that might give us some teeth.

I also heard, and I am not going to affirm the validity of the source, but I understand we are going to start doing that same thing with airplanes coming into this country. Is there any thought to——

Mr. WEISE. I think you may be referring to what we have on the northern border, where the risk is significantly less than it is on the southern border. We have a telephonic reporting program on noncommercial aircraft. It is basically in a prototype status. It has been in effect a little under a year and the experience has been good.

Because the history has been in the prior year before we implemented that, my numbers may be a bit off, but it approximated only 300,000 or 400,000 arrivals and found only 6 instances of wrongdoing. Of those six, only two related to smuggling of narcotics. They were more technical violations.

We face this challenge on the southern border and at other parts of the country. Our resources are not going up, so we have to constantly investigate where we can get the best return for those resources. With the northern border and the threat being rather low we have looked for ways we can create efficiencies there and invest those resources in other areas of the country where the threat is higher.

Mr. SHAW. Well, that seems to make a certain amount of sense, but isn't it true that the importation of heroin is coming in heavily across the Canadian border?

Mr. WEISE. I guess I would quarrel a little bit about whether I would describe it as heavily, but most of the threat on that border is drugs heading north rather than south.

Mr. SHAW. Canada is having a problem with us?

Mr. WEISE. Indeed, there are some problems there.

Mr. SHAW. All right. I want to talk to you now and if I could move into the area of what is going on in some of our ports. I understand that the term of art to use is internal conspiracy to smuggle. And this is about people who work at the ports at various levels. The amount of drugs coming in to the Port of Miami and Port of Everglades is escalating and is a terrible problem.

We have looked into the background and records and the Customs has done a sample at my request of just picking 50 Miami longshoremen. Out of the 50, 36 of them have arrest records. Of these 36 persons, they have had a total of 213 arrests, including 68 drug arrests.

At the Port of Everglades, a sample of 36 longshoremen, 19 had arrest records. Of these 19 persons, 73 arrests including 14 drug arrests. And these are serious.

Let me tell you, give you one of the subjects from Miami. Arrested for robbery, assault and battery, carrying a concealed weapon, possession of a firearm by a convicted felon, aggravated assault,

possession of heroin with intent to distribute, possession of cocaine with intent to sell, possession of heroin with intent to sell, grand theft, petty theft, uttering a forged instrument, forgery of a U.S. Treasury check, possession of cocaine, simple battery, aggravated battery, petty theft. This is one person. I don't see how he has had enough time in his life to have done that.

I have got a list, one of them from Port Everglades in Fort Lauderdale, arrested for arm robbery, assault with intent to commit murder, breaking and entering, disorderly conduct, shoplifting, burglary, dealing with stolen property, possession of cocaine, of course sale of cocaine, and also a case of domestic violence.

Now, I understand in New York that there is a licensing procedure that goes through that actually looks at the background of these people. Are you familiar with that and can you enlighten the Subcommittee on the problem that Customs has with the internal cooperation?

I know from talking to some of your people in south Florida that although you have surveillance cameras within the port, it is easy to stack up freight or containers to block the view long enough for the grab to be made of the illegal contraband coming into the country.

What can you tell us about background checks and things that might help us down in south Florida deal with this? And also enlighten us to arrest backgrounds, felony backgrounds of dock workers throughout the country. I don't think this is just a Florida problem.

Mr. WEISE. Again, you have hit on an extremely serious problem, particularly in your part of the country. We are finding a much higher percentage than not of the smuggling attempts that we are able to successfully apprehend. There are internal conspiracies which means we have to get there and get there quickly. Because the way the internal conspiracies work, often the narcotics are put on the shipment, unbeknownst to the legitimate shippers, and taken off by the individuals, the kinds of individuals you have alluded to, before the merchandise actually leaves the docks.

We have a number of procedures to put in place like making sure the inspectors are not waiting for the luggage to come actually into the terminal, but make sure our people are at plane side and go up into the cargo immediately upon arrival of the plane.

Certainly, there is no question that we have tried hard in our discussions with the airport authority and the airlines to encourage them to do more background checks of the employees. We have what I believe is a very successful program where the airlines have worked with us to ensure that they are minimizing the risk——

Mr. SHAW. As I recall, you grabbed a couple of planes and got their attention?

Mr. WEISE. Yes, and soon after that we got their cooperation.

I am not really aware of the licensing program that you alluded to in New York, but I would certainly be more than happy to work with you and the Subcommittee. We need to find a solution to this. It is a serious problem that needs to be addressed.

Mr. SHAW. The licensing provision, as it was given to me by my staff, it says the port of New Jersey and New York, the New York Waterfront Commission licenses dock workers. The commission

was established in 1953 in order to break the Cosa Nostra's stranglehold on the New York and New Jersey harbor.

Many of the Mafia controlled dock workers who were excluded from working on docks after the establishment of the commission. A lot of them traveled south to Florida, and I think perhaps that is a problem that we need to investigate down in our area.

I would suggest, too, that all of the ports that find that they have this problem, you certainly should be doing background checks of people who are in such a position that they can really, almost with absolute safety, go in and grab contraband and just disappear with it before your guys even get in.

Mr. WEISE. Absolutely. We would very much appreciate your assistance in helping to convince some of the other players in this game to work with us, and if we could do something legislatively——

Mr. SHAW. Mr. Chairman, there is a rather extensive investigative article in the Miami Herald to this and I would ask unanimous consent——

Chairman CRANE. Without objection.

Mr. SHAW [continuing]. To place that in the record of this hearing.

[The information follows:]

Narc squad sniffs out port crew's bad apples

Some longshoremen suspect in drug deals

By DAVID LYONS
Herald Staff Writer

In December 1994, a speeding van roared out of the Port of Miami, with U.S. Customs Service agents in pursuit. It hurtled over the bridge that links Dodge Island with the mainland, and in a futile effort to escape, the driver rammed the government car.

Chase over, agents arrested Ulysses Hamm, a longshoreman who worked the port. Inside the van: a ton of marijuana destined for distributors in South Florida. The weed had arrived in a container from Jamaica, concealed in a shipment of vegetables.

The arrests were a watershed for Customs. After years of playing a losing cat-and-mouse game with dockworkers, they finally had caught two people red-handed, moving drugs from the port and onto the streets of Miami.

CANDACE BARBOT / Herald Staff

ON GUARD: Customs officers, from left, John Miller, Dana Martin and Christopher Whitenton prepare to inspect containers being unloaded from a Venezuelan ship last week at the Port of Miami. At Port Everglades, eight or nine more inspectors are scheduled to join the 14 who currently team with another 14 from the National Guard.

Those arrests and 10 more since signaled the first crack in what law enforcement says is a dirty little secret: a well-run dockworker conspiracy that routinely funnels illegal drug shipments out of the Port of Miami and Port Everglades in Fort Lauderdale.

"We'd intercepted bigger loads," said Mike Sinclair, a Customs supervising agent at the port. "This was the first major one where we caught them running off the port."

Many of the dockworkers have criminal records and ties to South American drug cartels, federal agents say, and their union is doing little to weed out the smugglers.

"Longshoremen are a source of frustration for us, particularly in South Florida," said James Milford, former head of the Drug

PLEASE SEE PORTS, 6A

Miami Herald 4/8/97
Front Page

Drug agencies keeping an eye on dockworkers

Relatively small number suspected

PORTS, FROM 1A

Enforcement Administration in Miami and now the agency's top deputy in Washington.

"One of the things that concerns us is the ability of longshoremen to be utilized successfully in pulling cocaine shipments out of cargo and moving it out of the port with impunity.

"They know this port like it's their back yard. We continually have investigations that identify the longshoremen as the source of the offload crews."

The International Longshoreman's Association is the primary source of labor at U.S. ports. From offices around the nation, union locals dispatch workers to the cargo shipping lines that have a contract with the ILA. Working for pay that often exceeds $50,000 to $60,000 a year, the dockworkers load and unload containers from inbound and outbound ships.

No local responses

Repeated efforts to contact representatives of the union locals that represent dockworkers in Miami and Fort Lauderdale were unsuccessful.

James McNamara, a national ILA spokesman in New York, said the union has been working with law enforcement to fight the drug trade since the 1980s.

"We had a nationwide program working with U.S. Customs to combat drugs hidden inside containers," he said. "The ILA, from Maine to Texas, is continually working with U.S. Customs at Customs inspections sites."

McNamara questioned federal agents' contention that unionized workers at the Port of Miami and Port Everglades have arrest records. He said it's more likely that nonunion workers have those backgrounds.

However, The Herald ran a check of Dade County court records on 50 workers randomly chosen from a list of 435 union members who work at the Port of Miami. The data showed that more than two dozen had arrest records, ranging from disorderly conduct to armed robbery and drug possession.

Limited to a few

Nonetheless, law enforcement authorities emphasize that union officers and most ILA members are not involved in the drug trade.

"Not all of the ILA members are smugglers," said David McKinney, who directs anti-smuggling efforts at the Port of Miami. But he said many honest dockworkers are afraid of retaliation if they cooperate with agents.

The DEA's Milford said the union needs to step up its efforts against rogue dockworkers.

"We would hope they would tighten up their security and their personnel practices," he said. "But we haven't seen that."

U.S. Rep. E. Clay Shaw, R-Fort Lauderdale, said last week that he intends to call for tighter background checks in the hiring of dockworkers. He said federal authorities have told him that a "substantial percentage of longshoremen have serious felony convictions in their backgrounds."

Yet they are allowed to work at the nation's ports.

"I was shocked," Shaw said. "I'm asking for some of the information so I can go forward with a full-fledged investigation."

Hearings proposed

In a letter dated last Friday, Shaw asked Rep. Philip Crane, chairman of the trade subcommittee of the House Ways and Means Committee, to consider a hearing in Washington and field hearings at ports around the nation, including South Florida's.

"These docks have become an easy mark for the importation of illegal drugs," he wrote.

Shaw told The Herald he believes federal legislation can be written to force mandatory background checks among dockworkers. He suggested that local authorities ought to consider similar action.

"I see no barrier for the county commissioners in Broward and the powers that be in Dade from imposing background checks," the congressman said. "I would think that background checks should be right at the top of the list in their hiring policy for people working at the ports."

Such help would be welcome news at Shed E at the Port of Miami, where 26 Customs inspectors and 21 members of the National Guard scrutinize selected vessels for drug shipments.

Fraction stopped

Last year, they stopped more than 34,000 pounds of cocaine and marijuana, just a fraction of the illegal drugs they believe move through the port.

They say they often are overwhelmed by corrupt dockworkers who operate in small, closely knit "cells" that are difficult to infiltrate.

The rogue dockworkers remove cocaine from incoming ships, load the contraband into their private trucks or cars and drive it off the port grounds, officials say. Unless Customs is tipped in advance, the chances of a successful getaway are great.

Although there are permanent checkpoints at the port, few people are stopped for vehicle inspections. Privately hired uniformed guards routinely wave people through with nary a glance, federal agents say.

Port Director Carmen Lunetta was in meetings Monday and unavailable for comment.

When Customs sets up its own checkpoints, agents say, the effort usually is fruitless. The dishonest dockworkers conduct countersurveillance and warn associates by cellular phone to stay low until the checkpoint is dismantled.

Cameras blocked

Dockworkers have also been known to block the line of sight of government TV cameras that scan the port.

In a bid to prevent detection while retrieving drug shipments, agents say smugglers also have positioned containers around the one being unloaded to conceal the operation from agents.

To a large degree, agents have been fighting back with antiquated vehicles and radios that frequently don't work.

Some help is on the way.

"We're getting more people for enforcement," McKinney said.

He said U.S. Customs Commissioner George Weise ordered more inspectors and more equipment such as trucks and radios. Recently, a new truck outfitted with cranes, and other heavy equipment needed to crack containers suspected of carrying drugs arrived at Shed E.

At Port Everglades, eight or nine more inspectors are scheduled to join 14 inspectors now in place. A contingent of 14 guardsmen also operates at the Broward port.

But the best counterpunch, agents insist, is to scrutinize the employees who work at the ports. Otherwise, they say, it doesn't take dishonest dockworkers long to monitor the routines of Customs agents and devise a plan to haul away drugs when they aren't looking.

Change of venues

Agents say the smugglers often shift their activities from port to port. After agents make a large seizure at one port, the smugglers shift their activities to another until the heat is off.

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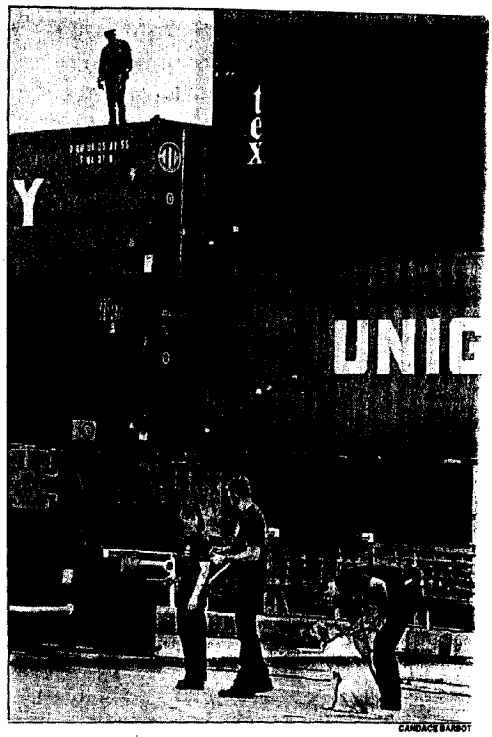

CANDACE BARBOT

DOUBLE VIGILANCE: As a longshoreman looks down from a container that will be unloaded a of Miami, Customs officers Dana Martin, left, Christopher Whitenton and John Miller wait.

DRUG SEIZURES AT PORT

Federal agents at the Port of Miami say a variety of methods are used to conceal drug shipments, many of which are then spirited out of the port by corrupt workers. Here are some of the larger shipments that were discovered in 1996. An asterisk indicates shipments that Customs officials believe involved dockworkers. No arrests have been made in those cases.

Major Drug Seizures at Port of Miami in 1996

Pounds	Drug	Concealment Method	Date
300	Cocaine	Lead ingots	May 5
691	Cocaine	Wood	May 21
1,077	Cocaine*	Coffee	May 24
6,043	Cocaine*	Coffee	Aug. 1
8,901	Marijuana*	Chicken bouillon	Aug. 30
244	Cocaine	Jet engines	Sep. 13
3,29[illegible]	Cocaine	Fake fish in [illegible]	Dec. [illegible]

'Internal Conspiracies' at Port of Miami

Federal law enforcement officials believe that a majority of the drug shipments through the Port of Miami involve what they call "internal conspiracies," their term for dockworker involvement. Fewer than a dozen dockworker arrests have been made in these cases.

Fiscal Year	Total Seizures	Seizures involving Dockworkers
1996	83	53
1995	54	37
1994	35	24
1993	24	12

Source: U.S. Customs Service

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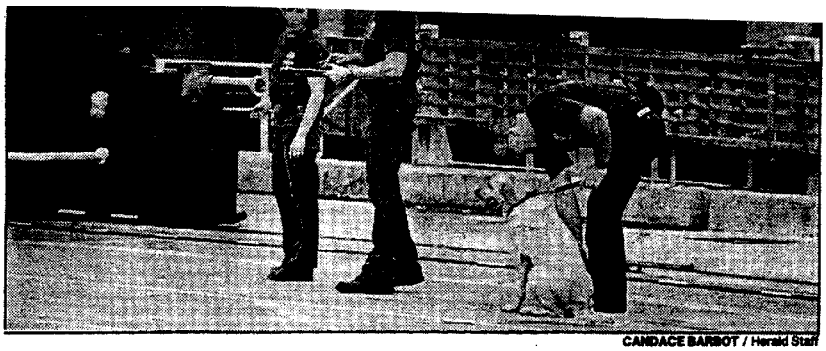

CANDACE BARBOT / Herald Staff

DOUBLE VIGILANCE: As a longshoreman looks down from a container that will be unloaded at the Port of Miami, Customs officers Dana Martin, left, Christopher Whitenton and John Miller wait.

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But the best counterpunch, agents insist, is to scrutinize the employees who work at the ports. Once entrenched, it doesn't take dishonest dockworkers long to monitor the routines of Customs agents and devise a plan to haul away drugs when they aren't looking.

Change of venues

Agents say the smugglers often shift their activities from port to port. After agents make a large seizure at one port, the smugglers shift their activities to another until the heat is off.

A lull in Port of Miami drug activity earlier this year briefly convinced agents that dockworker participation in smuggling had abated. Smugglers, however, had shifted their activities to Port Everglades, which experienced a cocaine boom that authorities hadn't seen in years.

But on a morning in early March, a drug-sniffing dog at Miami named Sir Knight alerted agents to a container filled with toilets from Medellin, Colombia. Inside, agents found 3,000 pounds of cocaine commingled with the commodes. They branded the load as an "internal conspiracy," bureaucratic code for an operation involving dockworkers.

"The dockworkers here would have unloaded the coke and carted it away," said Sinclair, the Customs supervisor.

No arrests have been made.

But the episode provided agents with more ammunition to take to Washington, where they have found a sympathetic ear from Shaw.

"There is really no way to control our ports if you've got crooks working our docks," the congressman said. "We've got to expect more from our longshoremen."

Chairman CRANE. We want to wish you the best in your new life and we appreciate the opportunity we have had to work with you both on the Subcommittee and in your present capacity, and bon voyage.

With that, the Subcommittee will stand in recess until we finish voting. I think we have about 7 minutes left.

[Brief recess.]

Chairman CRANE. The Subcommittee will come back to order.

We want to welcome our next witness, Myles Ambrose, former Commissioner of the U.S. Customs Service.

Welcome, Myles.

STATEMENT OF HON. MYLES J. AMBROSE, ROSS & HARDIES (FORMER COMMISSIONER, U.S. CUSTOMS SERVICE)

Mr. AMBROSE. Thank you very much, Mr. Chairman. I will summarize my prepared statement. I think it has been furnished to the Subcommittee.

As the former Commissioner of Customs, I am especially pleased to appear before you. As a former Treasury and Justice official, and practicing lawyer, I have had the unique opportunity to observe the work of the Customs Service. It should be noted and clearly stated on the record that despite some recent adverse and unfair publicity, the Service has never been in better hands than those of George Weise. Not only those of us who deal with the Customs Service will miss him, but so will the Nation to which he has devoted 25 years of his life. The appointment of his successor will be a most difficult task.

We have heard much recently about Customs and narcotics, the Mexican border and, indeed, the Mexican Government in its role in stemming the flow of heroin from Mexico. It has required the attention of both Presidents. It has been the subject of much attention by Congress, the press, and the private sector.

I have over the past 40 years been deeply involved in Mexican-American bilateral efforts to increase and improve and reduce the influx of narcotics. My initial efforts in 1959, with former Congressman James Roosevelt, was cochairing a series of bilateral meetings between Mexico and United States officials. These efforts were followed by many meetings over the years, too numerous to enumerate.

All these efforts resulted in only promises to improve cooperation between the two countries, to improve enforcement, and to address the heart of the problem, corruption. Yet we have had few results. The extent of corruption in Mexico is mind-boggling. The profits and sums of money available to traffickers is almost infinite. Unfortunately, the demand for drugs in this country is insatiable.

We need a new approach, one that takes these factors into account and is based on full knowledge of all facets of the problem. The solution must take cognizance of limitations of the government agencies, the complexity of border operations, and the necessity for involvement of the private sector.

Let me state what I think can and should be done. We need to establish standards by which both the United States and Mexican

law enforcement efforts can be objectively measured. We also need to establish procedures that shippers must follow in order to reduce the opportunities for drug smuggling. This will enable us to manage resources and reduce corruption.

We can only succeed if business and government act in partnership. Business must be given incentives to assist government efforts to address the drug problem. In this area of just-in-time inventory, the carrot for business is expedited Customs clearance. This privilege should only be earned by companies that implement the procedures that reduce the possibilities for drug smuggling.

This expedited clearance plan will require careful monitoring on both sides of the border. After all, a substantial portion of the cross-border traffic is from one company to its branch in the other country. Mexican exporters who seek a form of expedited clearance must also subscribe to and implement safeguards which must be rigorously enforced. Both countries should monitor these operations. Mexican exporters who do not have approved established procedures in place must be required to have their goods inspected by Mexican Customs officials with joint U.S. participation prior to crossing the border.

Procedures should also be required to establish advanced information about shipments thereby permitting prescreening for inspection. It will require substantial compliance analysis.

We should also be considering other available technologies such as giant x-ray equipment. With prescreening, we can be much more selective about when and where to employ these devices. With today's volume of trade, the use of risk analysis is absolutely essential.

We should demand a memorandum of understanding with the Mexicans addressing the specific standards expected of the two countries' law enforcement efforts and the procedural safeguards required. If Mexico is serious about getting at this problem, here is a measurable way of judging their cooperation and law enforcement performance. It forces companies on both sides of the border to adopt procedures that reduce the risk of abuse by drug smugglers. It enables the Customs administration to narrow their focus of inspection to high-risk shipments.

The governments must also have a considerable amount of prior intelligence available so that interdiction efforts can be directed to the most likely areas of exposure. Intelligence gathering should be a primary focus of DEA agents working jointly where necessary with Customs agents and of course the Mexicans. Such overlapping jurisdiction will help reduce the corruption problem. Both countries need more resources to handle both the commercial trade and the narcotics interdiction efforts.

Nothing that I have said is particularly new, but implementation will require resolve and determination. We have all considered various aspects of these proposals at various times, but due to political or financial constraints, we have never implemented such a coordinated plan. Now is the time to do so. We can no longer just pour money into joint enforcement efforts and receive little in return.

Congress and the administration may wish to review our entire border enforcement mechanism. In the reorganization of narcotics enforcement creating the Drug Enforcement Administration in

1973, we also recommended that there be one border control agency under the Customs umbrella. It may be time to revisit this concept.

Now, a few other points in closing. Phil Hughes of UPS will be testifying for the Transportation Coalition and I highly endorse his remarks. Customs has not moved as quickly as it should have to implement the Mod Act. After 3½ years we are still waiting for the raised dollar limit informal entry processing. Other important issues that have not been addressed include manifesting of letters, documents, and the $20 duty waiver for de minimis shipments. Customs recordkeeping requirements must also be finely tuned and tailored to the particular party and type of shipment.

The regulatory audit process is still much too slow and burdensome. The ruling process must be improved and expedited in order to be useful.

Last but not least, the administration should move quickly to fill the enormous void being left by George Weise's departure. We need someone devoted to improving our narcotic interdiction efforts but who is also thoroughly familiar with the complexities of international trade. The next Commissioner must recognize the necessity for a joint partnership with the business community for law enforcement and commercial reasons. When properly done, Customs will be able to apply its resources to the problem areas more effectively.

Thank you for giving me the opportunity to appear before you. As always, it is an honor and pleasure, and I will be glad to answer any questions that you might have.

[The prepared statement follows:]

Statement of Hon. Myles J. Ambrose, Ross & Hardies (Former Commissioner, U.S. Customs)

Mr. Chairman, Members of the Committee:

As a former Commissioner of Customs, I am especially pleased to appear before you. As a former Treasury and Justice official and prosecutor, and as a practicing lawyer for the past 25 years, I have had the unique opportunity to observe firsthand the work of this extraordinary agency, the United States Customs Service. It should also be noted here and clearly stated on the record, that despite some recent adverse and unfair publicity, the Service has never been in better hands than those of George Weise. Not only those of us who deal with the Customs Service will miss him but so will the nation to which he devoted 25 years of his life. The appointment of his successor will be a most difficult task about which I'll say more later. As the Chairman and Mr. Rangel know, I have somewhat of a personal interest in this matter. Despite this, I believe I can be reasonably objective because of my long association and knowledge of the needs of this agency.

We have heard much recently about Customs and narcotics, the Mexican border and indeed the Mexican Government and its role in stemming the flood of cocaine and heroin from Mexico. It has required the attention of our President and theirs and certainly it has been the subject of much attention by Congress, the press and certainly by those in the private sector.

I have over the past 40 years been deeply involved in Mexican-American bilateral efforts to increase and improve enforcement and reduce the flow of narcotics from that country to ours. My initial efforts in 1959, with former Congressman James Roosevelt, was co-chairing a series of bilateral meetings between Mexican and U.S. officials. These efforts were followed by many meetings over the years—too numerous to enumerate.

All these efforts resulted in only promises—to improve cooperation between the two countries, to improve enforcement and to address the heart of the problem—corruption. Yet, we have had few results. The extent of corruption in Mexico is mind-boggling—the profits and sums of money available to traffickers are almost infinite. Unfortunately, the demand for drugs in this country is insatiable.

We need a new approach—one that takes these factors into account and one that is based on full knowledge of all facets of the problem. The solution must take cog-

nizance of the limitations of the governmental agencies involved, the enormous complexity of border operations and the necessity for absolute involvement of all segments of the private sector.

Let me briefly state what I think can and should be done.

We need to establish standards by which both U.S. and Mexican law enforcement efforts can be objectively measured. We also need to establish procedures that shippers must follow in order to reduce the opportunities for drug smuggling. This will enable us to manage resources to reduce the potential for corruption.

We can only succeed if business and government act in partnership. But how will we involve business? Business must be given incentives to assist governmental efforts to address the drug problem. In this era of just-in-time inventory, the carrot for business is expedited customs clearance. This privilege can only be earned by companies that implement procedures that reduce the possibilities for drug smuggling and assist governmental efforts. This expedited clearance plan will require careful monitoring of the companies receiving the benefits. It should also be applied on both sides of the border. After all, a substantial portion of the cross-border traffic is from one company to its branch in the other country. Mexican exporters who seek a form of expedited clearance must also subscribe to and implement procedural safeguards which must be vigorously enforced and continually audited. Both countries should jointly monitor these operations. Mexican exporters who do not have approved established procedures in place should be required to have their goods inspected by Mexican customs officials with joint U.S. participation prior to crossing the border.

Procedures should also be established to require, where possible, advance information about shipments, thereby permitting prescreening for inspection. It will require substantial compliance analysis. We also should be considering other available technology such as giant x-ray equipment. When you have a prescreening program, you can be much more selective about when and where to employ these devices. With today's volume of trade, the use of risk analysis is absolutely essential to effective enforcement. There must be swift and certain punishment for violators.

We should demand a memorandum of understanding with the Mexicans addressing the specific standards expected of the two countries' law enforcement efforts and the procedural safeguards required of the countries' companies. If Mexico is serious about getting at this problem, here is a measurable way of judging their cooperation and law enforcement performance. It also forces companies on both sides of the border to adopt procedures that reduce the risk of abuse by drug smugglers. This will enable the respective customs administrations to narrow their focus of inspection on high risk shipments, which is absolutely necessary given the enormity of cross-border traffic. Again, this plan can only be effective when the participating companies are carefully monitored by established audit procedures.

The governments must also have a considerable amount of prior intelligence available so that interdiction efforts can be directed to the most likely areas of exposure. Intelligence gathering should be a primary focus of Drug Enforcement Administration agents in Mexico working jointly, where necessary, with U.S. Customs agents and, of course, the Mexican officials. Such overlapping jurisdiction will help reduce (unfortunately—not necessarily resolve) the corruption problem. Both countries need more resources to handle both the commercial trade and narcotics interdiction efforts. It will require the full support and partnership of the private sector on both sides of the border.

Nothing that I have said is particularly new but implementation will require resolve and determination. We have all considered various aspects of these proposals at various times but due to political or financial constraints, we have never implemented such a coordinated plan. Now is the time to do so. We can no longer just pour money into joint enforcement efforts and receive little in return.

Congress and the Administration may wish to review our entire border enforcement mechanism. In the reorganization of narcotics enforcement creating the Drug Enforcement Administration in 1973, we also recommended that there be one border control agency under the Customs umbrella. It may be time to revisit this concept.

Now a few other points in closing. Phil Hughes of UPS will be testifying for the Transportation Coalition, and I heartily endorse his remarks. Customs has not proceeded as quickly as it should have to implement the Mod Act. For example, after 3½ years we are still waiting for the raised dollar limit informal entry processing. This would be an enormous benefit to both commerce and government. Other simple but important provisions that have not yet been addressed include summary manifesting of letters and documents and the $20 duty waiver for de minimis shipments. Customs recordkeeping must also be fine tuned and tailored to the particular party, the type of shipment and take into account automation and electronic storage.

The regulatory audit process is still much too slow and burdensome. It must be improved. The ruling process must be improved and expedited in order to be useful. I understand that Assistant Commissioner Seidel outlined proposals to you in March. Hopefully, they can be adopted quickly.

Last, but certainly not least, the Administration should move quickly to fill the enormous void being left by George Weise's departure. We need someone devoted to improving our narcotics interdiction efforts but who is also thoroughly familiar with the complexities of international trade. The next Commissioner must also recognize the necessity for a joint partnership with the business community for both law enforcement and commercial reasons. When this is properly done, Customs will be able to apply its resources to the problem areas more effectively.

Thank you for giving me this opportunity to appear before you. As always, it is an honor and a pleasure. I will be glad to answer any questions you might have.

Chairman CRANE. Thank you so much, Myles.

You touched upon that Customs regulatory audit process. How would you improve and expedite it?

Mr. AMBROSE. Well, the same way I have recommended in the past, they improve on the criminal investigators. Set time limits on reports to the supervisors, whether it should be done by regulation between the agency or administrative procedures, but you can't let them go on forever.

And supervisors have to have responsibilities. A report, a preliminary audit report should be set out, say, 30 or 45 days after the commencement of the audit. Forty-five days after that there should be an analysis of where they are going and so forth. So there are standards that have to be met and, unfortunately, that is not the case. We are in the audit now for a client. I think we are in the fifth year of an audit. That makes no sense.

Chairman CRANE. Something I meant to ask George and maybe you can tell me about, do you know anything about the strategies and discussions of interdicting small aircraft that are taking money out of the country involved in the drug trafficking?

Mr. AMBROSE. With all due deference, yes, I know something about it, but 20 years ago, not now.

Chairman CRANE. I was just wondering what the dollar figures were.

Mr. AMBROSE. I wouldn't want to comment on it at this point.

Chairman CRANE. Is that money divided between Customs and the General Treasury, the money that is seized by Customs?

Mr. AMBROSE. It goes into the General Treasury.

Chairman CRANE. All of it?

Mr. AMBROSE. All of it, unless it has changed.

Mr. SHAW. Would the Chairman yield on that?

Chairman CRANE. Sure.

Mr. SHAW. I heard you mention that a few minutes ago to George. I think that under the RICO, that a lot of police departments, allow you money to stay with the department, and I think this might be a very nice incentive for Customs and it might also be a source of some very badly needed resources to beef up the—I would suggest it is something we might want to look into.

Chairman CRANE. Well, that thought crossed my mind, and I was flying out the door when I was kidding George about putting it all inside Customs' revenues, including, possibly, special bonuses for

those participants in the Customs Service who make the apprehensions.

Mr. AMBROSE. I am sure the Customs Service would enjoy that suggestion.

Chairman CRANE. Well, I will happily yield to you, Clay.

Mr. SHAW. Thank you, Mr. Chairman.

I would like to question you following up on the question I had with the Commissioner, and that is in your experience as the Executive Director of Waterfront in New York Harbor, I made reference to some of the screening that was going on up there and licensing. Could you tell me a little bit about how that works——

Mr. AMBROSE. Well, I haven't looked at that in a few years. It is a contact between the State of New York and New Jersey. It licenses companies, as such. They must meet certain standards of character, integrity, financial ability, and so forth. Then it licenses checkers.

Checkers are the ones responsible for ascertaining the validity of the cargoes and registers longshoremen. Checkers who have felony convictions cannot be checkers; it is as simple as that. Longshoremen, if they can demonstrate the fact that they have cleaned up their act, in effect, can be registered as longshoremen. It has had remarkable success.

As you know, I don't think New York has been used as a major entrance point for narcotics in 30 years, obviously. I mean, obviously, some comes through but it doesn't come through in any degree, and the waterfront is pretty well controlled.

Now, the airports, at one point there was an attempt by the New York legislature to extend this to the airports but it went down the drain. I do not know what the current status is. I would suggest if you are having that kind of a problem, the people you mentioned before in that criminal record department could never work on the New York waterfront.

Mr. SHAW. Yes, they shouldn't work in Florida, either.

Mr. AMBROSE. I don't doubt it.

Mr. SHAW. Was this done by the legislature?

Mr. AMBROSE. It was passed by both legislatures and had to be approved by Congress.

Mr. SHAW. We wouldn't have that problem in Florida, not by State contact.

Mr. AMBROSE. You could do it by legislative fiat.

Mr. SHAW. I wonder if it could be done at the local level, by whomever runs the port?

Mr. AMBROSE. I guess it could. Virtually every aspect of this licensing program has been challenged and I think three cases went to the Supreme Court of the United States when I was Director, and I don't think there are any prohibitions left that you would have to worry about, given the type of situation that was there. I don't know who owns Port Everglades, for example.

Mr. SHAW. Broward County does.

Mr. AMBROSE. Well, then I think Broward County could implement a system.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Mr. Ambrose, I thought in your comments that you framed the dilemma pretty well, even in one instance when inad-

vertently you mentioned drug demand and spoke of the limits of government action. When we talk about interdiction, it seems to me we miss the aspect of demand here in the United States.

What kind of incentives do you think we might provide to businesspeople to do a better job in assisting us?

Mr. AMBROSE. You mean to reduce demand?

Mr. NEAL. Well, certainly to reduce supply, but if you want to offer something on demand I would entertain that as well.

Mr. AMBROSE. It has always been a conundrum. You don't have users without the supply of narcotics; you don't have the expansion of the narcotic-using population without substantial narcotics. We have never, to my knowledge, come up with a panacea for restricting the demand of narcotics. It is mostly a family situation, it is mostly the way children are raised, and so forth.

I do think, however, that business can be very much involved in the interdiction effort, which is what I have suggested, and we have lots of small programs that are starting.

I am suggesting that the program that I put in here about a mandated program from the President of the United States right on down where certain standards under a memorandum has to be matched or have to be met so we can say to the Mexicans, you no longer can give us all this boloney about all the work you have been doing when we know damned well you are not, and we have known they have not for so many years now that we ought to stop it and stop listening to pious platitudes and do something.

Mr. NEAL. Do you think that ought to be a reasonable demand in free trade discussions?

Mr. AMBROSE. You are asking for a political question and I will give you a political answer, yes.

Mr. NEAL. Those of us who opposed NAFTA, part of the opposition that we offered is that somehow the Mexicans were not taking our argument very seriously. Mr. Rangel has done a great job over many years of that issue of drug interdiction and demand as well.

Mr. AMBROSE. I know he has been Chairman of the Committee, and Congressman Ben Gilman.

First of all, I am not opposed to NAFTA. I think it was a good step forward, but be that as it may, I still think that the idea of them meeting objective standards to stop the flow of narcotics, to do something about stopping corruption within their own society and their own government, can be done and can be one of our demands—just as we are demanding with the Chinese on human rights.

Our DEA would suggest that about 70 percent of illicit drug trafficking that occurs in America comes through Mexico. I talked to a former DEA official this morning and he thinks it is going to 90 percent. Mexico is now the prime source of heroin. Heroin is shooting up again as it did in the early sixties, and we have a lot to do that we are not doing.

Chairman CRANE. Thank you.

Mr. SHAW. Mr. Chairman, could I ask one thing. This Mexico thing really fascinates me. I have seen in visiting other countries and discussing with several administrations, not just this administration, it is my opinion that one of the biggest problems we have in dealing with these countries that are supplying the narcotics

that are used as transshipment areas into the United States is our own State Department. You go to these countries and everybody seems to be—wants to keep everybody else happy—and nobody is hitting on those hard issues that you are talking about, and that is that we want performance, we demand performance. And I think that it is time to take off the gloves and it sounds from your remarks that you are pretty much in agreement with me. There has to be performance standards that are met if you want normalized relations, particularly favored relations as we have NAFTA.

I also supported NAFTA but I have begun to have second thoughts, but that is neither here nor there.

Mr. AMBROSE. I tend to agree. This is an awful conundrum.

Let me say, when I was commissioner at Customs, they never threw out any red carpets to welcome me to the State Department.

Chairman CRANE. Thank you very much, Myles.

I would now like to introduce our next panel of witnesses from the U.S. General Accounting Office, the first being Norm Rabkin, the Director of the GAO, and Linda Koontz, Associate Director of the Information Resources Management Division. In the interest of time, I would ask that you try and keep your oral testimony to 5 minutes, but we will include all printed matter in the statements into the record.

STATEMENT OF NORMAN J. RABKIN, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY WALTER RAHEB, LOS ANGELES OFFICE

Mr. RABKIN. Thank you, Mr. Chairman. With me on my right is Walter Raheb from our Los Angeles office who has assisted me in carrying out a lot of work we have done for this Subcommittee on the Customs Service.

I am pleased to be here this afternoon to discuss work we have done for the Subcommittee addressing Customs' drug interdiction efforts, labor-management partnership concepts, and issues related to inspectional overtime. My testimony is based primarily on products we have issued on each of these subjects since 1991.

Our September 1996 report on Customs' drug interdiction efforts identify and describe the key elements, resources, costs, and performance measures of Customs' national drug interdiction program. It also focused on the drug activities at the investigative offices and selectedports in the Miami and San Diego areas.

Among other things, we pointed out that Customs had about 11,000 inspectors, special agents, and other staff involved in its drug interdiction program, that its drug interdiction and investigations budget has averaged about $575 million a year since fiscal year 1990, that its Operation Hard Line was a special effort to address drug smuggling first along the Southwest border and then the whole southern tier of the country, and we pointed out that Customs relied on traditional measures such as the number of seizures and number of arrests to gauge the success of its program, and it was trying to develop some nontraditional measures to more appropriately reflect the success that it was having.

Our report also discussed the challenges that Customs was facing in its drug interdiction mission. For example, we pointed out

that Customs' major challenge was to carry out its drug interdiction and trade enforcement missions while facilitating the flow of persons and cargo across the border.

In March 1997 testimony before this Subcommittee, we discussed labor-management issues within Customs, as you recall. In June 1994 Customs and the National Treasury Employees Union entered into a partnership agreement that established 19 goals, set up a National Partnership Council, and stated that the union will participate in agency meetings that affect the workforce.

To assess how this concept was being implemented, we conducted work at headquarters, five Customs management centers, 11 ports of entry around the country, NTEU's national office, and seven local union chapters. Most of Customs' managers and union chapter presidents we interviewed characterized their relationship under the partnership concept as better, while first-line supervisors' views were more evenly distributed between much better and much worse.

Customs managers and supervisors as well as union representatives provided similar comments about the advantages of the partnership concept, citing faster problem resolution, improved communications, and mutual involvement in decisions. However, comments on the disadvantages of the partnership concept revealed no clearly shared views. For example, managers and supervisors generally stated that they felt all issues must be bargained with the union before any action could be taken, and union officials generally indicated that managers wanted to choose when they included the union in decisions and when they did not.

Customs didn't have any formal plans to evaluate the impact of this partnership concept on its mission, and we concluded that since partnership was about 3 years old at that time, it was appropriate for Customs to start plans to more formally evaluate it.

On the subject of inspectional overtime, in 1991, we reported that overtime pay to Customs inspectors had increased from about $57 million in fiscal year 1985 to about $103 million in fiscal year 1990, and we pointed out one cause of this growth was Customs' focus on ensuring that inspectors did not exceed the $25,000 pay cap that was instituted by Congress in 1983, and Customs' disregard of the individual overtime assignments that build to the cap. We pointed out that many Customs inspectors were receiving overtime payments for work they did not perform because of the way the system was designed.

Customs' overtime system was based on conditions existing in 1911, when the Act was originally passed. Then, it was not typical for ports to operate outside their regular hours, especially on Sundays and holidays, and we recommended that legislation be amended so the overtime pay would more directly be linked to the actual hours worked.

In 1993, the Customs Officers Pay Reform amendments was Congress' response to our recommendations. They were intended to more closely match earnings to hours worked. However, the Treasury Inspector General reported in September 1996 that although COPRA reduced direct spending associated with overtime pay, it caused a significant increase in the costs associated with night differential pay in fiscal years 1995 and 1996.

Congress dealt with that problem by including restrictive language in Customs' appropriations for fiscal year 1997, and the administration has introduced similar language in the budget request for fiscal year 1998.

Mr. Chairman, this completes my statement, and I will be happy to answer questions at your leisure.

[The prepared statement follows:]

Statement of Norman J. Rabkin, Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today at this Customs oversight hearing to discuss work we have done for this Subcommittee addressing Customs' drug interdiction efforts, labor-management partnership concept, and issues related to inspectional overtime. Our testimony is based primarily on products we have issued on each of these subjects since 1991.

Created in 1789, the U.S. Customs Service is one of the federal government's oldest agencies. Although its original mission was to collect revenue, Customs' mission has expanded to include ensuring that all goods and persons entering and exiting the United States do so in accordance with all U.S. laws and regulations. Moreover, a major goal of Customs is to prevent the smuggling of drugs into the country by creating an effective drug interdiction, intelligence, and investigation capability that disrupts and dismantles smuggling organizations.

As of January 1997, Customs performed its mission with a workforce of about 19,500 personnel at its headquarters, 20 Customs Management Centers, 20 Special Agent-in-Charge (SAC) offices, and 301 ports of entry around the country. Customs collects revenues in excess of $23 billion annually while processing the estimated 14 million import entries and 450 million people who enter the country each year.

DRUG INTERDICTION

In September 1996, we issued a report to this Subcommittee on the drug interdiction efforts of the Customs Service.[1] As one of the more than 50 federal agencies involved in the War on Drugs, Customs is responsible for stopping the flow of illegal drugs across the nation's borders. In addition to routine inspections to search passengers, cargo, and conveyances for illegal drugs moving through U.S. ports, Customs' drug interdiction program includes investigations and other activities unique to specific ports.

Our report identified and described the key elements, resources, costs, and performance measures of Customs' national drug interdiction program, as well as those of its investigative offices and selected ports in the Miami and San Diego areas.

Customs has two key organizational elements in its drug interdiction program. First, the Office of Field Operations has over 6,600 inspectors and 527 canine enforcement officers who perform inspections at the 301 air, land, and sea ports around the country. Inspectors use an array of technology in their search for drugs, such as an X-ray system for trucks and trailers, X-ray machines for containerized cargo, and fiber-optic scopes to examine gas tanks and other enclosed spaces. Inspectors also target persons, cargo, and conveyances for examination using manifest reviews and databases such as the Treasury Enforcement Communications System, which contains information on suspected smugglers.

Second, the Office of Investigations has about 2,500 special agents, about half of whom are authorized to react to and investigate drug seizures at ports and develop cases that implicate drug smuggling operations. Investigations also is responsible for about 1,100 personnel in aviation, marine, and intelligence units, which support the drug interdiction mission. The aviation unit supports foreign interdiction operations, interdicts and apprehends air smugglers, and supports other Customs and federal, state, and local law enforcement efforts. Marine units interdict, investigate, and apprehend violators that smuggle drugs into the United States via commercial and pleasure vessels. To assist in performing these missions, the aviation and marine units have 78 vessels, 77 airplanes, and 39 helicopters. The intelligence unit supports Customs' management and all field elements; this involves developing assessments of drug smuggling threats for various parts of the country. For example, threat assessments of the Southwest border led, in part, to the Customs Commis-

[1] *Customs Service: Drug Interdiction Efforts* (GAO/GGD–96–189BR, Sept. 26, 1996). The data in this section were current as of September 1996, unless otherwise indicated.

sioner's support for creating a major national initiative, Operation Hard Line,[2] for the Southwest border.

Customs reported to the Office of National Drug Control Policy that its combined budget for drug interdiction and investigations averaged about $575 million for fiscal years 1990 to 1996. In fiscal year 1995, its drug interdiction budget was about 38 percent and its drug investigations budget was about 3 percent of the federal drug control budget.

Customs has traditionally measured the output from its drug interdiction effort by the resulting number of seizures, arrests, indictments, and convictions. For example, in fiscal year 1995, Customs reported about 2,200 cocaine seizures, about 900 heroin seizures, and about 10,000 marijuana seizures—these seizures accounted for over 50 percent of all drugs seized by federal agencies. It also reported participating in the seizure of an additional 13 percent of the total drugs seized.

These traditional measures, however, track activity, not outcome or effectiveness. Customs has sought to develop nontraditional measures for use in assessing the effectiveness of its drug strategy initiative. For example, Customs is testing a program designed to estimate the number of drug smugglers entering the ports, thus providing it with a baseline from which to measure how effective its inspectors have been at targeting drug smugglers at the ports. At the time of our report, the program was implemented at major air and land border ports.

Our September 1996 report also described drug interdiction activities at major ports in the Miami and San Diego areas. It provided information on the ports, estimates of the resources Customs had invested in drug interdiction and investigation activities there, and traditional measures of its success. In addition, we described a special cargo entry program at the Otay Mesa, California cargo port. The program, called Line Release, was designed to expedite the release and tracking of low-risk, high-volume shipments. Under the Line Release program, Customs is to prescreen manufacturers, importers, brokers, and shippers in an attempt to ensure they are low risk for drug smuggling; Line Release participants are required to pass five intensive examinations and meet a minimum requirement of 50 shipments per year. Although the program has been criticized for allowing trucks to enter the United States from Mexico without inspection, our work showed that vehicles participating in the Line Release program were subject to the same special enforcement operations as non-Line Release vehicles, and were inspected more frequently through these operations than were non-Line Release vehicles.

Finally, our report discussed the challenges Customs was facing in its drug interdiction mission. First, we pointed out that Customs' major challenge was to effectively carry out its drug interdiction and trade enforcement missions while facilitating the flow of persons and cargo across the borders. Customs has to perform these missions despite continuous and extensive threats from drug smugglers along the border.

Second, because its financial information systems are not designed to account for costs by mission component, Customs has to estimate the amount it is spending for drug interdiction overall. This reduces Customs' ability to determine whether allocation of additional resources at specific ports or in a specific region has produced commensurate benefits. Customs officials told us that they were developing mission- and performance-based budgets, in accordance with Department of the Treasury directives, that would enable them to determine with greater reliability the costs of drug interdiction activities throughout Customs.

Third, Customs—like other law enforcement agencies engaged in the fight against drug smuggling—has attempted to develop performance measures. Traditional output measures do not allow officials to gauge the effectiveness of drug interdiction activities. Even the new, nontraditional measures being developed may not allow Customs to assess, over time, whether increased efforts are producing better outcomes.

LABOR-MANAGEMENT PARTNERSHIP CONCEPT

In March 1997, I testified before this Subcommittee on labor-management activities within Customs.[3] The Subcommittee had asked us to review, among other topics, the history of union activity at Customs and the effect that the partnership

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[2] First implemented on the Southwest border, Operation Hard Line emphasizes intensified inspections, improved facilities, and the use of technology to detect drug smuggling. It has been expanded beyond the Southwest border to the southern tier of the United States, including the Caribbean and Puerto Rico, with enhanced air and marine enforcement.

[3] *U.S. Customs Service: Varied Reaction to the Labor-Management Partnership Concept* (GAO/T–GGD–97–54, Mar. 11, 1997).

agreement between Customs and the National Treasury Employees Union (NTEU), the exclusive representative of Customs' bargaining unit employees,[4] had on Customs' ability to establish and achieve its mission-related goals. At the time of that hearing, we had performed preliminary work at Customs headquarters, 5 Customs Management Centers, 11 ports of entry around the country, the NTEU national office, and 7 local NTEU chapters.[5]

Executive Order 12871, October 1, 1993, required the head of each federal agency to create labor-management councils to help involve employees and their unions as full partners. These partnership councils are to identify problems and craft solutions to better serve the agency's customers and accomplish its mission. In June 1994, the Customs Service and NTEU entered into a partnership agreement that established 19 goals, set up a National Partnership Council, and stated that NTEU will participate in agency operational meetings that affect the workforce. In February 1997, Customs and NTEU implemented a new national contract.

Our limited work revealed a variety of opinions regarding Customs-NTEU relations since the implementation of the executive order. Most of the Customs managers we interviewed characterized their relationship with NTEU chapters as better. Most of the NTEU chapter presidents we spoke with also said the relationship was better. The views of the Customs first-line supervisors we interviewed were more evenly distributed from "much better" to "much worse."

Customs managers and supervisors and NTEU representatives provided similar comments about the advantages of the partnership concept, citing faster problem resolution, improved communications, and mutual involvement in decisions. However, comments on disadvantages revealed no clearly shared views. For example, managers and supervisors generally stated that all issues must be bargained with the union before any action can be taken, while NTEU officials generally indicated that managers want to choose when they include NTEU in making decisions and when they do not.

Customs' partnership agreement with NTEU and Executive Order 12871 call for evaluating the progress of and improvements in the agency's performance resulting from the partnership concept. To a limited extent, Customs had begun that effort. However, at the time of our testimony, these efforts had not set the groundwork for the kind of comprehensive evaluation envisioned by the Executive Order and partnership agreement. In our work at Customs' headquarters and several field locations, we did not see any plans for an evaluation of the impact of the partnership approach on Customs' mission.

We pointed out in our testimony that cultural changes such as those promised by the partnership concept do not occur quickly. The Commissioner of Customs told us that he expected it to take at least 5 years for the new relationship to become Customs' normal operating environment. Nevertheless, given that Customs and NTEU had been in this new relationship for almost 3 years, we concluded that it was not too soon for Customs to develop a formal plan for the evaluation of progress and improvements in organizational performance resulting from this labor-management partnership.

Overtime Issues

In the Act of February 13, 1911, Congress enacted overtime pay provisions for Customs inspectors. Sunday work was to be compensated at the rate of 2 days' regular pay; on holidays, the rate was to be the total of 2 days' pay plus the hourly rate for the period of time worked on the holiday. No minimum period of work was required to qualify for the premium—overtime—pay. Thus, inspectors could have worked as little as 1 minute and received 2 days' pay for Sunday work. For overtime work at other times during a week, the minimum compensation was 4 to 12 hours' pay, depending on whether the inspector worked late, came in early, or was called back to work. In 1983, Congress set a cap of $25,000 on the amount of individual overtime earnings. With the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Customs began charging user fees for processing passengers and cargo; the revenue from these fees paid for Customs' overtime and premium pay.

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[4] As of January 1997, approximately 11,200 of the 19,500 Customs personnel were eligible to join NTEU, and about 7,200 had done so.

[5] Because the testimony satisfied the Subcommittee's interests at that time, we have not conducted further work on this issue.

In 1991,[6] we reported to this Subcommittee that overtime pay to Customs inspectors had increased from about $57 million in fiscal year 1985 to about $103 million in fiscal year 1990. We concluded that an important contributing cause of this growth was Customs' focus on ensuring that inspectors did not exceed the $25,000 cap and its disregard of the individual overtime assignments that build to the cap. We found internal control weaknesses that resulted in errors in preparing overtime documentation, certifying payments, and entering data in the overtime system. We also concluded that the 1911 Act provisions hindered the efficient management of overtime and that the special payments were premised on conditions that no longer existed. Although we believed that inspectors should be paid extra for working overtime, we recommended that (1) the 1911 Act be amended so that inspector overtime pay would be more directly linked to actual hours worked and (2) Customs management focus on achieving a more efficient use of overtime.

Based in part on our findings, the Customs Officers Pay Reform Amendments (COPRA), Section 13811 of the Omnibus Budget Reconciliation Act of 1993, established the overtime and premium pay system for Customs officers performing inspectional services. The intent behind changing the 1911 Act was to more closely match earnings to hours worked, thereby reducing overtime costs. It was expected that the changes made by COPRA would result in overtime savings of $12 million in both fiscal years 1994 and 1995, and a total of $52 million for the 5-year period ending with fiscal year 1998.[7] However, in September 1996 the Treasury Inspector General (IG) reported that although COPRA reduced direct spending associated with Customs officers' overtime pay, it caused a significant increase in the costs associated with night differential pay.[8] The IG reported a net increase in overtime pay of $8.9 million in fiscal year 1995.[9]

Further, the IG pointed out that future night differential pay to Custom officers will be even higher. On December 9, 1995, an arbitrator ruled favorably on a grievance filed by NTEU that protested Customs' refusal to pay night differential to Customs officers who were on sick or annual leave for 8 hours or longer. The ruling required Customs to pay employees who would ordinarily receive COPRA night differential when at work but who did not receive it when on leave since January 1, 1994. Customs estimated that it paid over $1 million in premium pay for work not performed as a result of that ruling. Customs' appropriation act for fiscal year 1997 prohibits this practice for that fiscal year, but this prohibition expires at the end of fiscal year 1997.

The IG report also pointed out that the pay cap has caused additional increases in administrative costs for Customs. Annually, inspectors (and canine enforcement officers) file grievances because they are not allowed to work overtime assignments if they are close to the $25,000 cap. According to a Customs official, most port management stop those Customs officers who are approaching the cap (usually those who had earned about $24,500) from working any more overtime. This work was performed by other Customs officers who were not at the cap. The IG reported that in fiscal year 1994 over $100,000 in settlements were paid as a result of these overtime cap grievances.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions.

Chairman CRANE. Thank you.

Ms. Koontz.

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[6] *Customs Service: 1911 Act Governing Overtime Is Outdated* (GAO/GGD–91–96, June 14, 1991).

[7] See House Report 103–111, May 25, 1993.

[8] Night differential pay depends on the regularly scheduled hours of the Customs officer. If the majority of the officer's hours are between 3 p.m. and midnight, compensation equals the basic hourly rate plus premium pay of 15 percent of the hourly rate. If the majority of the hours are between 11 p.m. and 8 a.m., compensation equals the basic hourly rate plus premium pay of 20 percent of the hourly rate.

[9] *Customs Officer Pay Reform Amendments (COPRA)*, Office of Inspector General, Department of the Treasury, OIG–96–094 (Sept. 13, 1996). Customs reported that this amount increased to $9.5 million in fiscal year 1996.

STATEMENT OF LINDA D. KOONTZ, ASSOCIATE DIRECTOR, INFORMATION RESOURCES, MANAGEMENT/GENERAL GOVERNMENT ISSUES, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY MARK BYRD, SENIOR INFORMATION SYSTEMS ANALYST

Ms. KOONTZ. Good afternoon. With me today is Mark Byrd. He is a senior information systems analyst and he was involved with our ongoing Customs work. I am pleased to be here today to discuss the U.S. Customs Service modernization. My remarks will focus on the progress that Customs has made in addressing the recommendations we made in our May 1996 report to this Subcommittee and the challenges that Customs faces as it plans and develops an Automated Commercial Environment, ACE, the automated system designed to support Customs' newly redesigned trade process and provide the capabilities the Congress called for in establishing the National Customs Automation Program, NCAP.

In our report last year we stated that Customs was ill-prepared to develop ACE because the agency was not effectively applying critical management practices that help organizations mitigate the risks associated with modernizing automated systems.

Consequently, we believed that efforts to develop ACE were vulnerable to failure. Our report noted that clear accountability and responsibility for meeting the requirements was lacking and as such recommended that Customs assign such responsibility.

In response, Customs moved quickly to assign responsibility for NCAP implementation to the Trade Compliance Board of Directors. Our remaining three recommendations required that Customs take substantive action to develop and implement improved information technology practices over a long term.

While Customs has initiated a variety of actions and made progress toward each situation, it is too early to determine whether Customs will successfully implement each recommendation. First, we recommended that Customs identify and analyze how it will conduct business in the future before selecting an architecture.

An architecture is a blueprint or framework for guiding development and evolution of all Customs automated information systems, including ACE, and is a critical component of any modernization effort. In response to this recommendation, Customs has hired a contractor to conduct analyses of business requirements and recommend a process for selecting an architecture by June 1997.

Second, we recommended that Customs institute an investment review process to involve senior management in applying a disciplined process for selecting, controlling and evaluating major information systems projects. In February 1996, even before our report was issued, Customs designated an investment review board with the Deputy Commissioner as Chair. The board meets monthly and thus far has discussed issues relating to its scope and operation. However, Customs has not yet established policies and procedures or implemented an investment review process. Customs has also hired a contractor to assist them and expects this process to be in place by July 1997.

Finally, we recommended that Customs ensure that the ACE project comply with its own systems development policies that re-

quire extensive project planning and top level management reviews.

As of early May 1997, Customs had revised the ACE project plan and believes that the revisions now bring the plan into compliance. The management practices I have described, if successfully implemented will help reduce the risk inherent in a major information system project such as ACE. However, Customs also faces a number of challenges in planning and implementing the ACE project itself.

For example, Customs cannot say how much ACE will cost. While Customs estimates ACE will cost $150 million to develop in a 10-year period, the agency does not have an estimate for the total cost of ACE that includes operation and maintenance costs. In addition, this development estimate is not based on the projected size of the system or level of effort expected for development. Instead, it is based on the level of funding Customs has historically received for ACE.

Customs has not determined when ACE will be completed. The agency lacks an overall schedule for the project. It does have a schedule for the first phase of ACE, which is the NCAP prototype which will have certain functions required by NCAP, but has had difficulty adhering to its schedule. The implementation of the prototype has slipped from January to August 1997, and again to a series of four releases beginning in October 1997, with the fourth stage starting in June 1998.

We have discussed these issues with Customs and they are receptive to the need to better identify the ACE cost schedule and goals, and they plan to produce a comprehensive plan by February 1998. Customs faces some very significant challenges as they move forward. To ensure their efforts are successful, they will need to sustain their commitment and attention through the more difficult phases of the modernization that are yet to come.

In addition, we plan to continue monitoring their efforts and to look at such basic questions about ACE as cost, schedule and performance. That concludes my statement and I would be happy to answer any questions you may have.

[The prepared statement follows:]

Statement of Linda D. Koontz, Associate Director, Information Resources, Management/General Government Issues, Accounting and Information Management Division, U.S. General Accounting Office

I am pleased to be here today to discuss issues related to the U. S. Customs Service systems modernization. My remarks will focus primarily on Customs' efforts to address risks associated with the agency's modernization of its automated systems. We made recommendations to help Customs address these risks in our May 1996 report[1] to this Subcommittee. I will also identify challenges Customs faces as it plans and develops the Automated Commercial Environment or ACE—which is critical because this system is planned to support improvements to Customs' trade compliance (import) process through greater use of information technology.

TRADE COMPLIANCE PROCESS REDESIGN

One of Customs' primary responsibilities is to assess and collect duties, taxes, and fees on imported merchandise. Today, this is accomplished with a variety of processes for handling, inspecting, and accounting for imports that have grown paper

[1] *Customs Service Modernization: Strategic Information Management Must Be Improved for National Automation Program To Succeed* (GAO/AIMD–96–57, May 9, 1996).

intensive, inefficient, and ineffective. Customs is acutely aware that its ability to process the growing volume of imports while improving compliance with trade laws depends heavily on successfully modernizing its trade compliance process and its supporting automated systems. In recognizing this need to modernize, Customs undertook a major initiative to redesign the trade compliance process. Also, the Congress enacted legislation in 1993 that enabled Customs to streamline trade compliance processing through automation by establishing the National Customs Automation Program (NCAP). The legislation eliminated certain mandated paper requirements and specified critical functions that NCAP must provide, including the ability for members of the trade community to electronically file import entries at remote locations and for Customs to electronically process "drawback" claims, which are refunds of duties and taxes paid on imported goods that are subsequently exported or destroyed.

In 1994, Customs began the ACE project that is planned to replace the Automated Commercial System—Customs' existing automated import system—with an integrated, automated information system for collecting, disseminating, and analyzing import data and ensuring the proper collection and allocation of revenue. The NCAP prototype, intended as the first operational demonstration of ACE, is planned to implement selected features of the NCAP legislation beginning in October 1997. Customs is also undergoing a separate but related project, called Customs Distributed Computing 2000 (CDC–2000), to select an information systems "architecture." This architecture is essentially a blueprint or framework for guiding the development and evolution of all Customs' automated information systems, including ACE and, as I will highlight in my testimony today, is a key component in successfully developing automated systems.

FOLLOW-UP ON GAO RECOMMENDATIONS

The framework for GAO's 1996 review of Customs' automation was research we previously conducted across a variety of public and private sector organizations to identify "best practices" that help these organizations consistently apply information technology to improve mission performance. The Paperwork Reduction Act and the Clinger-Cohen Act, which establish responsibilities for effective information technology management, embrace these practices. These important legislative requirements include implementation of an information technology architecture, establishment of a disciplined process to evaluate information technology investments, and measurement of how well information technology supports agency programs.

In our May 1996 report to this Subcommittee, we stated that Customs was ill-prepared to develop ACE because the agency was not effectively applying critical management practices that help organizations mitigate the risks associated with modernizing automated systems and better position themselves to achieve success. Specifically, we found that Customs (1) lacked clear accountability for ensuring successful implementation of NCAP requirements, (2) selected an information systems architecture without first analyzing its business requirements, (3) lacked policies and procedures to manage ACE and other systems as investments, and (4) did not ensure that systems under development adhere to Customs' own systems development policies. Consequently, efforts to successfully develop ACE were vulnerable to failure. The following is a brief summary of our May 1996 recommendations, each of which Customs agreed with, and the actions the agency has taken in response.

Assigning clear accountability and responsibility for information management decisions and results is an important practice identified by successful organizations. Because we found that clear accountability for meeting NCAP requirements was lacking, we recommended that Customs assign such responsibility. In response, Customs acted quickly by assigning overall, policy-level responsibility for implementing NCAP to the Trade Compliance Board of Directors, which is headed by the Assistant Commissioner, Office of Strategic Trade. Day-to-day responsibility for implementing NCAP is assigned to the Assistant Commissioner, Office of Information and Technology, who is also the Chief Information Officer.

The remaining three recommendations each required that Customs take substantive action to develop and implement improved information technology management practices over a long term. Because these recommendations call for significant changes in long-standing management practices, they will require sustained commitment and focus on the part of Customs' leadership. While Customs has initiated a variety of actions and made progress toward addressing each situation, it is too early to determine whether Customs will successfully implement each recommendation.

First, we recommended that Customs identify and analyze how it will conduct its business in the future before selecting the information systems architecture for the

whole of Customs and on which ACE will run. Failure to base selection of the architecture on such business requirements could result in the development of systems that do not function well or cannot be readily integrated with other systems. In response, in October 1996 Customs reconsidered its approach to selecting the architecture. Customs changed the CDC–2000 project—which had entailed acquiring hardware, software, and telecommunications for ACE—to emphasize conducting analyses of business requirements prior to selecting an architecture. As part of the refocused CDC–2000 project, Customs hired a contractor in January 1997 that is expected to conduct these analyses and recommend a process for selecting an architecture in June 1997. As of early May 1997, Customs officials stated that the contractor is on schedule to complete its work in mid-June 1997.

Second, we recommended that Customs manage information technology systems as investments. Doing so involves senior management applying a disciplined process for selecting, controlling, and evaluating major information technology projects. As a result, the Customs investment review board (IRB) was designated in February 1996. The Deputy Commissioner is chair of the IRB. Other high-level Customs officials and representatives from other Customs offices and the Department of the Treasury constitute the membership. The IRB meets monthly and has primarily discussed issues related to the purpose, organization, operation, and scope of the board. Customs has not yet established policies and procedures or implemented an investment review process that the IRB will implement. In November 1996, Customs hired a contractor to develop a plan to help bring the agency into compliance with the Clinger-Cohen Act. In April 1997, Customs specifically tasked the contractor to assist with the development, implementation, and institutionalization of a complete information technology investment management process. As of early May 1997, Customs officials told us that the contractor's work will be complete and the investment process will be in place in July 1997.

Third, we recommended that Customs ensure that the agency adhere to its own policies for developing information systems. Customs has such policies to provide a standard approach to developing systems and to help ensure the delivery of accurate, effective, and efficient information systems. In October 1996, Customs updated these policies to include new provisions on software project planning and project management. The policy specifies that extensive project planning, including estimating the size of software products and estimating resource needs, should occur in initiating a project of the magnitude of ACE. Also, the policy requires that project plans include top-level management reviews and decisions at various stages and between various phases of development. Such reviews are important because they provide higher management with a basis for deciding whether the expenditure of resources for the next phase is justified.

As of early May 1997, Customs had revised the ACE project plan and Customs officials told us that the revised project plan complies with their system development policies. Also, in January 1997, the Assistant Commissioner, Office of Information and Technology, assigned responsibility for system development policy enforcement to his information resources management division. This division established a schedule for compliance reviews, with ACE scheduled for review in October 1997. These reviews are intended to promote compliance with the software development process and provide management visibility into the development process.

ACE PROJECT POSES MANY CHALLENGES

The management practices described above, if successfully implemented by Customs, will help reduce the risk inherent in a major information system project such as ACE. However, Customs also faces a number of challenges in planning and implementing the ACE project itself that will require additional effort to resolve. These challenges relate to the cost and schedule for ACE and include, for example:

- Customs cannot say how much ACE will cost. While Customs estimates ACE will cost $150 million to develop over a 10-year period, the agency does not have an estimate for the total cost of ACE that includes system operation and maintenance. Customs did not base this estimate for development on the projected size of the system or level of effort expected for development. Instead, it is based on the level of funding Customs has historically obtained for ACE.
- Customs has not determined when ACE will be completed. Assessing Customs' progress in developing ACE is difficult because the agency lacks an overall schedule for the project. Customs does, however, have a schedule for the first phase of ACE—the NCAP prototype—although the agency has had difficulty adhering to this schedule. Specifically, implementation of the NCAP prototype has slipped from January 1997 to August 1997 and again to a series of four releases beginning in October 1997 with the fourth stage starting in June 1998.

We have discussed these issues with Customs' Assistant Commissioner, Office of Information and Technology, and the Assistant Commissioner, Office of Strategic Trade, and they are receptive to the need to better identify the ACE cost and schedule. Currently, Customs' plan is to produce a comprehensive project plan that includes cost and schedule information in February 1998.

In conclusion, Customs faces some very significant challenges as it develops ACE and attempts to address broader information technology management issues. To ensure that the initial steps succeed in implementing effective information technology management, Customs will have to sustain its commitment and attention through the more difficult phases of the modernization effort which are yet to come. We plan to continue monitoring implementation of our May 1996 recommendations as well as the additional issues I have highlighted today. In this regard, we will review the revised ACE project plan and the results of the contractors that are helping Customs determine its information system architecture and establish an investment review process. Additionally, we have an ongoing review that is designed to help Customs answer basic questions about ACE with regard to cost, schedule, and performance.

Mr. Chairman, this concludes my statement. I would be pleased to address any questions you or the other members may have.

Chairman CRANE. Thank you very much. For both of you, pursuant to your recommendations in your reports, Customs intends to undertake an evaluation of the progress of the partnership agreement between Customs and NTEU. Could you comment on the difficulties your team identified with their ability to track the cost and amount of official time and the number of grievances.

Mr. RABKIN. Mr. Chairman, up until 1992, Customs didn't really have an item that recorded those records, and since then when we went around and asked what the official time was being charged to the union activities, we got some information from Customs, but not what we considered to be very reliable. They have put out instructions and guidance to the staff to help them more accurately record that. And we reported to you in March some of these figures. For example, our data show, or Customs' data shows in fiscal year 1995, over 62,000 hours of Customs' employees' time was charged to union activity, and that was the high point of the 5 years that we looked at.

But we don't put a lot of confidence in those numbers. For example, we were out at the ports and found what time will be charged to various ports and Calexico in California had no time at all claimed until 1996 and yet we know they had spent time on union activities.

So that is the kind of problems with the data that leads us to hesitate to say anything about how much time has been charged because we don't know and we don't think that Customs knows either.

Chairman CRANE. Do you have any input, Ms. Koontz?

Ms. KOONTZ. No, sir.

Chairman CRANE. You mentioned measurements of effectiveness. What is Customs doing to help measure how well they are doing?

Mr. RABKIN. Well, their traditional measures deal with arrests and seizures, and as Mr. Weise talked about earlier today, they record how much they have seized. The real question is how much are they missing and that will give them an idea of the effectiveness of their efforts, and it is almost impossible to determine that.

We have looked at and are in the process, when we were doing our work of establishing other measures of performance or non-traditional measures to give them an idea of how well they were doing in activities. They had a problem with port runners, people who would pull up to the gate and then zoom right through the gate and take off into California.

Customs was measuring how well they were solving that problem. They took some steps, they put in K-rails to prevent cars from going straight through and the problem significantly decreased, and that is one way to measure the effectiveness of specific efforts.

On a broader scale, Customs is one player in a broad Federal effort in solving this problem with drugs and, to a certain extent, their efforts have to be taken into consideration with all the other agencies that are involved in reducing the supply of drugs. The Office of National Drug Control Policy, ONDCP, is working with these agencies to come up with sets of measures that will more appropriately deal with the outcomes of their efforts rather than just a level of activity. So I think it remains to be seen what kind of measures they will develop.

Chairman CRANE. Do you have any idea, and this goes back to the question I forgot to ask George, what the dollar amounts are of money confiscated, not just from small planes, but from people trying to cross the border with suitcases of contraband money?

Mr. RABKIN. I don't have any information about the amounts of the money, no.

Chairman CRANE. I had heard of a single case, and this was up in a port in New Jersey, of one man that had a quarter of a million bucks in his suitcase. But I was thinking there might be a way to help reimburse Customs for their performance in this area.

Mr. RABKIN. Well, I think you were right in some of your earlier comments, that the funds that were confiscated go in an asset forfeiture fund that is shared with State and local law enforcement agencies and there is distribution made of that every year.

Chairman CRANE. In absence of legislative action, Customs will again need to pay hundreds of thousands of dollars in premium pay to inspectors on vacation or on sick leave. Does this practice make sense to you?

Mr. RABKIN. In our 1991 report, we took the position that Customs' inspectors should get paid for work they actually do, and that seems to make sense. And if they are not working, if they are working overtime or if they are working on premium or night differential or working on Sundays, holidays, they should get paid for the extra inconvenience that that causes. But if they are not working, if they are on leave, it seems to me that it makes more sense to have them paid at their regular rate.

Chairman CRANE. I quite agree.

Mr. Neal.

Mr. NEAL. I have no questions, Mr. Chairman.

Chairman CRANE. Then I thank you both for your testimony and appreciate your spending the time with us today.

Mr. RABKIN. Thank you, Mr. Chairman.

Chairman CRANE. And I next would like to recognize Sandy Merber with the Counsel for International Trade Relations and Sourcing for the IFAC, and John Partilla, vice president for logis-

tics for Olympus America on behalf of the American Association of Exporters and Importers.

And, again, if you could try and confine your oral presentations to approximately 5 minutes, your printed statements will be a matter, part of the permanent record. Proceed when ready, Mr. Merber.

STATEMENT OF SELIG S. MERBER, COUNSEL FOR INTERNATIONAL TRADE REGULATIONS AND SOURCING, INDUSTRY FUNCTIONAL ADVISORY COMMITTEE I

Mr. MERBER. Thank you, Mr. Chairman, Members of the Subcommittee, I would like to thank you for the opportunity to present views on behalf of the Customs IFAC on this important topic. I think it is a particularly important time for us to be discussing Customs oversight, given the circumstance previously mentioned, Commissioner Weise's retirement after 4 years of very distinguished service, Commissioner Weise's retirement comes also at a time when implementation of the Customs Modernization Act is in progress, and I think therefore puts us at a very important crossroads for the Customs Service.

In preparing for this testimony, members of the IFAC, which is the industry's functional advisory committee on Customs matters, raised a number of specific issues that they would like the Committee to be aware of, notably, and I think this has been mentioned, the amount of time that it takes for the Office of Regulations and Rulings to give decisions on ruling requests which are very important to importers, and also the implementation of the Automated Export System, particularly that a cost-benefit analysis be made before changes are made; that the new system be practical for all modes of transportation, ocean, air and land, and finally that it accommodate the interests of large businesses and small businesses alike.

But rather than focus on specific issues related to the implementation of the Customs Modernization Act, in light of, as I said, my belief that this is an important crossroads, I wanted to focus on three themes: The importance of the Customs Service and the work it does as an export promotion agency, because Customs isn't often thought of as an export promotion agency; the fact that the goals of trade facilitation and law enforcement are complementary goals rather than competing goals; and finally, the importance of the Office of International Affairs to U.S. companies.

These three themes are tied together by a common thread, which is its thread of the important cultural changes going on in Customs as an organization. On the first point, Customs as an export promotion agency. As I said, I don't think it is often thought of as an export promotion agency, but in a very real and important sense it is. The ability of U.S. firms to compete in a world market depends on their ability to lower costs and have access to world class suppliers.

That, in turn, depends on having a Customs Service that is able to process cargo in keeping with the demands of modern manufacturing techniques such as just in time inventories and other cost-reducing methods. In providing a Customs Service that gives good

service, that gives fast turnaround, the U.S. Customs Service, I think, provides a competitive advantage for American firms.

U.S. companies, for example, have manufacturing facilities overseas. They face many problems with local Customs administrations. They are forced to carry larger inventories, to have safety stocks. This raises the costs of production, and makes those locations less attractive. In the U.S. we have a good situation. We are talking about issues at the margins, but when we look at the performance of the U.S. Customs Service with respect to others in the world, I think we see a high level of performance.

Second, the question of trade facilitation as a complement to rather than a competitor with enforcement activities. And, again, this is a question that I think involves culture, because it is something that comes about because of a change in culture in the Customs Service that is going on.

Trade facilitation happens when you can differentiate between cargoes that are troublesome and cargoes that are not troublesome, and at the same time that process enables enforcement efforts to focus where they ought to be, to eliminate the need to use too many resources for cargo inspection, for cargoes that are not troublesome, and therefore free up resources for enforcement and other related activities.

Finally, and perhaps importantly, because I don't think this is addressed elsewhere, I would like to say a few words about the Office of International Affairs. There has been a tremendous amount of trade liberalization in the recent past and over the history of the General Agreement on Tariffs and Trade, GATT. Trade liberalization, however, is more than just nominal tariff reduction. Trade liberalization also depends on the ability to get goods across the border in a timely way.

A low tariff doesn't do you any good if you can't move the goods. So by using a relatively small resource within the Customs Service to project the norms that our Customs Service develops across the world where American firms are looking to export, is I think a tremendous synergy and creates tremendous leverage for the money spent on the Office of International Affairs, and I think that we ought to give attention to supporting that office at a higher level. Thank you.

[The prepared statement follows:]

Statement of Selig S. Merber, Counsel for International Trade Regulations and Sourcing, Industry Functional Advisory Committee I

Mr. Chairman, members of the committee, I would like to express my appreciation for this opportunity to provide the perspective of IFAC I on current issues affecting the performance of the United States Customs Service. IFAC I—the Industry Functional Advisory Committee for Customs Matters—consists of 27 members, each with experience in international customs issues and representing backgrounds in virtually every sector of the economy.

This hearing is being held as a part of the important responsibility of the Subcommittee on Trade to provide oversight of the U.S. Customs Service. The primary focus of IFAC I is to provide advice on that part of Customs mission that relates to commercial trade, and I will direct my observations this morning primarily toward the need to maintain Customs' current emphasis on obtaining greater and greater levels of trade compliance through a program that emphasizes cooperation and trade facilitation. At the same time, it is neither prudent nor practical to view Customs' commercial operations wholly in isolation from the critical role Customs plays in protecting our borders from the attack of drugs and other contraband, and

the important role Customs plays in protecting our national security by enforcing safeguards against the proliferation of weapons of mass destruction.

Mr. Chairman, as you know, George Weise recently announced his retirement after four years as Commissioner of Customs. Commissioner Weise's retirement comes at a time when the Customs Service is undergoing many important changes, engendered both by passage of the Customs Modernization Act and by its internal realization that a change in attitude from confrontation to cooperation would best serve its twin missions of trade compliance and law enforcement. At this critical juncture the most important question facing the Customs Service and this Committee in its oversight role is whether Customs will continue its momentum toward enhanced compliance through "informed compliance." For this reason, my testimony will focus on the broad issues surrounding Customs' new philosophy rather than on the details of Customs' implementation of the Customs Modernization Act.

Given these considerations, I would like this morning to develop three principal themes. First, to emphasize the role that Customs plays in export promotion. The work of the Customs Service must be viewed in a broader perspective than as a domestic gatekeeper, enforcing laws and regulations relating only to revenue collection, protection of domestic industries and safeguarding domestic health and safety. There is no doubt that these are important functions, but we must also recognize the key role Customs plays in enhancing the competitiveness of the United States in attracting manufacturing jobs and in enhancing export growth. Second, and this is vital, it is important to understand that the goals of trade facilitation and enforcement are complementary, not competing. Third, Customs' role in the formulation and implementation of international trade policy, through its Office of International Affairs, is a critical function that deserves increased levels of support. Through the Office of International Affairs, Customs projects worldwide the important lessons it has learned domestically, thereby significantly enhancing the trade climate for U.S. exporters.

TRADE FACILITATION AS A COMPETITIVE ADVANTAGE

Customs is not often thought of as an export promotion agency, but in fact it is just that in a very real and important sense. Trade facilitation is important not only to consumers of imported goods, but also to domestic manufacturers who need access to imported inputs to compete in the world economy. There is no doubt that an efficient, effective, customs service, with a culture of trade compliance through facilitation, provides a competitive advantage for its country in attracting and maintaining manufacturing facilities and manufacturing jobs.

Any world-class manufacturing facility must have access to worldwide sources of raw materials and components. Certainly, many inputs will be available locally in quantities and quality that support world-class manufacturing. However, even in a developed market such as the United States, a complex manufacturing operation will be competitive globally only if it has access to worldwide competition to provide the highest quality and lowest cost inputs. Consequently, access to imported raw materials and components is an important consideration in plant siting, and customs administration is critically important to this process by determining the amount of time imports will be delayed in customs clearance, and by determining the predictability of the duty cost of imported inputs.

The productivity and profitability of a manufacturing plant depends in large part on cycle time—that is, its ability to process inputs into outputs as quickly as possible. Decreased cycle time leads to lower inventories, with correspondingly lower inventory costs and need for working capital, and increased customer responsiveness. In order to support world-class manufacturing, customs clearance time must be measured not in weeks, or even days, but in hours. Predictability is as important as speed. Input flows need to be planned carefully, and reliability of delivery is key. Delayed delivery of a needed input can shut down an entire manufacturing line, at enormous cost. Alternatively, unpredictable delivery due to customs administration can require the maintenance of excessively large "safety stock," with unacceptable inventory carrying costs.

Customs' efforts to enhance trade facilitation thus contribute directly to the competitiveness of U.S. manufacturing and thereby promotes exports. By providing reliable, timely customs clearance, including immediate release based on pre-clearance, and by providing predictable, consistent treatment to imports, the United States Customs Service creates an enormous competitive advantage for our country in attracting and maintaining our manufacturing base. Customs' efforts to provide greater service and trade facilitation should be viewed in the context of this important contribution to our domestic economy.

TRADE FACILITATION AND ENFORCEMENT ARE COMPLEMENTARY GOALS

Customs has two principal missions: to administer U.S. trade policy through the collection of tariffs, and to protect health, safety, and national security through enforcement of criminal laws prohibiting trade in dangerous drugs, other contraband, and weapons of mass destruction. When Customs develops programs to facilitate trade in carrying out its commercial mission, it often is criticized for neglecting or even undermining its enforcement mission. This is a false dichotomy. Intelligently applied trade facilitation measures complement vigorous law enforcement.

In recent years, particularly under the leadership of Commissioner George Weise, the Customs Service has radically changed the orientation of its commercial operations mission from one of conflict and confrontation with international traders to one of cooperation to achieve what is correctly perceived as a mutual objective of increased compliance with the laws and regulations governing imports. We have gone from a philosophy of inspect and suspect to one of respect, to the advantage of all concerned. The important changes embodied in the Customs Modernization Act have been translated into improved service for the importing community and improved compliance, as Customs has implemented "informed compliance" and importers have embraced their new responsibilities under the standard of "reasonable care."

The benefits have been tangible. Statistical measurements performed by Customs indicate that overall commercial compliance rates are high and increasing and, most significantly, that revenue collection exceeds 99% of all duties due. Customs' ambitious program of CAT audits is targeted at large importers and sensitive industries, and is well designed to achieve even better levels of voluntary compliance, primarily through enhanced understanding on the part of importers, and ultimately, therefore with less demand on Customs' resources, rather than more.

Despite this progress, much remains to be done. Many of the advances envisioned by the Customs Modernization Act have yet to be realized. For example, periodic entry reconciliation is not a practical reality. Testing and implementation of this and other programs made possible by the CMA are proceeding at a pace that is, I am sure, as frustrating for Customs as it is for importers.

It is important to recognize, however, that the most important change implemented by the Customs Service, beginning with the administration of Commissioner Hallett, and continuing at an accelerated pace under Commissioner Weise's leadership, is not in the systems and programs employed by Customs to process entries, but in the attitudes of the women and men of the Customs Service who implement those systems and programs. One of the most difficult tasks of any organization is to manage change in its internal culture. The Customs Modernization Act gave Customs the tools to enable a change in attitude from confrontation to cooperation, and to do so in a way that enhances rather than undercuts compliance. Customs has embraced the opportunity to change its internal culture in a way that support both its mission and American importers. No institution the size of the Customs Service can transform its philosophy overnight, and the change in attitude has not yet been accepted universally, but the process of change is in place, supported by consistent leadership.

Too often it is assumed that Customs' efforts to enhance trade facilitation and to forge a more cooperative relationship with importers must come at the expense of Customs' enforcement mission. In fact, the opposite is true—efforts at trade facilitation are complementary to Customs' enforcement activities.

Among the most potent tools of trade facilitation are measures that are designed to differentiate intelligently between those cargoes that carry an enforcement risk and those that do not. When Customs can identify with confidence those imports that pose little enforcement risk, it can then institute programs to facilitate the clearance of those cargoes with as little delay and expense to Customs and to the importer as is warranted by the reduced risk. Post audit measures are used to ensure that compliance obligations are understood by the importer, and thus to protect the revenue. This is at the heart of trade facilitation.

At the same time that such measures identify low-risk imports they of course serve to identify those imports that carry a high enforcement risk, and allow Customs to focus enforcement resources where they are most needed. Because they reduce the need for Customs to allocate resources to low-risk imports and at the same time focus enforcement resources on high-risk imports, trade facilitation measures enhance both commercial operations and Customs' enforcement mission. Greater voluntary compliance on the commercial side, reduced demand for resources for commercial operations, and enforcement resources better targeted at high-risk imports result in more effective enforcement as well as in trade facilitation.

I emphasize these points because Customs now stands at an important crossroads. Commissioner Weise has announced his resignation after four years of an administration that embraced the reforms of the Customs Modernization Act and, most importantly, continued to manage the change of Customs' basic philosophy and attitude from confrontation with legitimate traders to cooperation toward a shared goal of increased commercial compliance. In order for an organization the size of the Customs Service to achieve in a meaningful and lasting way such an important change in its internal culture, there must be consistency of leadership and unwavering commitment. Consequently, it is critical that the new Commissioner of Customs understand the complementary nature of enforcement and trade facilitation and fully embrace the emerging new culture of the Customs Service, which serves both goals well.

CUSTOMS' INTERNATIONAL AFFAIRS FUNCTION

Just as the efficiency of customs administration at home plays an important role in enhancing our country's competitive advantage, the Customs Service plays an important role in facilitating market access for U.S. products and U.S. investors abroad. Important market access agreements such as the Uruguay Round and the Information Technology Agreement have progressively lowered foreign tariffs on U.S. products. Further trade liberalization through the APEC process and negotiation of a Free Trade Area of the Americas promise additional tariff reductions.

But true trade liberalization is a function of more than nominal tariff rates. Because customs administration can be an important barrier to trade, mutual assurances of customs efficiency are necessary if trading partners are to have the confidence they need to achieve greater and greater levels of market opening. Absent a uniformly high standard of customs efficiency, the benefits of market opening are unfairly denied those parties to an agreement for whom the benefits of trade liberalization are attenuated by continuing difficulties of customs administration. Thus, raising customs efficiency to a uniform, high standard is a prerequisite to achieving for the United States the full benefit of trade liberalizing agreements.

The Customs Service Office of International Affairs plays an important role in working to reduce the barriers to trade reflected by the failure of customs administrations around the world to modernize and reform their processes and priorities. One important example of this work is the role that the U.S. Customs Service plays in customs improvement through the APEC process.

Perhaps the most tangible evidence of APEC's effectiveness in liberalizing trade and investment in the Asia Pacific region is in the work of the Sub Committee on Customs Procedures (SCCP) of the Committee on Trade and Investment. The SCCP, which evolved in 1994 from the APEC Customs Procedures Working Group, reached a consensus in Sapporo Japan, in June of 1995 on a vision statement, a guiding framework and principles, a common action plan, individual action plans, and statements on technical assistance. At Cebu, Philippines, in May 1996, the member economies of APEC agreed on an implementation program for the 9 elements of the Common Action Plan. These elements, which include standardized implementation of the WTO Valuation Agreement, support for a standard electronic messaging format, protection of intellectual property rights, provisions for temporary importation, and transparency of customs procedures and laws, comprise precisely those measures that are important to U.S. exporters to ensure fair access to export markets. Implementation of this program will be a significant benefit.

The United States Customs Service, principally through the Office of International Affairs, played an important role in developing the Common Action Plan, and is playing an important role in delivering the training needed by developing economy customs services to make it a reality. U.S. Customs has the lead in training for enforcement of intellectual property rights and temporary importation procedures, and shares responsibility with Canada for training on the WTO Valuation Agreement. The importance of these efforts and implementation of the Common Action Plan to U.S. exporters cannot be overemphasized.

There is one way in which the training component of the Common Action Plan could be improved materially. As discussed previously, changing the internal culture and attitudes of a customs service from one of distrust and confrontation to one of cooperation and trade facilitation is both the most difficult reform to implement, and the most important. At a recent conference on customs reform and modernization sponsored by the World Customs Organization there was a consensus that personnel and organizational change was the most difficult aspect of reform to manage. However, none of the elements of the training and implementation program of the Common Action Plan is designed to assist developing country services in managing the change process. One industry recommendation for the SCCP that emerged from the

APEC Customs Symposium held last week in Montreal was to develop a tenth training module focused directly on the management of change, and I urge the U.S. Customs Service to support this proposal and to work to develop the new training module based on its experiences and the experiences of U.S. industry in managing change.

APEC is only one example of the important work of the Office of International Affairs. The office provides important training not only in the Asia Pacific region, and not only in commercial operations. Its range is worldwide, and its scope includes training in counterproliferation measures, drug interdiction, and arms transfer and export controls. It also assists U.S. exporters with specific issues and problems encountered with customs services abroad. Much of the budget of the Office of International Affairs is funded through reimbursable agreements to support its overseas training and technical assistance programs, both with other federal agencies and with host country governments. Given the direct and substantial benefits of these efforts to U.S. exporters, increased direct funding of the Office of International Affairs to provide added scope and flexibility to its training function would be a worthwhile allocation of resources.

CONCLUSION

The role of the Customs Service in trade facilitation supports the U.S. economy by creating a competitive advantage for U.S. manufacturers, thus promoting U.S. exports and encouraging the establishment and maintenance of manufacturing jobs in the United States. The Office of International Affairs complements this effort abroad by working to ensure that foreign customs administrations have the training and will to provide the efficient service that is needed for U.S. companies to achieve the full benefits of trade liberalizing agreements negotiated with other countries. By targeting high-risk imports and reducing the resource demands of commercial operations, trade facilitation efforts complement the important responsibilities of the Customs Service in the areas of drug interdiction and national security law enforcement. With the resignation of Commissioner Weise, it is important to ensure that the Customs Service maintains clear leadership toward increased compliance levels through cooperation and informed compliance, rather than reverting to an attitude of confrontation with legitimate importers that would impede, rather than enhance, enforcement objectives.

Chairman CRANE. Thank you.

Mr. Partilla.

STATEMENT OF JOHN PARTILLA, VICE PRESIDENT, LOGISTICS, OLYMPUS AMERICA, INC., LONG ISLAND, NEW YORK; AND CHAIRMAN, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. PARTILLA. Mr. Chairman, Members of the Trade Subcommittee. I am John Partilla.

Chairman CRANE. Excuse me for mispronouncing your name.

Mr. PARTILLA. It is OK. That is common. I am vice president of logistics for Olympus America, and I am currently the chairman of the American Association of Importers, commonly known as AAEI. AAEI is a national organization of approximately 1,000 firms involved in every facet of international trade. It is actually the largest membership organization concentrating the majority of its efforts on the issues directly related to Customs' policies and procedures.

The members of this association empathize with Customs' tremendous responsibility to both facilitate commercial trade as well as enforce laws at the border. AAEI also sympathizes with Customs ever-present budgetary hurdle. In spite of the increased demand for drug interdiction, commercial enforcement and the in-

creasing number of import and export entries to process, the Customs Service and the trade community continually have to fight for increased staffing.

As Commissioner Weise indicated in his statements earlier, the Customs Service in effect has actually reduced their funding over the past several years. No matter how talented the Customs workforce, the Agency will require staffing and budget increases if it is to meet the tremendous demands of the burgeoning international trade.

Now, Customs realizes that the overall theme of the Mod Act was to utilize the unique partnership that it created between Customs and the trade, to work together to redesign a more efficient and effective, yet less intrusive, Customs Service based on electronic processing and modern business practices. While the process of promulgating the new regulations has been more lengthy than we anticipated, we are certainly pleased with the unprecedented opportunity that AAEI has had or has been granted to impact the final product. The AAEI membership in the trade community places a high value on this unparalleled process and commends Commissioner Weise for his dedication to building this partnership.

As an example, the AAEI has a few major conferences each year in conjunction with the U.S. Customs Service. We have one in June coming up and another major one in Chicago in the fall. These are the type things that are building a partnership that has been very, very beneficial to the trade community as well as the Customs Service in understanding the needs and requirements of the trade community.

Customs sees its current automation overhaul as an essential means to its goal, in achieving these goals. Unfortunately, the time-consuming development of the Customs new automated commercial environment, ACE, has delayed the completion of the periodic entry summary program. The business community desperately needs this tool to keep the flow of international trade or keep pace with the flow. The move away from the entry-by-entry processing is a critical element of Customs and the trade community's ability to handle more transactions with static resources.

The mechanics of interest collection and the requirements set forth in 19 U.S.C. 1505 is the central roadblock to the successful implementation of this program. We request that this Subcommittee staff work with Customs to review this issue and recommend any legislative changes to eliminate this roadblock.

Now, this issue is extremely important to Customs and the trade community in that the entry process is currently labor intensive. The periodic entry summary program would facilitate a significant reduction in the millions of entries that are now required to be prepared by the importers and reviewed by Customs. It would also facilitate Customs and the trade community moving forward together in an automated business environment.

AAEI would also like to commend Commissioner Weise and his staff for maintaining an effective balance between enforcement and trade facilitation. Through such innovative programs as Operation Hardline and Gateway, as the Commissioner mentioned, and his staff, Customs has significantly increased the amount of narcotics seizures at the border with record levels in this past year. Addi-

tionally, the Business Anti-Smuggling Coalition, a cooperative effort between the business community and Customs to step up drug interdiction, was initiated under Mr. Weise's administration.

While Customs has made a tremendous contribution to the war on drugs, it is a war that cannot be fought alone. Customs must be sufficiently funded to be able to deal with this problem adequately as well as to continue to provide the first-rate services of trade facilitation that the honest customers use dealing in commercial trade, pay for, and deserve.

Recently Commissioner Weise announced his plans to retire from government service. AAEI urges Congress to confirm a successor who will carry on Mr. Weise's legacy of maintaining an effective balance between Customs enforcement, function, and the role that it plays in facilitation of legitimate international trade, which is crucial to the Nation as a whole and every State in the Union. This is even more significant as Customs increasingly takes on an increasing leadership role in export facilitation.

AAEI always stands ready to work with this Subcommittee and the Ways and Means Committee and the U.S. Customs Service to improve Customs commercial operations and continue to build a growing partnership that has now been established between the Customs Service and the international trade community.

Thank you for the opportunity to present our views to you.

[The prepared statement follows:]

Statement of John Partilla, Vice President, Logistics, Olympus America, Inc., Long Island, New York; and Chairman, American Association of Exporters and Importers

Good Afternoon, Chairman Crane and members of the Trade Subcommittee. I am John Partilla, Vice President Logistics for Olympus America, Inc. I am currently the Chairman of the American Association of Exporters and Importers (AAEI). AAEI is a national organization of approximately 1000 firms involved in every facet of international trade. AAEI concentrates on policies and practices of the U.S. Customs Service. Our members are active in importing and exporting a broad range of products including, chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, household consumer goods, toys and automobiles. AAEI members are also involved in the service industries which serve the trade community such as customs brokers, freight forwarders, banks, attorneys, Good Afternoon, Chairman Crane and members of the Trade Subcommittee. I am John accountants and insurance carriers.

We are pleased to have this opportunity to address the operations of the U.S. Customs Service. The management and oversight of Customs commercial operations are of great concern to AAEI, as our members interact with the agency on a daily basis.

AAEI and Customs have always dealt with each other in a direct, honest, usually harmonious, and always mutually respectful, manner. Due to this long-standing relationship, AAEI does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many specific problems are resolved. AAEI understands that Customs role in drug enforcement is of paramount importance. However, the agency must continuously work to effectively balance this role with its equally demanding trade facilitation responsibilities.

AAEI sympathizes with Customs ever-present budgetary hurdle. In spite of increased demands for drug interdiction, increased emphasis on commercial enforcement and more and more entries to process, the Customs Service and the trade community continually have to fight for increased staffing.

Importers, exporters and other members of the trade community appreciate the difficulties facing the Customs Service and are anxious to work with Customs to improve its efficiency. AAEI consistently asks Customs what it is planning and how AAEI can help it to reach its goals. Through this continuous dialogue, AAEI is closely exposed to the best and worst of commercial operations. Today, AAEI hopes to emphasize that the successful programs Customs has developed and implemented in recent years should set the standard for all of its programs. Efficient and quick commercial trade processing, minimal cost to the exporter or importer and a respect

for the legal rights of U.S. persons should be the rule—not the exception—of Customs commercial operations.

CUSTOMS BUDGET

Over the past twenty years, Customs has experienced dramatic increases in its workload due to rapidly expanding international trade. In the past decade alone, Customs workload has more than doubled. Responding to mounting workload requirements, Customs is automating its processing, and introducing new compliance measurement systems and other innovative technology and procedures. Customs estimates that by fiscal year 1998, it will be tasked with processing 18.4 million entry summaries and collecting approximately $20.3 billion in duties. This is an estimated increase of 1.2 million entry summaries and $600 million in duties collected over FY 1997 estimates. U.S. Customs is a revenue generating agency. In FY 1998 Customs expects to collect $23 billion, $20.3 billion of which is attributed to commercial operations. AAEI urges this Subcommittee to ensure that the trade community receives adequate services for which it pays so dearly.

For example, in one way or another, almost all of AAEIs members are directly impacted by U.S. Customs Office of Regulations and Rulings, ORR. This office affects the entry of goods into the U.S., valued at over $800 billion in 1996, by (1) drafting regulations implementing U.S. trade laws; (2) issuing rulings on the proper classification, valuation, country of origin and marking of imported goods; and (3) providing guidance to the trade community and other Customs units on their compliance responsibilities under Customs regulations and related laws.

Recently, AAEI offered its assistance to the U.S. General Accounting Office in its study of the overall effectiveness and efficiency of ORR. GAOs report indicates that the trade community is generally pleased with the quality of services provided by ORR. It was noted that ORR rulings provide important analysis and information about the duties importers should pay and furthermore, are considered vital to their ability to make reasoned business decisions and comply with Customs regulations. The only concern cited was the timeliness of ORRs decisions, including rulings and decisions regarding protests and penalties.

An important 1989 Customs Directive requires that certain legal decisions or rulings, that deal with the classification of merchandise, be issued within 120 days of receipt by Customs. The GAO study reports that Customs did not meet the 120 day requirement for 53 percent of the cases closed in 1996 that GAO reviewed. AAEI understands that such delays can be directly attributed to budget cuts and inadequate staffing. ORRs staff of 248 consists mainly of attorneys and specialists in commodity classification. For fiscal year 1997, out of Customs total budget of $1.6 billion, ORRs budget is only $16.38 million, of which $15.2 million is for salaries.

AAEI applauds Customs on its commitment to maintaining such a talented work force in the face of continuous budgetary constraints. Customs is increasingly forced to stretch its limited resources to facilitate trade that is growing at an exponential rate. However, no matter how skilled the work force, without increased staffing there will come a point when the rubber band will snap. Ultimately, Customs will require staffing and budget increases if it is to meet the demands of burgeoning international trade.

In FY 1997, Customs Service appropriations total $1,638,354,000 and 16,992 full-time equivalent positions (FTE). For FY 1998 Customs proposes appropriations of $1,690,602,000 and 17,193 FTE, including $20,100,000 from the Violent Crime Reduction Trust Fund. This level represents an overall increase of $52,248,000 and 201 FTE from the FY 1997 operating level.

We urge Congress to allocate the funds necessary for Customs to continue its important role as the Nations primary border agency, interdicting drugs and ensuring that all goods and persons entering and exiting the United States do so in compliance with all United States laws and regulations.

USER FEES

Although AAEI supports an increase in the Customs budget for FY 1998, we are opposed to the utilization of user fees for this purpose. To continue to impose a Customs user fee for the privilege of paying mandatory Customs duties as a condition to entry of imported merchandise into the United States is analogous to charging a taxpayer a fee for filing an income tax return and paying income taxes. The functions of the Customs Service are required by law, and are carried out for the general welfare. As such, the cost of Customs operations should be borne by general revenue and not through the imposition of user fees.

Continuation of the Customs user fee over the opposition of the U.S. business community is bad fiscal and trade policy. The costs of the fee itself, collection of the

fee, and recordkeeping requirements for the fee are enormous. We believe the combined cost of the fee to U.S. business and the U.S. government more than offset the revenues collected.

Furthermore, the user fee is not necessary to increase the budget of the Customs Service since the agency collects far more than the funds appropriated to it. The surplus generated by the user fee (the amount collected over and above the cost of Customs commercial operations budget) is close to $1 billion. This surplus can and should be used to alleviate budgetary pressures with regard to Customs commercial operations. Ultimately, it should be relied upon to phase out the user fee altogether.

AAEI understands political realities must override principle on occasion. The need to reduce the U.S. budget deficit without raising taxes may place undue pressures on the government to adopt unnecessary measures for raising revenue. The Customs user fee, without regard to inconsistencies with the World Trade Organization, was imposed in such a climate. Political pressures, however, should not supersede U.S. international obligations or notions of fundamental fairness.

The members of AAEI are sensitive to budgetary pressures, but on balance, urge the Trade Subcommittee to use its Customs oversight authority to mandate the expiration of the Customs user fee. The Association is ready and willing to assist the Subcommittee in its endeavors to this end.

CUSTOMS REORGANIZATION

The reorganization of the U.S. Customs Service, spearheaded by Commissioner George Weise, was implemented in October of 1995. AAEI supported the overall concept and objectives of the plan and is pleased with the smooth, largely transparent implementation. Customs efforts to make the agency more effective and responsive to its customers, the international trade community, is laudable. Also commendable is the partnership Customs has fostered with industry in developing a plan that will optimally serve the agency and its customers. Based on the Associations many years of interaction and meaningful dialogue with Customs, we are confident that the agency will hold true to its stated intentions as it continues to settle into its new environment.

As AAEI told the Subcommittee prior to implementation, it is pleased that Customs has established a mechanism whereby determinations made at the port level are and will continue to be appealable to Headquarters. To ensure that the benefits of this process are preserved over time, AAEI recommends that it be codified. Codification of this important appeals mechanism will guarantee consistency and stability through future changes in personnel and administrations.

One of the most significant changes implemented under the reorganization was the establishment of Strategic Trade Centers (STC), which focus on enforcement issues such as transshipments, smuggling, intellectual property rights and quota. We fully expect that Customs, in its enforcement operations, will continue to be mindful of its mission to ensure the smooth flow of merchandise through the agency with minimal effect on the nations commerce. While enforcement measures are a fundamental aspect of the Customs Service, they should not be carried out to the detriment of its other fundamental function, the facilitation of global trade. The current commissioner as well as the immediate past commissioner have recognized the weight of Customs commercial function. We fully anticipate that this climate will be maintained with the increasing role of STCs.

The Association understands that Customs management Centers (CMC) were established for the sole internal use of Customs to ensure the overall uniformity of the organization. Monitoring uniformity is as much operational as it is an internal administrative task. Hence, it is the importer who is in the best position to detect a breakdown in uniformity with respect to the implementation of Customs procedures. AAEI therefore suggests that members of the trade community be permitted the option of accessing CMCs for the effective and expedient resolution of uniformity discrepancies.

AAEI has always enjoyed access to Customs top policy makers. The AAEI Customs Liaison Committee meets regularly with high-level Customs officials at Headquarters to discuss pending issues. We believe forums such as this are beneficial, if not necessary to Customs officials in keeping in tune with the dynamic needs of the trade community. This type of outreach furthers the spirit of partnership legislated in the Mod Act.

CUSTOMS MODERNIZATION REGULATIONS

Even before enactment of the Customs Mod Act in 1993, the Customs Service has been committed to developing a partnership with the trade community to formulate regulations which first allow all parties to meet their obligations. Over the past

three and a half years, Customs has met frequently with representatives from various trade groups to discuss proposed concepts and regulations. Customs has been responsive to comments submitted and has modified several of its original proposals to reflect the input of industry. While the process of promulgating the new regulations has been more lengthy than we had anticipated, we are certainly pleased with the unprecedented opportunity we have been granted to impact the final product. The trade community places high value on this unparalleled process and commends Commissioner Weise for his dedication in building the partnership.

A prime example of the partnership at work is the duty drawback regulations. Customs recognizes the importance of the duty drawback program as a significant export incentive. AAEIs key concern was that the new regulations should in no way undermine this program as it permits many U.S. companies to compete on a global scale. However, during the drafting process, there came a point where many difficult drawback issues remained unresolved.

It was at the AAEI Annual Convention where industry representatives and Customs officials came together to figure out how to overcome the impasse. Respecting the value of the drawback program to the enhancement of U.S. exports, Customs hired an independent facilitator to work with Customs and the trade community to arrive at mutually agreeable terms. The technique applied, known as Interest Based Problem Solving, was at times painstakingly slow, but in the end produced fruitful results. The drawback team, comprised of participants from the government and the business community was recently awarded the Vice Presidents Hammer Award for its accomplishments in this process. This is a special award under the Vice Presidents National Performance Review given to people who have participated in a team effort that has contributed dramatically to improving the way government works. The Vice President bestows the award to recognize special achievements in at least one of the four principals of reinventing government -putting customers first, cutting red tape, empowering employees to get results, or cutting back to basics. AAEI is proud to have been involved in this endeavor and congratulates Customs leadership for taking the lead and fostering a breeding ground for productive results.

CUSTOMS AUTOMATION

Since 1984, when Customs implemented its first comprehensive automation system (ACS), the agency has made continuous strides in implementing technology to help it meet the demands of burgeoning international trade. Within the government, Customs has clearly assumed a lead role in developing and implementing efficient automated systems. Fully mindful of the difficulty of the task, Customs has not tried to develop its systems in a vacuum. It studies the experiences, both positive and negative of other government agencies. It looked to the business community for guidance, particularly for the process it should adopt for evaluating and selecting systems design.

The Mod Act has created a unique partnership between Congress, Customs and the trade community. Customs realizes that the overall theme of the Mod Act is to utilize this partnership to work together to redesign a much more efficient and effective, yet less intrusive, Customs Service based on modern business practices, including electronic processing. Inherent in this approach, is the adoption and reinforcement by Customs of an institutional philosophy that its goal is compliance. Number of seizures, penalty cases or agent investigations ultimately does not achieve Customs mandate. Customs sees its current automation overhaul as an essential means to its goals.

ACS, based on electronic interfaces with customs brokers, importers, carriers, and others, provides Customs with automated import data. When implemented in 1984, there were no trade interfaces. Today, over 2000 trade participants and other government agencies interface electronically with Customs. Ten years after ACS was implemented, 96% of 14.3 million entries were processed electronically at least at the first stages. The current redesign of ACS will enable Customs to utilize new technology, implement Mod Act automation features, and correct processing deficiencies identified by various oversight groups. The new system (ACE) is targeted for completion in FY 1999.

While ACS has widely been heralded as one of the most successful automation endeavors of the federal government, it has been showing its age for a number of years now. Internal and external system users demand more functionality and processing capacity from ACS than its outdated mainframe architecture and data structure can support. Making enhancements to the current system is becoming increasingly more difficult and expensive. Additionally, desirable new technology is often incompatible with the existing hardware and software. Most importantly, the business of Customs commercial processing has significantly evolved since ACS was first

designed. Todays applications for handling entries, entry summaries, and manifests simply will not support the business changes demanded by an increasingly complex new trade environment.

Since the implementation of the Mod Act, Customs has made considerable progress in building its new Automated Commercial Environment (ACE), a system which will encompass the agencys many electronic systems. Most recently, Customs announced its plan to test the first phase of the National Customs Automation Program in Detroit, Port Huron, and Loredo. This prototype, known as NCAP/P, is the first operational demonstration of account-based declaration that was developed as part of the Trade Compliance Redesign. NCAP/P will be supported by ACE.

The time-consuming development of ACE has delayed the completion of the periodic entry summary system program enabled by the Mod Act over three years ago. The business community desperately needs this tool to keep pace with the flow of international trade. The move away from entry-by-entry processing is a critical element of Customs and the trade communitys ability to handle more transactions with static resources.

Similarly, reconciliation was a tool promised by the Mod Act that has also been hampered by automation delays. Moreover, as set out in the recent test announced for reconciliation, the benefits of the program are being threatened by Customs requirement that reconciliation be made on an entry-by-entry basis. This requirement does not tie in with the way the business community maintains its records and will greatly diminish the use of this tool for periodic submissions of value and cost data. This roadblock apparently arises out of concern over the mechanics of interest collection and the requirements of 19 U.S.C. 1505. We request and encourage the Subcommittee staff to meet with Customs to review this issue and recommend any necessary legislative changes to the interest provisions which would allow additional periodic payment of duty to be made without the need to specifically refer such payment back to any entry-by-entry analysis. We believe this can be accomplished in a revenue-neutral manner and greatly facilitate the intended goals of reconciliation promised by the Mod Act.

In February, 1996, Customs launched a one year effort to prototype the use of an "Account Manager" to act as the primary point of contact in dealings with selected importers. The importers were selected based on their total entered value and the value of imports of commodities in Primary Focus Industries. Several AAEI members participated in the prototype and have deemed it a success. To date, 41 importers have been assigned Account Managers. Customs expects to have 100 accounts by the end of the year.

AAEI understands that the many new initiatives and programs of the Customs Service are reliant on the completion and successful implementation of the ACE system. Automation is at the core of the agencys operations. While the Mod Act laid the groundwork for Customs automation needs, it will take continued support from Congress and the trade community to bring Customs electronic environment into the 21st century.

AAEI Membership Survey

In November of 1995 AAEI approached U.S. Customs with a proposal to conduct a membership survey in the first quarter of 1996, approximately six months after the implementation of the Customs reorganization. The intent of the survey was to identify membership attitudes and perceptions regarding the Customs Service and its operations. The Office of Planning and Evaluation within Customs agreed to assist in the design and analysis of the survey with the aim of soliciting feedback from the trade community and identifying areas for improved customer service.

Draft versions of the questionnaire were developed using the Structured Group Interview technique with representatives from the trade community and from Customs field. After a draft was pilot tested at AAEI, revisions were made and a final version was later distributed nationwide to the entire AAEI membership. The questionnaire surveyed many areas including, Customs competencies; customer relations, procedures, rules and regulations and automation and technology.

The survey, which was administered with strict confidentiality, yielded results that were overall positive and supportive of Customs people, processes and programs. The mean of 16 questionnaire items fell in the range between very satisfied and satisfied. The mean of the remaining 48 quantitative items fell in the positive range from satisfied to a mixed reaction. No question averages fell in the dissatisfied to very dissatisfied range. Nearly 95 percent of the respondents indicated that they were either "satisfied" (35.5%) or "very satisfied" (59.4%) with the overall quality work provided by Customs. On the flipside, respondents indicated low satisfaction with the Automated Export System (AES); that Customs rules, regulations and

procedures are burdensome and that Customs automation efforts have not reduced paperwork over the previous year. AAEI is currently working with Customs to draft and administer a follow-up survey.

CONCLUSION

Mr. Chairman, members of the Subcommittee, the members of AAEI empathize with Customs tremendous responsibility to both facilitate commercial trade as well as enforce U.S. laws at the border. While Customs is the lead agency charged with processing and facilitating commercial trade, it is not the sole agency directed to fight the war on drugs. Customs budget should be allocated accordingly. While Congress has increased funding for the U.S. Immigration and Naturalization Service to enable it to significantly increase its manpower over the past two years, it has not similarly increased funding to help Customs in its anti-smuggling efforts.

Through such innovative programs as Operation Hardline and Project Gateway, Commissioner George Weise and his staff at Customs have significantly increased the amount of narcotics seizures along the border, with record levels this past year alone. Additionally, the Business Anti-Smuggling Coalition, a cooperative effort between the business community and Customs to step-up drug interdiction, was initiated under Weises administration. While Customs has made a tremendous contribution in the war on drugs, it is a war that cannot be fought alone. Customs must be sufficiently funded to be able to deal with this problem adequately as well as continue to provide the first-rate services and trade facilitation that its honest customers dealing in commercial trade pay for and deserve.

Recently, Commissioner Weise announced his plans to retire after 25 years of government service. In a letter to President Clinton announcing his resignation he characterized his tenure as Commissioner as "the greatest years of my life;" however, he felt it was time to put his family first. Upon receiving Commissioner Weises letter of resignation, Treasury Secretary Rubin expressed regret and praised Weise for his "tremendous contribution as Commissioner toward strengthening our borders and protecting our citizens against illicit drug smuggling." AAEI urges Congress to confirm a successor who will carry on Mr. Weises legacy of maintaining an effective balance between Customs enforcement function and the role it plays in facilitation of legitimate international trade; which is crucial to the nation as a whole and every state in the Union.

AAEI always stands ready to work with this Subcommittee, the Ways & Means Committee and the U.S. Customs Service to improve Customs commercial operations and continue to build the growing partnership between the Customs Service and the international trade community. Thank you for the opportunity to present our views today.

Chairman CRANE. Thank you, Mr. Partilla.

Mr. Merber, do you have any recommendations for improving the performance of the Office of Rules and Regulations, OR&R?

Mr. MERBER. This goes to my theme of changing culture of organizations. OR&R is an organization that consists primarily of lawyers. I am a lawyer myself, so I know how much the temptation is for lawyers to say, well, these management techniques, they don't apply to us. What we do is different, what we do is special. It doesn't really work here.

In fact, I think that management techniques do work with lawyers and do work with the kind of work that lawyers do, and I think that the sort of discipline of having good measurements in place, using those measurements to analyze what the root causes are of deficiencies that are identified by the measurements, will allow you then to work on focused projects to improve the performance, and then to put in processes to control them. I think that is a well-understood management technique of dealing with a system that is broken, and I think that despite this being a group of lawyers and a culture of lawyers, that it can work there. So I think

it is a question of applying well-known rigorous management techniques, and I think that could be done.

Chairman CRANE. Mr. Partilla, last year your organization did a membership survey of Customs operations, and apparently that survey indicated low satisfaction with the Automated Export System, AES. I was wondering if you could elaborate on the specific complaints your members have with AES, and would you be willing to share the results of that survey with this Subcommittee?

Mr. PARTILLA. Essentially our membership's dissatisfaction with AES is the lack of information as to what we are going to get in return, what the members and what the companies that are involved will get in return for the tremendous investment that is required. However, conceptually we are not opposed to this at all. In fact, we are in favor of it. In fact, the association would like to see support and funding for increased automation as far as the customer service activities, because we feel this is the trend, and this is the way our industries are going, and in order for Customs to be able to facilitate trade, they are going to have to be operating in an automated environment as the industries that they are dealing with are.

Chairman CRANE. Under the Customs regulations, importers can file a protest for up to 90 days after the date of liquidation, but Customs, on the other hand, can take up to 2 years to respond to the protest. What time lines would you recommend for correcting what would appear to be a very obvious asymmetrical power relationship?

Mr. PARTILLA. Well, our position on the protest issue is that we would like to see some legislative requirements enacted to set time lines. The actual time lines that we feel that would be appropriate would actually vary depending on a couple of situations. But we think approximately 1 year or 9 months would be an appropriate time.

Chairman CRANE. Very good.

Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Merber, do you believe that Customs has found the correct balance of resources between law enforcement and commercial regulation missions?

Mr. MERBER. Mr. Neal, I have not studied the allocation of resources between the two. What I wanted to speak to was what I believe is the philosophical compatibility of the two functions; that is, to understand that resources that are spent on facilitation of trade are not resources that are wholly unconnected with the enforcement mission, because to intelligently facilitate trade, you need to differentiate between the high-risk imports and the low-risk imports and to take appropriate action with respect to each, and at the same time, that is the same process of intelligence, use of intelligence information, risk assessment, cargo selectivity, postaudit, that are useful in the enforcement area.

I recognize that some of the enforcement activities are not related to that, the discussion earlier today about small pleasure craft and small aircraft, but what I am speaking to is the philosophy that the two functions—that the better the job that Customs does

at trade facilitation, the better the job it is also doing at enforcement.

Mr. NEAL. OK. Mr. Partilla, you spoke a bit about interdiction. You mentioned drug interdiction in your testimony. Are we striking the right balance between interdiction and demand?

Mr. PARTILLA. Well, so far under the current Customs administration, I think we are. However, I think that we need to increase this because of the increased funding that would be necessary to support the Customs programs that we are asking for in automation. But I think the funding for the drug interdiction is also appropriate. So I would say yes. As far as the current balance, I think it is.

Mr. NEAL. Do you think we can do a better job of convincing the Mexicans, for example, that a higher level of cooperation is necessary?

Mr. PARTILLA. I guess we can always do a better job. In our association, I have some personal opinions there.

Mr. NEAL. Share them with us.

Mr. PARTILLA. From our association's standpoint, I think we are strictly concerned with trade facilitation rather than the interdiction program. I mentioned the interdiction program in the fact that Customs was making great strides in that area, as well as the facilitation. But the drug interdiction is not strictly a Customs' problem.

Mr. NEAL. Right. Is it your impression that the Mexicans take us seriously on these issues?

Mr. PARTILLA. I really don't have any data to support a position.

Mr. NEAL. How about the anecdotal evidence that you come across or newspaper headlines or any of those issues? Do those shape any of your opinions?

Mr. PARTILLA. From a personal standpoint, I think we should be doing more in that area.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman CRANE. Well, I want to thank you both for your thoughts on the U.S. Customs Service and what changes Congress can make to better facilitate trade at our borders. We look forward to your input any time, so please stay in communication.

[The following questions were subsequently submitted by Chairman Crane to Mr. Partilla:]

[The response of Mr. Partilla follows:]

1. Under the Customs regulations, importers may file a protest up to 90 days after the date of liquidation. Customs, on the other hand, may take up to two years to respond to the protest. What time-line would the American Association of Exporters and Importers recommend for correcting this obviously asymetrical power relationship?

AAEI agrees that there is an asymmetrical power relationship with regard to the time-frame in which an importer is permitted to file a protest (90 days) and Customs' response time (two years). We recommend that Customs' time-line for responding to protests be made equivalent to its 90 day time-line for responding to requests for rulings. Other than the different offices charged with handling the processes, we don't see any major discrepancies between the procedures for responding to protests and ruling requests.

In a related matter, importers frequently encounter confusion with respect to Customs courtesy Notices of Liquidation and Extension and bills. Often, many addresses in Customs' data base are not updated in a timely fashion and notices don't reach the appropriate contact. We recommend that Customs move faster in developing a

system to issue such notices electronically. This should alleviate much, if not all of the administrative confusion.

2. Customs' Office of Rules and Regulations is in the process of rewriting more than 85% of the Customs Regulations. What efforts are being made by your organization and its members to ensure that Customs is adhering closely to the original statutory authority of the Customs Modernization Act?

Upon implementation of the Mod Act, AAEI established a Subcommittee on Customs Regulations. This Subcommittee was set up to monitor the drafting of new regulations as well as offer the Association's input on how the various proposals will impact the trade community. The AAEI Subcommittee reviews the various proposals drafted by Customs to ensure that Customs is adhering closely to the original statutory authority of the Mod Act.

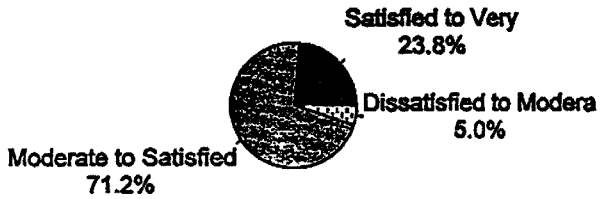
3. Last year, your organization did a membership survey of Customs operations. Apparently that survey indicated low satisfaction with the Automated Export System (AES). Could you elaborate on the specific complaints your members have with AES? Could you share the results of that survey with this Subcommittee?

Last year's AAEI membership survey did indeed indicate low satisfaction with the Automated Export System (AES). We do not see that the system offers any real incentives or advantages to the exporting community. The increased costs of complying with AES coupled with the transactional delays it is likely to cause outweigh any possible advantages. We are happy to share with you the results of our membership survey. Attached is a two-page executive summary. For your information, we are administering a follow-up survey at our upcoming Annual International Trade Convention and Exhibition. When available, we will be happy to provide you with these results as well.

Section I: Study Highlights

Who was involved in the study?
Of the approximately 1,000 questionnaires distributed by the American Association of Exporters and Importers to its membership, 167 organizations completed and returned their responses. While this response rate is lower than desirable, it should be noted that the anonymity of organizations prohibited any follow-up efforts to increase the return rate. Typically, the responding organization was primarily in the service industry, almost 70% of the respondents had less than 10 employees in their Customs operations, had their headquarters in the Northeast, imported through 2 to 5 ports, had more than 5,000 entries per year, and had more indirect interactions with Customs than direct interactions.

What did they have to say?
Everything considered
Overall, the response of the trade was very positive and supportive of Customs people, processes, and programs. Of the total of 89 questions asked, 67 asked for a quantitative evaluation using a five point scale (1= positive, good to 5= negative, poor). The average response on this scale was computed for each question and these were placed in rank order with the following graph and conclusions:



- Only three questions had an average indicating a slightly dissatisfied reaction.
- The mean of 16 questionnaire items fell in the range between very satisfied to satisfied.
- The mean of the remaining 48 quantitative items fell in the positive range from satisfied to a mixed reaction.
- No question averages fell in the dissatisfied to very dissatisfied range.

It is interesting to note that, of all items in the questionnaire, the one that had the most positive support among respondents was "Overall, how satisfied or dissatisfied are you with the quality of Customs Service?" Nearly 95 percent of the responding organizations indicated that they were either "satisfied" (35.5%) or "very satisfied"

(59.4%) in answering this question. On the other side of the coin, respondents indicated:

► Low satisfaction with the AES program.
► That Customs rules, regulations, and procedures are burdensome.
► That Customs automation efforts have not reduced paperwork over the last year.

Topical results

Within the several sections of the questionnaire a number of different questions could be combined into similar topics or themes. Statistically, the responses to these similar topic areas were combined and "categorical" averages computed. On the whole, those questions relating to "Customs training" efforts were rated the most favorable. This topic was followed in approval ratings by those items relating to "Customs programs" such as paperless release, ACH, paperless summary, AMS, etc. On the negative side, those items relating to "Customs rules" and "Customs fines" were rated the poorest.

Past accomplishments-future endeavors

Two items on the questionnaire asked respondents to compare questionnaire topics in terms of past improvement and those areas needing future attention by the Customs Service (Section VI, questions 15 and 16). More specifically, respondents were asked to evaluate in which area had Customs shown the most improvement and in which area should Customs place emphasis in the future. The results showed that:

► Customs has shown the most improvement in "personnel competencies". (42%)
► Second in improvement was changes in "procedures, rules, and regulations" (30%)
► Customs needs to place its future improvement efforts in "customer relations"(43%)

Qualitative comments

Two items in Section VI of the questionnaire requested narrative comments. Question 20 requested areas in which additional Customs training emphasis is needed. The majority of the suggestions and comments in response to this questions asked for more training in Customs procedures, rules, and regulations. More specifically, the most commonly cited training topics identified were:

► Informed compliance
► Record keeping
► Valuation
► Remote filing
► Binding rulings

Question 21 asked participants to make any suggestions or comments regarding Customs operations. The majority of the comments in response to this question discussed the need for more defined procedures and uniformity in addition to speeding up the Customs processes.

A complete list of qualitative comments is provided in the Results Section of this report that follows.

4. As part of the new culture within Customs following the Customs Modernization Act, "account managers" have been assigned to specific companies and large industry sectors. In theory, this allows a particular set of Customs employees to build a long-term understanding of that industry's Customs needs and problems. In your opinion, has this been an effective approach?

Customs' approach of assigning "account managers" to specific companies and large industry sectors as a means to allow a particular set of Customs employees to build a long-term understanding of that industry's Customs needs and problems is a positive step. The "account manager" system is still in the early stages of prototype/development. So far, our members who have participated in the test programs are pleased with the outcome. We would like to see Customs step-up the pace for the program's development. Additionally, AAEI recognizes the value of involving brokers, attorneys and other service providers in the importer/account manager relationship, at the discretion of the importers.

We recognize that "account management" is directly tied to development of Customs Automated Commercial Environment (ACE). AAEI is pleased with Customs' overall effort to overhaul its automated systems, but would like to see the pace of development expedited. We urge the Subcommittee to ensure that ACE encompass state-of-the-art technology at the time of implementation. Often there is a danger that new automated systems feature the latest technology at the time the system is selected or designed. Upon ultimate implementation the system is often outdated. While we hope to see Customs move more expeditiously in getting ACE up and running, we expect that it will comprise the latest, most efficient technology available at the time of implementation. We urge Congress to support Customs in this monumental endeavor.

5. In your written testimony, you indicated that the reorganization of the Customs Service which occurred after the Customs Modernization Act should be "codified." Could you elaborate on this recommendation?

In our written testimony, we praised Customs for establishing a mechanism whereby determinations made at the port level are and will continue to be appealable to Headquarters. To ensure that the benefits of this process are preserved over time, we recommended that it be codified. This appeals mechanism was established as part of the Customs reorganization. AAEI favors codification of the appeals mechanism.

6. I am concerned that the lack of uniformity of Customs administrative rulings is a problem that could lead to "port shopping" by importers searching for the port that offers the most favorable ruling for their merchandise. What do you feel Customs could do to ensure uniformity of binding rulings across all ports of entry?

The lack of uniformity regarding administrative rulings is a declining problem. As automation advancements continue to be implemented, we expect to see less and less uniformity problems respecting rulings. Automation has made rulings more accessible by more parties. Also, utilization of e-mail has enabled increased and more effective communication amongst the various ports. However, automation improvements will not change archaic attitudes that still linger amongst various port personnel.

We do see a problem regarding reversals, revocations and modifications of rulings. At times rulings are revoked, reversed or modified with little or no notice to importers. Also, the change in policy is not typically the result of a new law or recent court decision. This makes it quite difficult and expensive for importers to make informed business decisions based on rulings.

7. Do you have any recommendations for improving the overall performance of the Office of Rules and Regulations?

Our main recommendation for improving the overall performance of the Office of Rules and Regulations is to increase its clerical/support staff. OR&R should be operated like a private sector office or law firm. AAEI members often encounter long delays in receiving responses to calls. Many delays are the result of "flex-time." O,R&R personnel are just not available during enough of the normal work-day hours.

8. Has your organization been contacted by Customs about developing processes which reduce the burden of Customs regulations on business and industry?

Customs frequently contacts AAEI about developing processes which reduce the burden of Customs regulations on business and industry. Upon implementation of the Mod Act, Customs established the Mod Act Task Force. This working group, comprised of government and industry representatives met on occasion to discuss various regulatory proposals and Customs initiatives prior to release for formal comment. Also, Customs engages in the regular practice of posting drafts of its proposals on the Customs Electronic Bulletin Board for advance comment.

Chairman CRANE. Our next panel of witnesses are as follows: Susan Kohn Ross, member of the board of directors, Border Trade Alliance. I think she is not here yet, but en route from testifying before the ITC. Jeff Bobeck, senior congressional liaison with the American Automobile Manufacturers Association; Philip Hughes, vice president of the Customhouse Brokerage Division of the United Parcel Service, on behalf of the U.S. Transportation Coalition for an Effective Customs Service; and Harold Brauner, chair-

man of the board of the National Customs Brokers and Forwarders Association of America.

Let's see, we will save that chair between you two gentlemen for Susan when she gets here. We will proceed with Jeff first.

STATEMENT OF JEFFREY BOBECK, SENIOR CONGRESSIONAL LIAISON, AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION

Mr. BOBECK. Thank you, Mr. Chairman. Thank you for holding this hearing. I will keep my remarks brief in the interest of time.

I want to thank you for your strong leadership in modernizing U.S. Customs practices and procedures. I am Jeffrey Bobeck, senior congressional liaison for the American Automobile Manufacturers Association, AAMA, the trade association consisting of Chrysler Corp., Ford Motor Co., and General Motors Corp.

On a personal note, it is an honor for me to be here today, having served previously as a staff member to a Member of this Committee, Hon. Mrs. Johnson from Connecticut.

Mr. Chairman, America's car companies comprise the largest domestic manufacturing industry, directly supporting over 2 million American jobs, and account for more international trade than any other manufacturing industry. As the auto industry has become increasingly global, and as NAFTA has phased in, the ability of AAMA's members to move goods through U.S. ports has become a critical component of our competitiveness worldwide. Just-in-time delivery practices mean that a component produced in one country may be assembled into a vehicle in another country on the same day; in fact, perhaps even in Belvidere, Illinois. A delay at the border may create enormous costs and missed trade opportunities further down the line.

The number of transactions has increased rapidly. The complexity of those transactions has increased, and, in fact, the importance of completing those transactions quickly has increased.

Relief is embodied in the Mod Act, the centerpiece of which we believe is the National Customs Automation Program, or NCAP. Many of the procedures now authorized by law, such as remote filing, periodic filing of entry summary information, and payment of duties and reconciliation, were first proposed by AAMA's members and are now coming to fruition with Customs' announcement of the first NCAP prototype.

AAMA and its members are eager to participate in this prototype. Customs, for its part, has recognized the unique needs of automobile manufacturers and has responded very positively to our input.

The NCAP prototype is the first true test of a fully electronic system encompassing remote filing, periodic entry and duty payment, and reconciliation of entry information. The results of the prototype will have a major influence on the final development and efficacy of these systems and how they will perform well into the next century.

We generally are pleased with the details of the prototype Customs has been developing and grateful for their enormous effort. However, AAMA is concerned that Customs has proposed to limit the use of the reconciliation process. Specifically, Customs is pro-

posing to exclude classification-related matters from reconciliation, except where classification disagreement is pending in Customs or the courts.

A fully developed reconciliation process is very important to AAMA's members. Obtaining and providing precise information on each importation before it crosses the border, even within 30 days after entry, often is impossible. With competitive global sourcing, the number of suppliers, individual products, and corresponding HTS numbers are already daunting and rising every day. The reason that reconciliation was created is that information required for the importation of a good often is not available or cannot accurately be evaluated at the time of importation. It is essential that this concept be tested through the prototype.

There are several other issues unrelated to NCAP that we wish to raise today. Under the NAFTA Implementation Act, Congress chose not to impose Merchandise Processing Fees, MPF, on goods originating in NAFTA countries. To claim NAFTA preference, an importer must possess a valid certificate of origin, which in practice is not always available at the time of importation. Thus, importers often pay the MPF on a good they know is NAFTA-eligible, with the expectation that the MPF will be refunded later as an excess duty when NAFTA eligibility is proven. However, Customs has taken the position that these MPFs are not refundable under 19 U.S.C. 1520(d), a provision included in the Customs laws to deal with postimportation of claims for refunds.

In short, we believe that a NAFTA good is a NAFTA good, and that is what Congress intended. We ask the Committee review this matter.

A related issue of concern is Customs' position with respect to protesting NAFTA claims. Again, importers often do not have a certificate of origin at the time goods enter the country and simply file a post-entry claim when a valid certificate of origin is received. When the entry is liquidated before they receive an anticipated certificate of origin, they protest the liquidation under 19 U.S.C. 1514.

However, local Customs officials around the country recently have been directed to deny all such protests. We ask again that the Committee explore Customs' position on this issue and, if it is warranted, amend the law to ensure that if an importer is entitled to the NAFTA preference, there is a method for obtaining the refund of duties paid at the time of entry.

Finally, Mr. Chairman, Commissioner George Weise deserves much credit for the accomplishments to date and the spirit of cooperation that prevails between Customs and industry. Commissioner Weise's announcement that he will be leaving Customs' helm shortly causes us great concern. During his watch, Customs has committed resources to the development of NCAP and has worked unceasingly to carry out its part of what is often referred to as informed compliance, the sharing of responsibility between business and government, or complying with often complex laws and regulations.

We ask the Subcommittee to help ensure that the cooperative spirit of shared responsibility is maintained and that adequate resources are devoted to the continued development of NCAP.

Thank you for permitting AAMA to participate in this hearing. I would be happy to respond to any questions.

Chairman CRANE. Thank you for the nice compliment paid to George, whom we will all miss.

[The prepared statement follows:]

Statement of Jeffrey Bobeck, Senior Congressional Liasion, American Automobile Manufacturers Association

Mr. Chairman, thank you for holding this hearing and for your strong leadership on modernizing U.S. Customs practices and procedures. I am Jeffrey Bobeck, Senior Congressional Liaison for the American Automobile Manufacturers Association (AAMA), the trade association comprised of Chrysler Corporation, Ford Motor Company, and General Motors Corporation.

AAMA's members comprise the largest domestic manufacturing industry, directly supporting over two million American jobs, and account for more international trade than any other manufacturing industry. As the auto industry has become increasingly global, the ability of AAMA's members to move goods through U.S. ports has become a critical component of our competititiveness worldwide. Just-in-time delivery practices mean that a component produced in one country may be assembled into a vehicle in another country on the same day. A delay at the border may create enormous costs and missed trade opportunities further down the line.

As trade has increased and the electronic paperless environment has become common in the business world, Congress has responded by passing major legislation with the goal of improving the efficiency of the U.S. Customs Service. The most important initiative in this regard was the Customs Modernization Act (the Mod Act), which was aimed at providing Customs with the tools to realize the full potential of automating its practices. AAMA and its member companies worked closely with this Committee and the Customs Service in helping to draft key provisions of the Mod Act.

THE NATIONAL CUSTOMS AUTOMATION PROGRAM

The centerpiece of the Act was the National Customs Automation Program, or NCAP, the revision of laws to permit the full automation of Customs' commercial process. Many of the procedures now authorized by law, such as remote filing, periodic filing of entry summary information and payment of duties, and reconciliation, were first proposed by AAMA's members and are now coming to fruition with Customs's announcement of the first NCAP prototype, which is scheduled to commence this summer.

AAMA and its members have responded enthusiastically to the opportunity to help develop and participate in this prototype. Customs, for its part, has recognized the unique needs of automobile manufacturers and has responded positively to our input. The development of the NCAP prototype reflects a strong partnership between industry and government aimed at improving procedures that have a direct impact on the cost of international trade, both for our members and the Customs Service.

The NCAP prototype is the first true test of a fully electronic system encompassing remote filing, periodic entry and duty payment, and reconciliation of entry information. The results of the prototype will have a major influence on the final development and efficacy of these systems and how they will perform well into the next century.

We generally are pleased with the details of the prototype Customs has been developing, and grateful for the enormous effort Customs has put forth in this regard. However, AAMA is concerned that Customs has proposed to limit the use of the reconciliation process. Specifically, Customs is proposing to exclude classification-related matters from reconciliation, except where a classification disagreement is pending in Customs or the Courts.

A fully developed reconciliation process is important to AAMA's members. They recognize that, despite constant efforts to streamline and improve internal procedures and record keeping, obtaining and providing precise information on each importation before it crosses the border—or even within 30 days after entry—often is impossible. With competitive global sourcing, the number of suppliers, individual products, and corresponding HTS numbers are already daunting and rising every day. In addition, valuation issues and potential tariff preferences further complicate the information involved in each transaction. The reason that reconciliation was created is that information required for the importation of a good often is not available,

or cannot accurately be evaluated, at the time of importation. It is an essential element in our efforts to comply with the reasonable care standard.

AAMA submits that there is no reason to restrict the use of reconciliation before testing it. We also are concerned that Customs intends to impose this restriction not only to the test, but to the permanent rules governing reconciliation. We believe the point of testing reconciliation is to learn how Customs and importers will handle reconciliation under actual conditions. We ask the Committee to insure that Customs conducts a full and complete test of the reconciliation process, including use of reconciliation to address classification issues.

REFUND OF MPFS FOR NAFTA GOODS

There are several other issues unrelated to NCAP that we wish to raise today.

Under the NAFTA Implementation Act (PL 103–182), Congress chose not to impose merchandise processing fees (MPFs) on goods originating in NAFTA countries. To claim NAFTA preference, an importer must provide a valid certificate of origin (c/o) which, in practice, is not always available at the time of importation. Thus, importers often pay the MPF on a good they know is NAFTA-eligible, with the expectation that the MPF will be refunded later as an excess duty when NAFTA eligibility is proven. However, Customs has taken the position that MPFs are not refundable under 19 U.S.C. 1520(d), a provision included in the customs laws to deal with post-importation claims for refunds.

AAMA submits that it was the intent of Congress that MPFs were not to be imposed on NAFTA-eligible goods, regardless of when NAFTA-eligibility is proven. In short, we believe that a NAFTA good is a NAFTA good, and that no legal basis exists to retain MFPs on such a good. We ask that the Committee review this matter.

PROTESTING NAFTA CLAIMS

A related issue of concern is Customs' position with respect to protesting NAFTA claims. Again, it is a violation of law for an importer to claim the NAFTA preference before receiving a valid c/o issued by the exporter. Our members often do not have a c/o at the time goods enter the country and simply file a post-entry claim when a valid c/o is received. When the entry is liquidated before they receive an anticipated c/o, they protest the liquidation under 19 U.S.C. 1514. This action prevents the liquidation from becoming final before the valid NAFTA claim.

We have learned from local Customs officials around the country that they have been directed to deny all such protests. We understand that it is Customs' position that a claim must be filed under 19 U.S.C. 1520(d) within one year from the date of entry. That section states, "Notwithstanding the fact that a valid protest was not filed, the Customs Service may . . . reliquidate an entry to refund any excess duties . . . ."

This statement has been interpreted in other instances to mean that, if a valid protest was filed, Customs could have considered and allowed the importer's claim under the protest procedure. Sections 1520(d), like section 1520(c), is an extraordinary remedy that may be used when a liquidation has become final and the protest procedure is not available.

We ask the Committee to explore Customs' position on this issue and, if it is warranted, amend the law to insure that if an importer is entitled to the NAFTA preference, there is method for obtaining a refund of the duties paid at the time of entry.

INTEREST PAYABLE ON REFUNDED NAFTA DUTIES

Also, AAMA asks the Committee to review last year's amendment to 19 U.S.C. 1505(c) to limit the interest payable on refunds of duty arising from NAFTA claims filed under 19 U.S.C. 1520(d). Customs proposed this amendment that now only permits interest to be paid to importers from the date of filing the claim to the date of reliquidation. In all other refund situations, importers are entitled to interest for the period of time that the Government had use of their money—that is, from the date of payment to the Government to the date of liquidation or reliquidation. We do not believe there was a sound reason for Customs to ask for this change in the interest period or for Congress to adopt it.

COMMISSIONER WEISE'S LEGACY

Finally, Mr. Chairman, Commissioner George Weise deserves much of the credit for the accomplishments to date and the spirit of cooperation that prevails between Customs and industry. As a staff member of this Committee, he offered a guiding

hand in fashioning the monumental changes contained in the Mod Act, and as Commissioner of Customs he has overseen its implementation.

Commissioner Weise's announcement that he will be leaving Customs' helm shortly causes us great concern. During his watch, not only has Customs committed resources to the development of NCAP, it has worked unceasingly too carry out its part of what is often referred to as "informed compliance," the sharing of responsibility between business and government for complying with often complex laws and regulations. Our members and many other importers have responded positively to this emphasis on voluntary compliance and have devoted significant resources to reviewing and improving internal company procedures. Their efforts have freed Customs enforcement personnel to focus on illegal activities that threaten the health and welfare of our country.

This sea change in attitude and development of NCAP is attributable to Commissioner Weise's leadership and must be preserved and fostered. In truth, a strong foundation has been laid, but much still needs to be done. We ask the Committee to help insure that the cooperative spirit of shared responsibility is maintained and that adequate resources are devoted to the continued development of NCAP.

Thank you for permitting AAMA to participate in this hearing. I would be pleased to respond to questions from the Committee.

Chairman CRANE. At this point, since we have another vote in progress, we will stand in recess until I get back from the floor. Ms. Ross hopefully will be back here, too, at the same time. So with that we will break.

[Brief recess.]

Chairman CRANE. If you folks will take your seats, we shall resume with Mr. Hughes.

STATEMENT OF PHILIP W. HUGHES, VICE PRESIDENT, CUSTOMHOUSE BROKERAGE, UNITED PARCEL SERVICE AIRLINES, LOUISVILLE, KENTUCKY; ON BEHALF OF THE U.S. TRANSPORTATION COALITION FOR AN EFFECTIVE U.S. CUSTOMS SERVICE

Mr. HUGHES. Thank you, Mr. Chairman. It is an honor to address the Subcommittee today.

I am the corporate customs manager and vice president with UPS, that is United Parcel Service Airlines, and I am here today on behalf of the Transportation Coalition. Our members include the Air Courier Conference of America, the Association of American Railroads, the Air Transport Association, the American Trucking Association, and U.S. flag ocean carriers.

We want to take this opportunity to commend Commissioner Weise for his extraordinary contribution with regard to the development and implementation of the Customs Modernization Act, as well as his leadership and vision in directing the reorganization of the over 200-year-old agency. It has become clear that U.S. Customs modernization will serve as a model worldwide. Additionally, we can already see that the process orientation of the reorganization is a major improvement. We have seen good results at the port level, but the reallocation of resources must continue to achieve the full benefits of the redesign.

It is vital to transportation and our customers that these modernization efforts continue without interruption. Thus, the next Commissioner must appreciate the complex but close interrelationship between enforcement and trade facilitation. In these days of limited resources, Customs must work smart to get at the contra-

band that harms our citizens and commercial fraud that injures our companies. Most international trade is legitimate. Freight facilitation allows Customs to focus its limited resources on these important enforcement matters.

We are finally starting to realize the benefits of the Mod Act with regulatory packages being put forth and automation efforts proceeding. However, because of the magnitude and volume of changes, implementation of the 1993 legislation has been slow and somewhat painful. Neither business nor government can afford any further delays.

I now would like to describe how transportation has worked in a partnership with Customs to improve enforcement and achieve high compliance levels and then recap the status of the various implementation items.

Our companies have invested large sums of money to assist in detecting illegal contraband and to ensure proper revenue collection. For example, our express carrier members provide advance information to the invoice detail for Customs entry processing which allows Customs to utilize risk analysis prior to the arrival of the cargo. Both the express and air carrier members have invested in expensive, sophisticated technology, including x-ray machines. Our vessel members have long participated in carrier initiatives to address the drug problem. Our trucking members have security measures in place. Our coalition urges implementation of NAFTA's trucking provisions because it will improve U.S. Customs border operations by simplifying the crossing process and reducing congestion at the border. This is good for Customs and bad for drug smuggling.

As to the specific implementation items, there are many ongoing automation initiatives. Our concern today is that the various programs be carefully coordinated to avoid duplication and inconsistency. It is also imperative that adequate funding be provided for operational systems. We strongly urge the establishment of a cargo user fee trust fund to be used for critical improvements such as automation programs. Currently, there are many issues not being adequately supported, such as split shipments and in-bond.

Finally, our coalition members, along with U.S. exporters, have expressed concern about the Automated Export System. The timing and quantity of data required by AES is not feasible in today's environment and does not significantly improve enforcement, in our view.

We are somewhat disappointed about the status of certain provisions. For example, Customs has yet not implemented the summary manifesting of letters and documents. Also, while we expect a notice of proposed rulemaking raising the dollar limit for informal entries, it has taken 3½ years to do so, and it will take several more months to finally implement this simple but cost-saving provision. Implementation of the $20 duty waiver is still in the very early stages of consideration. We have difficulty comprehending why it has taken Customs so long to move on some of these fundamental, simple items.

Important work on recordkeeping is also ahead of us. The burden of recordkeeping must be recognized, and the requirements must be carefully tailored to ensure that only essential data or records be

required to be maintained. The costs of record retention and retrieval of excessive information for unnecessarily lengthy periods is astronomical. Statutory revisions to our recordkeeping laws may be required.

The 1996 technical corrections bill will now allow Customs to provide daytime reimbursable services at express hubs, as was permitted at other courier facilities. In considering how to implement this provision, we are concerned that Customs is taking this as an opportunity to expand the range of services that are to be considered reimbursable. This must be carefully monitored. In fact, the entire reimbursable services program should be reviewed for obsolescence in light of the just-in-time inventory practices used by business worldwide, which necessitates inspectional services outside normal business hours.

In summary, the transportation coalition stands ready to work in partnership with government to make the efficiencies envisioned by the Mod Act and reorganization a reality. Again, we commend Commissioner Weise for undertaking an ambitious agenda over his 4-year tenure and ask the next Commissioner follow in his footsteps.

Thank you, and I would be pleased to respond to any questions.

[The prepared statement follows:]

Statement of Philip W. Hughes, Vice President, Customhouse Brokerage, United Parcel Service Airlines, Louisville, Kentucky; on Behalf of the U.S. Transportation Coalition for an Effective U.S. Customs Service

Thank you, Mr. Chairman and members of the Committee for this opportunity. My name is Philip Hughes. I am here today for the U.S. Transportation Coalition for an Effective U.S. Customs Service. I am Vice President—Customhouse Brokerage, United Parcel Service Airlines. In my capacity as co-chairman with Adi Abel of Sea-Land Service, Inc., I am pleased to testify today on behalf of the Transportation Coalition on the operations of the U.S. Customs Service.

Our Coalition, which represents all modes of transportation, includes: (1) the Air Courier Conference of America; (2) the Association of American Railroads; (3) the Air Transport Association; (4) the American Trucking Associations; and (5) ocean carriers.

Our Coalition came together during legislative consideration of the Customs Modernization Act (the "Mod Act"). We worked closely with this Committee, the Customs Service and the Joint Industry Group to effect this long overdue overhaul of U.S. Customs laws. We recognized at that time that customs modernization and simplification is imperative to both the flow of international trade and drug and commercial enforcement. In addition, we recognized that the partnership between government and the private sector envisioned by the Mod Act is critical to legitimate commerce in our global marketplace.

We want to take this opportunity to commend Commissioner Weise for his extraordinary contribution first as Staff Director of the Trade Subcommittee helping business and government to achieve consensus on this important legislation and then as the head of Customs to implement broad new concepts which allow the Service to develop a fully automated commercial environment that will bring U.S. customs processing into the 21st Century. It is clear that these efforts will serve as a model worldwide as simplification and modernization efforts are proceeding in various international fora such as the WCO, APEC and the Western Hemisphere.

At the same time Customs was charged with the mandate to automate, simplify and modernize its procedures, it became clear that it was necessary to reorganize the over 200-year old agency and to redesign and restructure its core business-related activities. Again, Commissioner Weise rose to the challenge and should be praised for his leadership and vision. The process orientation of the reorganization is a major improvement in customs operations. We have seen good results at the port level but the reallocation of resources must continue to see the full benefits of the redesign.

Commissioner Weise recognized that effective enforcement requires sophisticated techniques such as risk analysis to accommodate legitimate trade vital to our econ-

omy. Customs administrations cannot ignore either enforcement or trade facilitation. In fact, to do so would be detrimental to both efforts. In these days of limited resources, Customs administrations must act "smart" to get at the contraband that harms our citizens and commercial fraud that injures our companies. Facilitation of legitimate trade allows Customs to focus its limited resources on these important issues.

It is vital to transportation and our customers, U.S. business and the American public, that these modernization efforts continue without any further delay. Thus, the next Commissioner must appreciate the complex but close interrelationship between enforcement and trade facilitation.

We are finally starting to realize the benefits of the Mod Act, with regulatory packages being put forth and automation efforts proceeding. However, because of the magnitude and volume of changes implementation of the 1993 legislation has been slow and somewhat painful for those who advocated customs reform. Thus, it is crucial that the next Commissioner continue Mr. Weise's good work. Delays or failure to implement the mandate of Congress to modernize and automate customs processing will cost our economy billions of dollars and will even hurt governmental enforcement efforts.

I would now like to address how transportation has worked in partnership with the Customs Service to improve enforcement and achieve high compliance levels and recap the status of the vortation.

Our companies have invested extraordinary sums of money to detect illegal contraband and to ensure proper revenue collection. For example, our express carrier members follow special procedures to provide advance information which allows Customs to utilize its risk analysis techniques prior to the arrival of cargo. Both the express and air carrier members have invested in expensive sophisticated technology including x-ray machines. Our vessel members have long participated in carrier initiatives to address the drug problem. Our trucking members have security measures in place to detect illegal drugs. Our Coalition urges implementation of NAFTA's trucking provisions because it will improve U.S. Customs border operations by simplifying the crossing process and reducing congestion at the border. This is good for Customs and bad for drug smuggling.

While we have expressed concern in the past about the pace of Mod Act implementation, we recognize that the massive overhaul of our Customs laws together with the required reorganization made it difficult to implement the statutory revisions that we strived so hard for. But progress is now being made with regulations being promulgated and automation systems work underway. The next Commissioner must be one who appreciates the significance of these efforts to the operations of the Customs Service and to international commerce.

As to the specific items, there are many ongoing automation initiatives. For many years, transportation has worked closely with Customs to develop these programs. Our concern today is that the various programs, such as ITDS, ACE, AMS, AES, be carefully coordinated to avoid duplication and inconsistency which is costly to both our companies and government. It is also imperative that adequate funding be provided for critical operational systems. We strongly urge that Customs be given access to the user fee trust fund for cargo facilitation programs such as the various automation efforts. Currently, there are many programs that are not being adequately supported, such as split shipments and in-bond. We, along with U.S. exporters, have expressed concern about the requirements of the Automated Export System ("AES"). The timing and quantity of data is not feasible in today's environment and does not improve enforcement of U.S. export control laws.

We are somewhat disappointed, however, about the prospects for certain provisions of interest to transportation. For example, summary manifesting of letters and documents, which would appear to be a non-controversial issue, has not yet been implemented. For some inexplicable reason, the U.S. Customs Service views letter and document shipments as posing significant enforcement risks. We submit that it is time for Customs to implement this Congressional mandate to reduce the manifesting burden for these low risk shipments and turn its attention to the shipments that truly pose a risk to drug enforcement. While we expect a notice of proposed rulemaking raising the dollar limit for informal entry processing for low value shipments, it has taken Customs 3 1/2 years to do so and it will take several more months to finally implement this simple but costs savings provision. Implementation of the $20 duty waiver for de minimis shipments is still in the very early stages of consideration. We have difficulty comprehending why it has taken Customs so long to move these items along.

Important work on recordkeeping is also ahead of us. Customs just published a Notice of Proposed Rulemaking on the subject. The burden of recordkeeping must be recognized and the requirements must be carefully tailored to ensure that the

minimum data or records be required to be maintained. The costs of record retention for unnecessary information for unnecessarily lengthy periods of time are astronomical. Statutory revisions to our recordkeeping laws may be required.

The Miscellaneous Trade and Technical Corrections Act of 1996 corrrected an anomaly in the law to allow Customs to provide daytime reimbursable services at courier hubs as is permitted at other courier facilities. Customs is now considering how to implement this correction. We are concerned that Customs is taking this technical correction as an opportunity to expand the range of services that are to be considered reimbursable. This must be carefully monitored. In fact, the entire reimbursable services program should be reviewed for obsolescence in light of just-in-time inventory practices used by business worldwide, which necessitates inspectional services outside normal business hours.

In sum, the Transportation Coalition stands ready to work in partnership with this Committee and the Customs Service to make the efficiencies envisioned by the Mod Act and reorganization a reality. Again, we commend Commissioner Weise for undertaking an ambitious agenda over his four year tenure and ask that the next Commissioner follow in his footsteps.

Thank you again Mr. Chairman for this opportunity to comment on the operations of the U.S. Customs Service.

Chairman CRANE. Thank you very much.

Ms. Ross, we understand that you were tied up testifying at another hearing. You were scheduled as first on our witness list. We will yield to you at this time.

STATEMENT OF SUSAN KOHN ROSS, MEMBER, BOARD OF DIRECTORS AND COCHAIR, CUSTOMS COMMITTEE, BORDER TRADE ALLIANCE, PHOENIX, ARIZONA

Ms. ROSS. Thank you, Mr. Chairman.

I am here today on behalf of the Border Trade Alliance, BTA, which was formed in 1986 by those who live, work and/or do business along the southwest border for the purpose of addressing the issues which are unique to doing business in that part of the country. BTA members are legitimate people from both sides of the border who engage in the purchase and sale of legitimate goods. Because we are focused only on the southwest border, we have a unique perspective regarding U.S. Customs. It can be either a barrier to trade or a facilitator, and we have had experience with both.

Our members are at the spot where many people see drug interdiction and cargo facilitation colliding head on. However, that has not necessarily been our experience.

The BTA has been a strong supporter of U.S. Customs in terms of its dual mission, which is drug interdiction and trade facilitation. We do not believe that these missions are contradictory, nor do we subscribe to the idea that one should be focused on at the expense of the other. We find the very same enforcement efforts which are directed to uncovering commercial fraud are often the same ones that are brought to bear to uncover illicit shipments of contraband, including drugs.

Recognizing that Customs efforts at drug interdiction will be enhanced if there is a public-private partnership, the BTA has been an early and strong supporter of the Business Anti-Smuggling Coalition, which is a program whose goal is to generate proven cargo security programs, developed by the private sector, which can be transferred from industry to industry, and focuses on minimizing

the likelihood of drugs or any other contraband or illegality from transiting with legitimate cargo shipments.

We want to briefly address today, given the time constraints, the status of the reorganization, implementation of the Mod Act, outbound concerns and trade facilitation. Our focus is on the rapid movement of legitimate cargo and people, which is key to the economic well-being of the southwest border region.

Cities on both sides of the border are tied together by many ties, including familial, cultural and social relationships. If goods cannot move to meet just-in-time inventory, or if people cannot transit the border to conduct legitimate business, the boom of commercial business will become a bust.

In the context of Customs reorganization, we are concerned that the Customs Service may have gone too far in attempting to streamline its operations. By eliminating both the regions and the districts, we have a situation where the only place where issues of uniformity can be addressed are at headquarters, because in many instances the port director is not sufficiently trained or is unwilling or unable to make the necessary decisions.

Because there is such a wide disparity in capabilities and decisionmaking amongst port directors, the Customs Management Centers, CMC, also do not operate as originally envisioned. CMC directors in San Francisco, San Diego, El Paso, and Laredo are particularly noted for their involvement with the trade. However, in Los Angeles the same does not occur. The CMC director is involved only by his attendance at industry functions. The fact is that the CMC directors respond to the needs of the trade and the capabilities of the port directors under their jurisdiction because headquarters is the only place where issues of uniformity can be resolved. We believe that the original idea of a point of contact for the trade at each CMC to deal with issues of uniformity should be revived in order to address this dilemma.

We are also concerned that because of the wide disparity in capabilities between the various port directors, there is a potential for an increase in port shopping. We know the goal is uniformity, but in practicality we know that does not happen. Large importers are greatly benefited through the use of account managers who basically fight their battles for them within the agency. In the case of those who do not have account managers, there is an attempt and at a selection of other ports because those other ports are thought to be easier to deal with.

Quickly, in the context of automation, our concern is that there are too many programs which overlap. We think Customs has done a good job in developing sophisticated targeting capabilities which allow the quicker processing of routine shipments, but there are too many programs. They operate differently in different ports.

The example we looked to to illustrate this is line release versus border cargo selectivity. One is preferred over the other, depending on the region of the country. And then we overlay something like the NATP Program, the North American Trade Prototype, and you end up having to reinput the same data a second time. We think that is problematic.

The Automated Export System creates all kinds of problems because of the requirement for advanced notification, which simply

doesn't work in the border context. We are concerned that there are too many blitzes causing inspections of too many shipments without the desired result of finding violations; at least desired by the Customs Service.

I want to just quickly deal with reasonable care, which is an area about which we are very concerned. We think in the absence of regulations, there is too much of an ability at the local level causing conflicting decisions from the same facts depending on the location.

We are concerned, finally, about what will happen when there are regular disagreements between the trade and a given expert and how that will be handled.

Finally, we want to put forth our proposal that we have used a number of times in the past and continue to think is a good option, and that is Unified Port Management. We believe that one organization should be in charge to control both personnel issues and issues of hours of operation.

With that, I am out of time. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Susan Kohn Ross, Member, Board of Directors and Cochair, Customs Committee, Border Trade Alliance, Phoenix, Arizona

The Border Trade Alliance (BTA) was formed in 1986 by those who live, work and/or do business along the Southwest border for the purpose of addressing issues which are unique to doing business in that part of the country. BTA members are legitimate business people from both sides of the border who engage in the purchase and sale of legitimate goods. Because we are focused on the Southwest border, we have a unique perspective regarding U.S. Customs. It can be either a barrier to trade or a facilitator. We have had experience with both approaches. Our members are at the spot where many people see drug interdiction and cargo facilitation colliding head-on. That, however, is not necessarily our experience. The BTA has been a strong supporter of the dual missions of U.S. Customs—drug interdiction and trade facilitation. We do not believe these missions are contradictory, nor do we subscribe to the idea that one should be focused upon at the expense of the other. It is our experience that the very same enforcement efforts which are directed to uncovering commercial fraud can, and often are, brought to bear to uncover illicit shipments of contraband, including drugs. Recognizing that Customs' efforts at drug interdiction will be enhanced if there is a public-private partnership, BTA has been an early and strong supporter of the Business Anti-Smuggling Coalition (BASC). BASC is a program whose goal is to generate proven cargo security programs, developed by the private sector, which can be transferred from industry to industry, and focuses on minimizing the likelihood of drugs or any other contraband or illegality from transiting with legitimate cargo shipments. In terms of the focus of today's hearing, we intend to address in brief a number of issues: Customs reorganization, implementation of the Mod Act, outbound concerns and trade facilitation. Our focus as an organization is that rapid movement of legitimate cargo and people is key to the economic well-being of the Southwest border region. Cities on both sides of the border are joined together by many ties, including familial, cultural and social relationships. If goods cannot move to meet just-in-time delivery or if people cannot transit the border to conduct legitimate business, the boom of commercial business will become a bust.

CUSTOMS REORGANIZATION:

In the context of Customs' efforts to reorganize, the BTA believes that Customs may have gone too far in attempting to streamline its operations. By eliminating both the Regions and the Districts, Customs has created a new set of problems for the trade and for itself. Whereas in the past there were fifty nine (59) localities (the Districts and the Regions) with which to deal in order to resolve problems, now there are 301 ports plus Headquarters. Given that the staff at Headquarters has been reduced, an awkward situation exists in that decision making responsibility has been delegated to the ports, but often the Port Director is not sufficiently trained or is unwilling or unable to make the necessary decisions. For example, is an individual inspector being overzealous? Is the position of the importer or customs

broker correct so that the involved Customs person should be overruled? If so, by and large, Port Directors are unwilling to take the needed steps.

Because there is such a wide disparity in capabilities and decision making amongst the Port Directors, the Customs Management Centers (CMC) also do not operate as originally envisioned. Some have no interaction with the trade and some have nothing but interaction with the trade. To name a few, the CMC Directors in San Francisco, San Diego, El Paso and Laredo are particularly noted for their involvement with the trade. However, in Los Angeles, the CMC Director is involved only by his attendance at industry functions. We mean our comment as a factual statement only, because each CMC Director is responding to the needs of the trade and the capabilities of the Port Directors under his/her jurisdiction. The problem this creates is Customs management is becoming overwhelmed because Headquarters is the only place where issues of uniformity can be resolved. The BTA feels that the original idea of a point of contact for the trade at each CMC to deal with uniformity issues should be revived to solve this dilemma.

Additionally, given the wide disparity in capabilities between the various Port Directors, the potential for an increase in port shopping exists. While Customs has uniformity as one of its goals, we know from experience it simply does not happen. The large importers who have been assigned Account Managers are delighted to have someone assigned by the agency to fight the uniformity battle for them. Those less fortunate look for other ports to ship through, because these other ports are perceived as easier to deal with.

MOD ACT IMPLEMENTATION:

Automation:

Turning next to implementation of the Mod Act, much can be said. Given limited time, we want to deal with automation and the status of the regulatory packages only. Many positive things have been accomplished as Customs has increased its reliance on automation. Recognizing in this era of ever-tightening budget constraints that a significant funding increase for Customs is not likely, the agency has developed more sophisticated targeting capabilities which result in the allowance of quicker processing for many routine shipments. As previously indicated, the ability to obtain quick release of high volume routine shipments is important to the border region's economic well-being.

There remain, however, several problem areas. One big concern is the number of different automation programs. For example, there is line release and border cargo selectivity. Different regions along the border prefer one program over the other, simply because of the processing time involved. It differs greatly from port to port. Of equal concern is the impact of then overlaying a program such as the North American Trade Prototype (NATAP). NATAP requires the inputting of some of the same data elements as either line release or border cargo selectivity. We would urge Customs to find ways to eliminate these duplicate data input situations.

AUTOMATED EXPORT SYSTEM:

Also troublesome is the fact that Customs often creates automation programs without truly appreciating their consequences. The Automated Export System (AES) is just such a program. We applaud the goal of the program which we understand to be the establishment of reliable export trade statistics. We, in the business, know that Members of Congress, Senators and others in and out of the Administration are making decisions about our relationships with key trading partners and currently are forced to rely upon what we know to be wholly unreliable trade statistics. Where we differ with Customs, as does most of the rest of the trade, is in the requirement that a great deal of data is required well in advance of exportation. In formulating this program, Customs has apparently overlooked the reality of trading at the land borders. A plant on the U.S. side of the border is sometimes only 30 to 45 minutes away from its sister plant on the Mexican side of the border. To require detailed information about a truckload ready for export and to require that information days or even hours before shipment is simply an impossibility. In certain circumstances, the information may not be known until the goods are actually shipped. In those circumstances, providing the required data elements even minutes in advance of export is problematic. Other elements of the trade have weighed in criticizing the problems the advance notice requirement causes in the last minute air shipment situation or delivery just as receiving in the ocean context is closing. The potential for damage to trade across the land border by this advance notice requirement is simply incalculable. Manufacturing will come to a halt.

BLITZES:

Another area of concern in the automation context is the number of blitzes different arms of Customs generate. Here our concern focuses on various programs which Customs develops that require goods to be inspected. We understand the need to periodically inspect goods. We in the trade recognize inspections help Customs insure that goods are legitimate. It also helps industry uncover internal improprieties. Where we have concern is the circumstance which periodically arises of an importer who has had a series of shipments inspected, often at a cost of $200 to $500 per inspection. No violations have been found. As a result, no further inspections are required for the reasons caused by the first blitz. However, a new blitz looking for different issues is immediately instituted, again driving up the cost of doing business and for no apparent tangible reason. Additionally, there are often times directives from Headquarters to inspect certain types of goods which are at odds with the information needed by local commercial personnel. The importer ends up caught in the middle, but it is the consumer who ends up bearing the additional cost.

REASONABLE CARE:

Next we turn to the status of the regulations implementing the Mod Act. As this Committee knows all too well, the Mod Act was signed into law at the end of 1993. With few exceptions, no final regulations have yet been published. In fact, for most areas of reform, not even proposed regulations have been published. We are pleased to see that Customs has engaged the trade in formulating these regulations. However, it appears to us that a better degree of prioritization is needed.

One overarching area of concern for us is the lack of a clear definition of "reasonable care." Informed compliance requires that Customs inform the trade what is expected. Reasonable care requires that the trade follow that advice. While Customs is to be commended for the many publications which have been issued, one area of grave concern to all the trade is—when will reasonable care be defined by the agency? We are mindful of the proposed regulations on this topic which were published in January 1996. Many in the trade are aware that Customs continues to have internal debates about the best way to define reasonable care—should it be through examples? a definition? general principles? While we appreciate the difficulty encountered in addressing this issue, there is a vacuum in terms of what the field is to do. As a result, we see inconsistent action occurring. There are penalties issued to importers which cite a lack of reasonable care simply because the importer continued to rely on a long established practice which Customs decided was now wrong. We have seen penalties issued to brokers in circumstances where the behavior complained of had no bearing on the harm about which Customs complains. We have seen brokers penalized not once but twice over the same set of alleged improprieties, each time relying on different statutes. In short, without a clear definition of reasonable care, there is no real understanding by the trade or Customs of what is expected.

USE OF EXPERTS:

Another open area is that of the use of experts. The Mod Act allows an importer to make full disclosure to his selected expert and then rely on that expert's advice to establish reasonable care. What is not clear is how Customs will respond if a series of importers all rely on the same expert and that expert habitually disagrees with Customs' point of view. We presume for purposes of this example that the expert is competent and the disagreement is legitimate. However, it is also unclear what will happen if the expert is incompetent. Is it really going to be enough to fully disclose and rely on the expert's opinion? At what point will Customs say the importer should have known the expert was wrong? In the absence of a clear definition by which all parties may govern themselves, it is only a matter of time before such a case arises because of the judgment call of a field officer.

UNIFIED PORT MANAGEMENT:

As a last point, we want raise the issue of Unified Port Management (UPM). BTA has long been an advocate of the idea that for the land ports of entry to work most efficiently, one agency needs to be in charge for personnel purposes. Our concept of UPM involves leaving the agencies retaining their respective substantive areas of expertise. We believe, however, that one agency needs to be in charge to respond to staffing and hours of operation issues. We are aware there are pilot projects in Buffalo and Nogales. We know the Buffalo program by an INS person and the Nogales program is headed by a Customs person. We understand these two pro-

grams have been moderately successful in bringing the various agencies together to discuss issues of common concern, but they do not go as far as the BTA proposes. In both pilots, each agency retained its original jurisdiction, including staffing. Therefore, as we understand the results, no real efficiency in transit or release time was obtained. The BTA believes that UPM offers the government an opportunity to streamline operations without the need for added funding because it makes one agency responsible for staffing and hours of operation.

CONCLUSION:

Overall, the BTA believes that Customs has been adept in its efforts to enter the 21st Century. The issue we find most troubling is that Customs has had to balance a number of competing requirements without any meaningful increase in its budget. We do not subscribe to the idea that throwing money at an agency solves any problem, witness our UPM proposal. We do, however, recognize that Customs has been given more and more responsibility and each additional responsibility has been complex in its implementation. We have mentioned several of those recently added responsibilities today: NATAP, reorganization and the Mod Act. To this list should be added such efforts as NAFTA and Uruguay Round implementation, along with new textile rules of origin and the international application of NATAP. It is easy to criticize any large organization. We think there are a number of areas in which Customs could improve, most notably in staffing determinations, the education and training of its personnel and the manner in which those personnel are evaluated and promoted, including measurement of trade facilitation in the employment evaluation area. Nonetheless, Customs remains near the top of the list in revenue collection and enforcement success. Its efforts should be recognized and acknowledged as suggestions are made to improve its operations.

Mr. HOUGHTON [presiding]. I am sorry I am sort of in and out. This is known as the Houghton shuffle.

Ms. ROSS. That is OK. I just got here, too.

Mr. HOUGHTON. I understand you two gentlemen have already testified.

Mr. Brauner, thank you very much.

STATEMENT OF HAROLD G. BRAUNER, CHAIRMAN OF THE BOARD, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC., NEW YORK, NEW YORK

Mr. BRAUNER. Mr. Chairman, I am Harold Brauner, president of Brauner International Corp. of Jersey City, New Jersey. I am the chairman of the board of the National Customs Brokers and Forwarders Association of America, NCBFAA.

This hearing has noted George Weise's impending retirement. No Commissioner has accomplished so much to enhance the mission of U.S. Customs. I would like to add the voice of the NCBFAA to the chorus of praise that has been heaped on Mr. Weise this afternoon.

As you have heard, these are times of tumultuous change at Customs and in the private sector. No longer are organizations vertical and hierarchical; no longer is the flow of commerce neatly segmented, nor are roles clearly predefined; and no longer is the pace of business governed by the movement of paper, but instead it is accelerated by tools of automation and communication. What remains constant, however, is the availability of the customs broker to expedite these processes, wading through complexity to simplify, streamline and assure detailed compliance with U.S. law.

We recognize and applaud Customs' efforts to keep pace in this environment. The Customs Modernization Act has given the Service various tools to meet these objectives. For example, informed

compliance has fixed the responsibility on Customs to consult with and listen to the public before then clearly establishing its standards and what it expects. In all but a few instances, Customs has bent over backward to consult with the importing public before implementation of new programs. We acknowledge what Customs has accomplished under very challenging circumstances, but we are a very demanding constituent and partner. Customs can do better, and we will be the first to suggest ways that this can be accomplished.

Customs has engaged in the restructuring to flatten its organization, realign its operations along functional lines, and empower its field organization. With 312 ports of entry, however, and no intermediary coordinating headquarters, greater independence from Washington also increases the potential for far less uniformity from one port to another.

From firsthand observation, the NCBFAA must tell you that this experiment is failing, and that lack of uniformity is causing delays in the release of merchandise that has significant consequences to the importing public. The problem and solutions lie at Customs headquarters, which is, in plain terms, thin. Staffing at headquarters must be returned to fiscal year 1995 levels, and while discretion may continue to reside in the field, policy and implementation must be coordinated at the headquarters level.

Customs is empowered by the Modernization Act to evaluate when the cost of collection exceeds the amount of revenue received and then waive that collection. Customs is presently considering establishing a floor that would require the Agency to forego collections of $20 or less, yet it has never conducted the analysis required to develop a cost-benefit ratio. In fact, that analysis would likely yield an opposite result. With 94 percent of all entries electronic, the cost of Customs in these instances is de minimis. Substantial revenues are being lost by this proposal.

Customs embarked on a program in which importers in targeted categories were solicited to become accounts with an account manager assigned by Customs. The requirements are so onerous and the benefits so small that there were few volunteers. Now Customs is no longer soliciting companies. Rather they are telling them that they are an account and will hear from the assigned manager.

We do not believe that this account system will yield any benefits for the Customs Service. As a matter of fact, the system will siphon off the best and brightest of Customs from the ports. The reality of commerce is importers use their broker to interface with Customs, and it is the broker who is best equipped to respond to Customs' requirements. Despite our repeated efforts, Customs has excluded the broker from this program, to the detriment of the importing public and Customs.

NCBFAA is hearing mixed reports on the future of Customs' new Automated Commercial Environment, ACE. While on one hand sufficient appropriate funds may in doubt, there is great concern about Customs' own commitment. We have heard reports of the parallel development of competing support systems, North American Trade Automation Prototype, NATAP, and of the current Automated Broker Interface, ABI, being starved, and of exclusion of the Automated Export System component. We hear no clearly ar-

ticulated vision of where Customs is going with development of ACE and ask that Customs report to the Subcommittee on automation in detail.

While you may hear from others on this subject of Automated Export System, it is important, Mr. Chairman, for you to know of NCBFAA support for Customs' initiation of the Automated Export System. The current paper-oriented shippers export system is woefully inadequate to meet the objectives of U.S. law. It is incomplete, it is ignored, and it is unmanageable.

AES provides a single point of contact in government for the filing of export data that will improve collections of revenue, export statistics and enforcement of a myriad of Federal export laws. We do not espouse delaying the flow of exports 1 minute, nor do we give carte blanche endorsement to every element of the Customs program. However, we are working closely with Customs' private sector resource group and firmly believe the service is on the right track. We think the objections can be resolved, but we also think that criticisms are highly overstated and that an automated system is necessary to bring this element of reporting into the 21st century.

Mr. Chairman, that concludes my remarks. I am honored by your invitation to speak and hope that NCBFAA can continue to work effectively with the Subcommittee in the future.

[The prepared statement follows:]

Statement of Harold G. Brauner, Chairman of the Board, National Customs Brokers & Forwarders Association of America, Inc., New York, New York

Mr. Chairman: I am Harold Brauner, President of Brauner International Corporation of Jersey City, New Jersey, and Chairman of the Board of the National Customs Brokers and Forwarders Association of America. In addition to its ocean freight forwarder members, NCBFAA represents U.S. licensed customs brokers who act as an intermediary between the importing public and the United States Customs Service. You are well aware of our special relationship with the Customs Service: we are uniquely situated to act as an extension of the Service, facilitating their collection of the revenues and ensuring that all the laws of the United States are enforced.

As you have heard, these are times of tumultuous change at Customs and in the private sector. No longer are organizations vertical and hierarchial; no longer is the flow of commerce neatly segmented, nor are roles clearly predefined; and no longer is the pace of business governed by the movement of paper but instead it is accelerated by the tools of automation and communication. What remains constant however is the availability of the customs broker to expedite these processes, wading through complexity to simplify, streamline and assure detailed compliance with U.S. law.

We recognize and applaud Customs' efforts to keep pace in this environment. The Customs Modernization Act has given the Service various tools to meet these objectives. For example, "informed compliance" has fixed the responsibility on Customs to inform the public of what it expects and to establish its standards; concurrently, it has put the responsibility squarely on the public's shoulders, where once informed of its obligations, importers and brokers must comply. In all but a few instances, Customs has bent over backwards to consult with the importing public before implementation of new programs. We acknowledge what Customs has accomplished under very challenging circumstances; however, we are a very demanding constituent and partner. Customs can do better and we will be the first to suggest ways that this can be accomplished.

BETTER UNIFORMITY

Customs has engaged in a restructuring to flatten its organization, realign its operations along functional lines and empower its field organization. With 312 ports of entry, however, and no intermediary coordinating headquarters (formerly the "regions"), greater independence from Washington also increases the potential for far

less uniformity from one port to another. From firsthand observation, NCBFAA must tell you that this experiment is failing and that lack of uniformity is causing delays in the release of merchandise that has significant consequence to the importing public. The problem and solutions lie at Customs Headquarters which is, in plain terms, "thin." Staffing at Headquarters must be returned to FY95 levels and, while discretion may continue to reside in the field, policy and implementation must be coordinated at the headquarters level.

COLLECTION OF DUTIES

Customs is empowered by the Modernization Act to evaluate when the cost of collection exceeds the amount of revenue received, and then waive that collection. Customs is presently considering establishing a floor pursuant to 321(a)3 that would require the agency to forego collections of $20 or less. Yet it has never conducted the analysis required to develop a cost-benefit ratio. In fact, that analysis would likely yield an opposite result: with 94% of all entries electronic, the cost to Customs in those instances is de minimis and substantial revenues will be foregone.

NATIONAL ACCOUNTS

Customs embarked on a program in which large importers in targeted categories were solicited to become "accounts" with an account manager assigned by Customs. The reception was insufficient for Customs' purposes and, now, instead Customs is "telling" importers they are an account (according to a Customs spokesman). We do not believe that this account system will yield any benefits for the Customs Service. The reality of commerce is that importers use their broker to interface with Customs. And, it is the broker who is best equipped to respond to Customs' requirements. Despite our repeated efforts, Customs has excluded the broker from this program, to the detriment of the importing public and Customs.

BROKER'S ROLE

Mr. Chairman, I appeared before you earlier this year to tell the committee about the resource that brokers provide the Customs Service. In summary, we provide a "multiplier effect" whereby a single broker with several thousand importer clients helps streamline interactions with the public, simplifying and adding to the reliability of Customs' data. We believe that Customs is not taking advantage of the licensed experts. Every broker has the authorization from the importer to act as its agent. We have suggested that there would be great savings in Customs' time, effort and efficiency by communicating electronically directly with the broker as the agent of the importer.

BROKERS EXAMINATION

On a number of occasions we offered to prepare the questions for the examination, requesting only reimbursement for the Association's expenses, at an amount far less than is presently being spent by the Customs Service. Instead, the Office of Personnel Management was given the task of both preparing and administering the examination. While OPM are experts in administering examinations and evaluating the questions, they are not experts on the subject matter. We are prepared to carry out the preparation assignment, provided we receive reimbursement.

Furthermore, Customs needs to move expeditiously in providing a "make up" examination, thereby increasing the availability of examination to prospective brokers.

AUTOMATION

NCBFAA is hearing mixed reports on the future of Customs' new Automated Commercial Environment (ACE). While on the one hand sufficient appropriated funds may be in doubt, there is great concern about Customs' own commitment. We have heard reports of he parallel development of competing support systems (NATAP), of the current Automated Broker Interface (ABI) being starved, and of exclusion of the Automated Export System component. We hear no clearly articulated vision of where Customs is going with development of ACE and ask that Customs report to the Committee on automation, in detail.

AUTOMATED EXPORT SYSTEM

While you may hear from others on the subject, it is important, Mr. Chairman, for you to know of NCBFAA's support for Customs' initiation of the Automated Export System. The current, paper-oriented Shippers Export System is woefully inad-

equate to meet the objectives of U.S. law: it is incomplete; it is ignored; it is unmanageable.

AES provides a single point-of-contact in the government for the filing of export data that will improve collections of revenue, export statistics, and enforcement of a myriad of federal export laws. We do not espouse delaying the flow of exports one minute. Nor, do we give a carte blanche endorsement to every element of Customs program; however, we are working closely with Customs' private sector resource group and firmly believe that the Service is on the right track.

We think that objections can be resolved—but we also think that criticisms are highly overstated and that an automated system is necessary to bring this element of reporting into the 21st Century.

Mr. Chairman, that concludes my remarks. I am honored by your invitation to speak and hope that NCBFAA can continue to work effectively with the Committee in the future.

Mr. HOUGHTON. Thank you, Mr. Brauner.

We are honored to have you here, Mr. Hughes, Mr. Bobeck, Ms. Ross. I am not going to ask any questions. Do you have any specific statements you would like further to enter into the record?

Mr. BOBECK. If I could, I would like to make one statement, Mr. Chairman. There are two matters that are very important to the automobile manufacturers on which we may seek the assistance of the Subcommittee with legislation. The first is interest payable on refunded NAFTA duties. The issue here is putting importers and the government back on equal footing when it comes to paying interest on refunded NAFTA duties. Simply put, importers must pay interest on underpayments of duty, and the government must pay interest on overpayments of duty. In other words, interest is payable for the period that one party has the use of the other's money. However, under last year's Miscellaneous Trade and Technical Corrections Act, Customs received basically a shorter interest period, so we would like to see that put back.

Mr. HOUGHTON. You feel it should be a legislative process?

Mr. BOBECK. Yes.

A second related issue is refund of merchandise processing fees for NAFTA goods, which I discussed earlier in my testimony.

Mr. HOUGHTON. I am sorry I didn't hear it. Thank you very much.

Anybody else got anything?

Ms. ROSS. If I could, Mr. Chairman, the issue that the Border Trade Alliance will be putting forward, and I understand the legislative package may come through soon, is on Unified Port Management. Our concept of that is——

Mr. HOUGHTON. What is that again?

Ms. ROSS. Unified Port Management. The concept behind it is that each of the agencies with technical expertise will retain that expertise. However, we believe that one agency should be put in charge to deal with issues of personnel and hours of operation. There are currently——

Mr. HOUGHTON. This is in order to make the border crossing more efficient?

Ms. ROSS. Correct.

There are currently a couple of pilot projects going on, one in Nogales and one in Buffalo, but those don't really give the individuals involved in running them the kind of discretion that we are

talking about. What we find is that too often one agency or the other has problems staffing at the times of peak need. We think if there could be better coordination on that, it would be quite helpful.

Mr. HOUGHTON. OK.

Mr. BRAUNER. The NCBFAA would like to enter into the record a written statement of some answers of questions that the Subcommittee proposed to us.

Mr. HOUGHTON. That will be perfectly possible. Thank you very much for taking the time to be here.

[The following questions were subsequently submitted by Chairman Crane to the members of the panel:]

Responses to Chairman Crane's Questions from the National Customs Brokers & Forwarders Association of America

1. What is your view on Customs' proposed regulations regarding record keeping requirements?

Generally, the provisions track the statute. However, with regard to documents which must be kept under 19 USC § 1509(a)(1)(A) which and subject to penalties, the Service's approach is much too restrictive. Under the Customs regulations, these documents are required to be submitted at the time of entry. Historically, prior to the Mod Act, submission of many of these documents was routinely waived by the Ports and often were never even obtained by the importer. Certainly, if they are necessary for determining the valuation, classification, etc., of imported merchandise, the Import Specialist would require they submission prior toliquidation of the entry.

The record keeping regulations require that the (a)(1)(A) documents be maintained for five years. The failure to produce them upon demand during this five year period subjects the importer to the chilling statutory penalties. This serves no purpose other than to be a "gottcha" which can be used by the Customs Auditors. Customs has the authority to reduce the period for maintaining these records until liquidation and we have urged them to do so. In that Customs has not done this, we urge the Congress to amend the statute accordingly.

2. How have Customs changes to the role and function of the Customs Management Centers (CMC's) changed the way in which brokers operate at the port level? Are brokers permitted to operate along CMC geographic lines as they were under the District?

As originally conceived, the CMC's are "transparent" to the private sector. They serve the various ports in connection with budgets, training and management matters and do not interface with the public.

At the request of the NCBFAA, Customs adopted regulations which keep the geographic boundaries for broker permits as they were prior to the Mod Act; supervision of the broker's activities are handled by the "full service" port in that former district.

3. How has Customs reached out to the brokers to implement the provisions of the Customs Modernization Act? Is it your sense that Customs is trying to reduce the burden of its regulations on industry?

As stated in our testimony, in connection with national accounts, despite our repeated requests, Customs made no effort to see that importers were told that they could invite their broker(s) to any meetings with Customs, if they chose to do so. In some instances we found that the policy was to see that the broker was excluded.

We believe that the provisions of the Modernization Act require that Customs implement more, not less, regulations. For instance, the new provisions covering NEP, reconciliation, periodic payment, the (a)(1)(A) list, etc., require new regulations, in addition to those that already exist. This obviously places greater burdens on the importing public.

4. Should Customs issue a separate for each port, or should there be a National Permit?

Under the understanding we reached with the Customs Service, the provision in section 1641 for a "national permit" is limited to "remote location" filing. As stated in (2) above, the area boundaries for permits are maintained as they were before passage of the Mod Act.

5. During the debates over the Customs Modernization Act, we were assured that Customs Management Centers would never be involved in operational dealings rel-

ative to actual Customs entries. Has this, in fact, occurred? How have the CMC's affected the role of the brokers at the ports of entry?

Customs has remained true to its word. CMC's play no operational role with regard to entries. [See, also, our response to (2) above.]

Responses to Chairman Crane's Questions from the U.S. Transportation Coalition for an Effective U.S. Customs Service

1. It is my recollection that the Customs Modernization Act encouraged Customs to raise the informal entry processing limit for low-value shipments. It is discouraging to learn that years later Customs still has not implemented this provision. What can the Subcommittee do to expedite Customs' handling of this matter?

It is our understanding that the Customs Service will finally be publishing its Notice of Proposed Rulemaking raising the informal entry limit, possibly as soon as next week. We ask that the Subcommittee encourage the Customs Service to consider any comments as expeditiously as possible given the long delay in implementation and because Customs has already considered comments submitted in response to its announcement to raise the informal entry limit published on the Customs Electronic Bulletin Board ("CEEB"). Certainly, it should not take as long to finalize the regulation than the last time Customs raised the informal entry limit, which was done without the benefit of a CEEB notice and took 7 months between publication of the Notice of Proposed Rulemaking and the final rule in the Federal Register.

2. Summary Manifesting of letters and documents does appear to be a non-controversial issue. In your experience, do letters and documents pose a significant enforcement threat? How much would you estimate it costs the express industry each year to provide individual manifesting for letters and documents?

It is ludicrous to believe that letter and document shipments pose a significant enforcement risk. The facts simply do not bear this out. Unfortunately after 5 years, we are still at an impasse with the Customs Service on this sensible procedure. The practice of summary manifesting, which had been utilized at some ports, was codified by the Mod Act in 1993. Indeed, the failure to implement this provision is also very disappointing. There is no excuse for Customs to refuse to implement. The crux of the problem stems from a belief by the Customs Service that letter and documents must be bagged by each country separately for effective enforcement. The express industry has explained ad nauseam to the Customs Service that the law provides them with every necessary control to stop all shipments if they want to examine shipments from a particular country. Thus, express companies have every incentive to segregate letter and document shipments from high risk countries from the rest of the world. However, our express members have also explained to the Customs Service that individual bagging does not work with our operations. Thus, the Customs Service does not need to require separate bagging by each country for effective enforcement. We think that Customs should direct its attention to higher risk issues and implement the will of Congress with regard to letters and documents. The annual costs to our industry for providing individual manifesting for letters and documents is approximately $5 million.

3. In your written testimony you also expressed concern about the requirements of the Automated Export System (AES). You state that the timing and quantity of data is not feasible in today's environment and does not improve enforcement of U.S. export-control laws. What are your industry's specific concerns about AES?

First of all, we want to make it absolutely clear that our Coalition members heartily endorse automation for exports. We also fully support the goals of effective export control enforcement and the collection of accurate statistics. However, we do have problems with AES, as currently formulated by Customs. Consequently, our members have been working with the Trade Resource Group ("TRG") to develop an alternative to Customs' proposal. At this time, Customs and Census wants information predeparture. This does not work for exporters because the information has not been finalized. It also does not work for certain modes of transportation, such as our air and air express members because of the time constraints of their service. The AES program must be developed to accommodate the different modes of transportation. Basically, Customs is trying to replicate the customs import entry process, which is entry specific, for exports. This simply does not work for exports and would have a detrimental impact on U.S. companies exporting goods worldwide. The vast majority of exports are legitimate and are not controlled. In any case, the Commerce Department has regulations in place to ensure full compliance. Therefore, a

transaction by transaction approach is neither effective nor necessary. We would suggest that AES be modified to conform to the timing and data ownership of the business process. Any new automated reporting system should provide exporters with a post-departure reporting option. This would not compromise the accuracy of statistical data. In fact, it should improve accuracy since the reality of export business today is that the SED is not available for exporters and many modes of transportation prior to loading. Moreover, carriers should be responsible for reporting transportation data and exporters should be responsible reporting commodity data. Finally, AES should be developed to offer tangible benefits to the trade, such as those envisioned by the International Trade Data System ("ITDS") including one-stop shopping to provide all data elements for all government agencies and possible use of data for foreign import clearance purposes.

4. I am concerned about a statement in your written testimony that Customs may be making an overly broad interpretation of a provision which was included in the Miscellaneous Trade and Technical Corrections Act of 1996, which allows Customs to provide daytime reimbursable services at courier hubs. In what way is Customs using this technical correction as an opportunity to expand the range of services that are considered reimbursable?

This technical correction of the user fee law simply corrected an error in the law which prevented Customs from providing daytime reimbursable services when requested at courier hubs as they do at other courier facilities. During legislative consideration of this technical amendment prior to inclusion in the 1996 Technical Corrections bill, the Customs Service and the industry addressed the issue of which services are properly reimbursable under 19 U.S.C. 58c in draft report language. In this regard, it was stated:

—This amendment is intended to make a technical correction to existing law (19 U.S.C. 58c) to clarify that reimbursable services may be provided by Customs to centralized hub facilities during daytime hours as they are currently provided to express consignment carrier facilities. The amendment also clarifies that services related to the release determination, such as the costs of Customs inspectors and aids, canines and entry data processors, are reimbursable regardless of whether they are performed on site or not. In many cases these services are not provided at the express consignment carrier facility or centralized hub facility but are related to the release determination and, therefore, are properly reimbursable. It is not intended that the services subject to reimbursement pursuant to 19 U.S.C. 58c are to be expanded beyond those related to the release determination if such services are already covered by general user fees under 19 U.S.C. 58c(a). Services covered by this amendment continue to be the same services subject to reimbursement prior to the effective date of these amendments.

While we were initially concerned that Customs was seeking to bill for services beyond those necessary for release, there are indications that Customs intends to abide with the understanding reflected in the draft report language. This should be carefully monitored. We are also concerned that Customs intends to bill for services retroactively to the effective date of the 1996 Technical Corrections bill. To our amazement, we believe that Customs is taking the position that this provision does not require implementing regulations, as it has required for the raised de minimis and raised informal entry limit.

We also believe that the entire reimbursable program should be revisited. The premise for reimbursement is that Customs is rendering special services. In some ports, express industry business has risen to in excess of 50 percent of the volume. Thus, at some ports express business cannot be characterized as a special service but actually constitutes regular customs business subject to user fees which would more than cover the services provided.

5. In your written testimony, you describe measures taken by the express couriers to provide advance information which allows Customs to utilize its risk-analysis techniques prior to the arrival of cargo. Could you elaborate on these carrier initiatives to assist Customs in its enforcement mission?

Under the Express Consignment regulations, 19 C.F.R. Part 128, the express industry provides manifest data prior to the arrival of merchandise. The industry is capable of providing such information at this time because of the substantial investments it has made in automation. This enables Customs to utilize enforcement techniques such as risk analysis that have come to be internationally recognized as necessary for the volume of trade as we enter the 21st Century. The industry has also worked closely with the Customs Service at high risk entry points, providing x-ray equipment for the detection of illegal contraband.

6. In your written testimony, you addressed the issue of record keeping requirements. Given that Customs has recently issued new regulation which expand the record keeping requirements for importers and brokers, what recommendations can

you make to this Subcommittee that would help reduce the required record keeping to the maximum extent possible?

Customs has recently issued a Notice of Proposed Rulemaking on recordkeeping. We will be commenting on the NPRM as our members have done informally in the past with regard to this subject but we note for the record here that there will be issues, which may require legislative action. Recordkeeping requirements under the law are the same regardless of the type of import transactions and to our knowledge this has never been reviewed. We believe that some fine tuning is in order now that Customs is implementing the Mod Act recordkeeping requirements including significant penalties for failure to keep key entry information. Recordkeeping requirements and retention periods should be tailored to the type of entry and the particular party submitting the information. At the present time, there is no symmetry between the type of entry and the particular requirements and record retention periods. For example, the same recordkeeping requirements and retention periods apply to de-minimis shipments as those which require formal entry. There is no reason to require companies to keep such detailed information for 5 years when Custom compliance efforts will be done at the time of entry for these very low value shipments. The costs of the retention are astronomical. In addition, Custom recordkeeping requirements and retention should follow what is done in the normal course of business.

7. Remote filing is now possible under the Mod Act, meaning that a customs broker does not have to physically file an entry at the port where the merchandise is arriving. Is there sufficient grounds, given the enforcement headache, to eliminate the in-bond program?

The in-bond program is an important mechanism for in-transit shipments. There is no reason to enter such shipments for consumption since they never the commerce of the United States. In-bond safeguards the revenue while obviating the need to go through the formalities of filing consumption entries with Customs.

We hope that you find these responses helpful in your assessment of the operations of the Customs Service. Should the Subcommittee have any further questions, we would be pleased to address them.

Responses to Chairman Crane's Questions from the Border Trade Alliance

1. In your written testimony, you suggested that Customs may have gone too far in attempting to reorganize and streamline its operations. Could you elaborate on this criticism? Please explain, for example, what you mean by port directors being "unable or unwilling to make necessary decisions."

Reorganization: Customs has empowered the ports to independently make decisions. As a result, there is no specific group or section within Customs where issues of uniformity can be addressed by the trade except at Headquarters. The BTA thinks the concept of an individual at each Customs Management Center (CMC) whose function it is to deal with the trade on such issues should be resurrected and implemented. Otherwise, an already streamlined Headquarters staff will become overburden with issues which can often be successfully resolved by field personnel.

We recognize, of course, that much of how well a port is managed depends on the skills, temperament and cohesion of the staff. A key ingredient is the leadership skills of the Port Director and those skills vary greatly between Port Directors. Often times the natural rivalry between different elements of Customs is well-balanced by strong leadership. The lack of it frequently allows one element of Customs to make the key decisions within the port at the expense of other segments of Customs and/or the trade. As a result, we see big differences in how well ports are being managed. In some cases, the Port Director is more vigorous in exercising his/her management position. In others, the Port Director is passive and often unwilling to take a position which overrules any of the people under his/her management, even when the position involved is contrary to policy or otherwise obviously questionable.

We find that the Port Directors as a group are well-meaning and well-intentioned Customs employees. Many are highly skilled, capable and effective managers. However, the biggest problem many of them face is a lack of training in how to manage. For many years the Port Directors relied on the District Directors who supervised them. With reorganization, it appears they were let lose to manage without benefit, in some instances, of the necessary skill sets. An example of the lack of necessary training is evident from the wide disparity in terms negotiated with the various National Treasury Employees Union (NTEU) locals.

Further, a new development for Customs is the concept of process owners. In many situations, the process owner "owns" the process but often does not have or does not use the authority that goes with his/her position. As a result, decision making for both complicated and uncomplicated issues has the potential to become a major problem.

2. I share your concern about the problem of "port shopping" by importers searching for the port that offers the most favorable ruling for their merchandise. Do you feel that the Customs reorganization has contributed to this problem? What do you feel Customs can do to improve the uniformity of decisions and operations at the ports of entry?

Port Shopping: Customs reorganization has contributed to the port shopping problem to the extent that if an importer is unable to resolve an issue (operational or financial) at one port, there is a great temptation to move his transactions to another port.

Uniformity of decisions and operations could be addressed in very practical ways. Customs could do a better job of providing information about policy situations on a more regular basis to all its personnel and the trade and then insure that there is compliance with that policy. We are aware that Customs has begun a series of port councils, i.e. meetings amongst selected port directors with similar problems seeking ways in which to resolve those problems. We see this as a positive step. However, the best way to insure uniformity is for Customs to provide more training and follow-up and include conformity with policy and facilitation of trade in a practial and legal fashion as part of its personnel evaluations.

Related Labor Issues: Additionally, BTA would suggest that the national NTEU contract include uniform provisions about staffing at similarly situated ports. In a border environment, the cause of crossing delays often can be directly attributed to staffing levels. It appears to us that two land border ports of similar size should have similar staffing levels. However, our review of the local NTEU contracts reflects such not to be the case. It is important to leave individual inspectors free to use their intuition and expertise regarding the clearance of individuals or shipments. However, comparable staffing would address equal treatment between the ports. Uniformity of staffing levels for similar functions would also be helpful.

3. What suggestions could you make on how to streamline Customs' facilitation of trade along the border? Do you think a Unified Port Management will make border crossing more efficient?

Unified Port Management: The Border Trade Alliance (BTA) has contended for some time that Unified Port Management (UPM) would greatly assist trade facilitation. The BTA concept of UPM is that the substantive jurisdiction of each federal agency remains with that agency. What would change is that one agency would have responsibility to manage the port for administrative purposes, e.g. staffing, hours of operation, and the like.

BTA believes that by streamlining administrative functions, the ports are in a better position to respond to peak hours of operation, whether the personnel involved work for Customs or any of the other agencies.

Related Labor Issues: BTA wishes to reiterate here its concerns regarding comparability of staffing at similarly situated ports.

4. What is the experience of your members with regard to drugs being smuggled into the U.S. through commercial cargo? Could you provide the Subcommittee with an assessment of the successes and failure of the Line-Release Program?

Drugs: Our members have not had their legitimate shipments used to smuggle drugs. Despite this fact, we have discussed the question of drug smuggling with contacts within the law enforcement community. All concede there is no "hard" evidence to support the oft-quoted statement that 70% of all drugs entering the U.S. are smuggled through Mexico. Nonetheless, we recognize the perception that a large quantity of drugs is being imported into the U.S. through Mexico. We are also concerned that the discussion about drug interdiction seems to occur divorced from any discussions seeking to resolve the underlying causes giving rise to heightened domestic demand for illicit drugs.

In response to the perceptions which persist, the BTA has taken a pro-active role and assumed a leadership position in the formation and expansion of the Business Anti-Smuggling Coalition (BASC), a public-private partnership which focuses on cargo and personnel security issues as a means to lessen the likelihood of the use of legitimate cargo to smuggle contraband or other illegalities into the U.S.

LINE RELEASE:

Line release has had a positive affect in the facilitation of trade. It was originally designed to allow the expedited clearance of routine low-risk goods from well-established and pre-screened importers. The program has now been enhanced by the Land Border Carrier Initiative which pre-screens truckers and drivers. We do not think line release has been a failure, although its use has been expanded far beyond its original intention in terms of the number and scope of shipments approved under the program. In many border communities, Border Cargo Selectivity (BCS) has become more popular as a means to expedite the release of cargo. The advantage of BCS is that it includes all types of commodities and importers.

Regardless of the program which is employed, Customs is faced with the daunting task of ever-increasing quantities of shipments without corresponding funding or personnel increases. As such, it must continue to develop programs which allow it to pre-screen companies and their goods. Risk assessment and targeting will greatly enhance the ability of Customs to perform its dual mission of trade facilitation and law enforcement. Line release and Border Cargo Selectively are simply two programs in a necessarily ever- increasing arsenal of tools available to Customs, any one of which in the abstract is susceptible to criticism.

5. What do you see as the differences between the Customs Management Centers (CMCs) and the regional offices which existed prior to the Customs Modernization Act? Do you feel that ports of entry located near CMCs receive better treatment than ports in more remote locations?

With the former regional offices, there was more interaction between its personnel and the trade in such areas as insuring uniformity and providing a less parochial operational point of view. With the CMCs, the involvement of the Director with the trade is wholly dependent upon the strength of the individual Port Directors under his/her jurisdiction.

The regions also provided a means for Customs, on a broader scale, to come to know individuals and companies within the trade community so as to be able to identity the good from the bad actors. While Customs is still able to do so by communication between the ports, a great deal more effort may need to be expended. Additionally, the relationship developed between the trade and the regional personnel often allowed for the free-flow of ideas between equals which led to practical and legal problem resolution. Under the current structure, the port is only answerable to the CMC, which supposedly has no interaction with the trade, thereby putting the trade in a position where the only place it can turn for problem resolution is to Headquarters.

We have seen nothing to suggest that one port is benefiting over another dependent on proximity to a given CMC.

6. Are you concerned about the controls Customs has in place to protect innocent third parties under its civil asset forfeiture authority?

BTA's members have not been involved with the civil asset forfeiture laws. However, individual attorneys have had experience representing clients who have suffered under this procedure. In the monetary seizure situation, we recommend that Customs develop a procedure which routinely allows simultaneous disposition of the civil and criminal cases with full disclosure to defendants of the consequences of a guilty plea.

Mr. HOUGHTON. Now, Mr. Rakowsky. Please proceed, Mr. Rakowsky. Nice to have you here.

STATEMENT OF ANDREW R. RAKOWSKY, PRESIDENT, NATIONAL SECRETARY AND CUSTOMS SERVICE AGENCY, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION, EAST NORTH PORT, NEW YORK

Mr. RAKOWSKY. Thank you sir. Thank you for having me.

Chairman Crane, Members of the Subcommittee, ladies and gentlemen, my name is——

Mr. HOUGHTON. That is not my name.

Mr. RAKOWSKY. Yes, I know, sir. Mr. Houghton. It is a matter of protocol.

Mr. HOUGHTON. That is OK. I will be Mr. Crane for the day.

Mr. RAKOWSKY. My name is Andrew Rakowsky. I am presently employed as a special agent for the U.S. Customs Service in Newark, New Jersey. I have been employed by the Customs Service as a criminal investigator for approximately 14 years. I also serve as the national secretary and Customs Service Agency president for the Federal Law Enforcement Officers Association, FLEOA, which is a voluntary, nonpartisan, professional association representing approximately 13,000 Federal law enforcement officers and special agents from over 52 agencies of the Federal Government.

Our members include management as well as rank and file from the U.S. Customs Service special agents; personnel from the Air and Marine Interdiction Divisions; U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; Internal Revenue Service Criminal Investigations; Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service; U.S. Marshals Service; and a myriad of other Federal agencies, which include inspector generals from Interior, Justice, Labor, and Treasury.

It is my privilege to come before this Subcommittee as a representative of FLEOA. I wish to compliment this Subcommittee on Trade, and in specific Congressman Crane and Congressman Shaw for authorizing appropriations for each of fiscal years 1998 and 1999 for the U.S. Customs Service. This will allow $2.5 million to be spent rebuilding the U.S. Customs Service air and marine interdiction programs, as well as $2.5 million which would be dedicated to law enforcement activities and increasing the overall staffing levels of special agents who investigate counternarcotics and antimoney-laundering activities.

FLEOA hopes this Subcommittee's strong message of support of the Customs Service is an indication of things to come.

Also at this time we would like to publicly express our sincere thanks to the Commissioner George Weise for many years of dedicated service to the Federal Government.

For the past several years, the Office of Investigations, which includes special agents, air interdiction officers, Customs pilots, marine enforcement officers, have been cut back drastically. For a variety of reasons, the Customs Service has allocated those positions and resources to places like the southwest border in support of Operation Hardline and Puerto Rico in support of Operation Gateway.

FLEOA again supports and applauds the Customs Service commitment to those successful operations. However, we also believe that in light of NAFTA, the Office of Investigations must also expand its resources, not just to include the southwest border and Puerto Rico, but every inland office, including Florida, the New York area and California, that also focuses on the continued and growing threat of smuggling and crime being imported through our borders into the United States.

The criminal investigators of the Custom Service are among the best in the world. Besides conducting investigations of major narcotics trafficking and money laundering organizations, they conduct criminal and civil investigations pertaining to child pornography, terrorism, weapons smuggling, intellectual property rights viola-

tions, organized crime, and a host of U.S. laws which Customs enforces for other Federal, State, and local law enforcement officers.

Of particular concern to this Subcommittee are the fraud investigations which help protect the American industry and the consumer from illegal practices of foreign nations and corporations. It is important that this Congress understands the dedication and lifelong commitment that each law enforcement officer has made to the Customs Service. This is not just a job, it is a way of life for us.

FLEOA believes three things must happen in order to get the Office of Investigations back on track. We offer these three suggestions for your consideration: First, Customs must hire agents and investigative support personnel in order to function with peak efficiency and to bring it back to its 1989 through 1992 staffing levels; second, Customs must be funded supplementally by Congress, and it must help us repair its infrastructure; and third, Congress must fully fund the Office of the Treasury Under Secretary for Enforcement. Under Secretary Kelly must have the resources and staff to have oversight of the Office of Investigations as well as other Treasury agencies, such as Secret Service, ATF, and IRS, which make up 40 percent of Federal law enforcement.

Constrained resources in terms of both funding and staffing levels must be addressed by this Congress. FLEOA believes that by attending hearings such as this, Congress will get a clear-cut perspective on the needs of our personnel who wage a daily battle against crime.

I thank this Subcommittee very much for inviting FLEOA to testify. I now look forward to answering any questions, sir.

[The prepared statement follows:]

Statement of Andrew R. Rakowsky, President, National Secretary and Customs Service Agency, Federal Law Enforcement Officers Association, East North Port, New York

Chairman Crane, Members of the Subcommittee, Ladies and Gentlemen:

My name is Andrew Rakowsky. I am presently employed as a Special Agent for the United States Customs Service Office of Investigation in Newark, New Jersey. I have been employed by the Customs Service as a criminal investigator for approximately fourteen years. I also serve as the National Secretary and Customs Service Agency President for the Federal law Enforcement Officers Association (FLEOA), which is a voluntary non-partisan professional association representing approximately 13,000 Federal law enforcement officers and Special Agents from over fifty two agencies of the Federal Government. Our members include management as well as the rank and file from U.S. Customs Service Special agents and personnel from the Air and Marine Interdiction Division, the U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; Internal Revenue Service—Criminal Investigations and Inspection; Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service; U.S. Marshals Service; Postal Inspection Service; Naval Criminal Investigation Service; the Bureau of Diplomatic Security in the State Department; U.S. Park Police—DOI; Bureau of Land Management—Special Agents and Rangers; Defense Criminal Investigative Service and the Officers of Inspector General at the following departments: Agency of International Development, Agriculture, Commerce, Defense, Education, Energy, Environmental Protection Administration, Federal Aviation Administration, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Accounting Office, General Services Administration, Health and Human Services, Social Security Administration, Housing and Urban Development, Interior, Justice, Labor and Treasury.

It is a privilege for me to come before this subcommittee as a representative of FLEOA. I want to compliment the subcommittee on Trade and in specific Congressman Crane and Congressman Shaw for authorizing appropriations for each of fiscal years 1998 and 1999 for the U.S. Customs Service. This will allow $2.5 million to

be spent rebuilding the U.S. Customs Service Air and Marine Interdiction programs, as well as $2.5 million which would be dedicated to law enforcement activities and increasing the overall staffing level of Special Agents who investigate counter narcotics and anti-money laundering activities.

I also wish to publicly express our sincere thanks to Commissioner George Weise for his continued support and dedication to the law enforcement mission of the Customs Service. FLEOA hopes that this subcommittee's strong message of support of the Customs Service is an indication of things to come.

For the past several years, the Office of Investigations, which include Special Agents, Air Interdiction Officers, Pilots and Marine Enforcement Officers has been cut back drastically. For a variety of reasons the Customs Service has allocated those positions and resources to places like the southwest border in support of Operation Hardline and Puerto Rico in support of Operation Gateway. FLEOA supports and applauds the Customs Service commitment to these successful operations.

However, we also believe that in light of NAFTA the Office of Investigations must also expand its resources not just at the southwest border and Puerto Rico but at every-in-land office that also focuses on the continued and growing threat of smuggling and crime being imported through our borders into the United States.

The criminal investigators of the Customs Service are among the best in the world. Besides conducting investigations on major narcotics trafficking and money laundering organizations, they conduct criminal and civil investigations pertaining to child pornography, terrorism, weapons smuggling, intellectual property rights violations, organized crime and a host of United States laws which Customs enforces for other Federal, state and local law enforcement agencies. Of particular concern to this subcommittee are the fraud investigations which help protect American industry and the consumer from illegal practices of foreign nations and corporations.

It is important that Congress understands the dedication and life-long commitment that each law enforcement officer has made to the Customs Service. This is not just a job, it is a way of life.

FLEOA believes that three things must happen in order to get the Office of Investigations back on track. We offer these three suggestions:

(1) Customs must hire agents, and investigative support personnel in order to function with peak efficiency and to bring it back to its 1989–1992 staffing levels;

(2) Customs must be funded—supplementary by Congress and it must repair its infrastructure;

(3) Congress must fully fund the Office of the Treasury Under-Secretary for Enforcement. Under Secretary Kelly must have the resources and staff to have oversight of the Office of Investigation as well as the other Treasury agencies, such as the Secret Service, BATF and IRS, which make up 40% of federal law enforcement.

Constrained resources in terms of both funding and staffing levels must be addressed by this Congress. FLEOA believes that by attending hearings such as this, Congress will get a clear cut perspective on the needs of our personnel who wage a daily battle against crime.

I thank you for inviting FLEOA to testify and I now look forward to responding to any questions you may have. Thank you.

Mr. HOUGHTON [presiding]. Thank you very much, Mr. Rakowsky.

You know, the Congress did allocate more funds, and we are in a constant bind. As you know, we are trying to balance the budget, and unless we really dig into the entitlements, which I think we are not ready to do yet, ultimately we will have to do that, then other people have to come to the party. There have got to be ways that you can do your job and we can help you to do your job without going all out and funding every particular operation in this area.

The thing I worry about is not so much the funding, although I am sure that is uppermost in your mind as far as these three areas, but the fact that so many of the agents now—something like half in the next 18 months—are eligible for retirement.

Mr. RAKOWSKY. About 60 percent, from what I am told.

Mr. HOUGHTON. Let's put the money aside. Is there a proper recruitment policy? Did you see enough going on in that area?

Mr. RAKOWSKY. No, sir. In the past few years the Office of Investigations, which includes internal affairs agents, the air-marine interdiction programs, those positions when the agent or pilot would retire, those FTEs, full-time equivalent, would go to the commercial side of the house. We were never able to backfill those positions.

Now we are having the crisis of many people either eligible for retirement or mandatory retirement, which is 57 for Federal law enforcement. We are going to lose a huge chunk of our population. We need some help, obviously, to regroup.

Mr. HOUGHTON. Do you see anything going on to alleviate that, or do you think it is something which is inevitable the way the process is moving?

Mr. RAKOWSKY. Well, Commissioner Weise has been gracious enough to grant us several meetings. We have expressed our concerns. Now we have the new sheriff in town at Treasury, so to speak, the former police commissioner of New York City. He is very enthusiastic, he sees some of the problems, and we hope we can help each other solve this problem.

Mr. HOUGHTON. When you talk about hiring more agents, are you talking about a set number or a block of money? All these things require additional funds. What are you talking about?

Mr. RAKOWSKY. The ballpark figure that our membership, which again includes rank and file and management, the ballpark figure is 500 agents, hopefully, in the next year or two.

Mr. HOUGHTON. This is 500 in addition to the attrition that you are going to get from, you say, the 60 percent?

Mr. RAKOWSKY. Yes, sir. From what I understand, what we are led to believe, there is no contingency plan to hire agents that will be leaving in the next few years. You are looking at 500, plus the agents that will be leaving.

Mr. HOUGHTON. I understand.

You talk about funding supplementally. What do you mean by that?

Mr. RAKOWSKY. Supplementally, sir, without going against the White House and the President's directives on spending caps and so on, we would like to see a supplemental gift, as it were, to the Office of Investigations, because if you start looking at our productivity, if you break it down, the Customs agent pound for pound, agent per agent, is probably the most productive Federal employee in the United States as far as arrests are concerned, indictments, investigations and so on.

Mr. HOUGHTON. How does the Agency compare to other agencies of other countries in terms of staffing, in terms of procedures, and recruitment; do you know?

Mr. RAKOWSKY. Sir, I can't answer that question as far as other countries are concerned, but right now we have a new Assistant Commissioner for Investigations, who is a dynamic lady, very experienced, very knowledgeable. She is taking over the job as our Assistant Commissioner. We are looking forward to working with her. Again, she has the experience and the know-how of how to do things.

Mr. HOUGHTON. Well, thank you. Of course, your testimony will be put in the record, and if there is anything else that comes up after this, just let us know.

If that is the case, the hearing is ended. Thank you very much.

[Whereupon, at 4:55 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

AMERICAN FROZEN FOOD INSTITUTE,
MCLEAN, VIRGINIA
May 29, 1997

The Honorable Phil Crane
Chairman, Subcommittee on Trade
U.S. House of Representatives Committee on Ways and Means
1104 Longworth Office Building
Washington, D.C. 20515

Dear Representative Crane:

On behalf of the members of the American Frozen Food Institute (AFFI), I appreciate the opportunity to submit comments for the record regarding the House of Representatives Subcommittee on Trade's May 15, 1997, hearing on U.S. Customs Service oversight issues. In that regard, AFFI would like to express its opposition to a U.S. Customs Service (Customs) proposal to require front panel country of origin marking for frozen produce with imported content. The Customs proposal arbitrarily singles out the frozen produce industry for regulation that does not apply, nor has it been proposed to apply, to any other category of imported products, thereby overturning more than 60 years of Customs Service statutory interpretation. More importantly, the Customs proposal will have significant ramifications on the international trade of frozen fruits and vegetables.

As you may know, AFFI is the national trade association representing manufacturers and processors of frozen food products, as well as their marketers and suppliers.

AFFI's 550 member companies account for more than 90 percent of the total annual production of frozen food in the United States, valued at approximately $60 billion. AFFI's membership includes small and large U.S. frozen food manufacturers and exporters that use imported ingredients in their products. AFFI members are directly affected by country of origin marking requirements and have an interest in ensuring that any changes in these rules do not have disruptive effects on the marketing of their products, either internationally or domestically, or impose unnecessary compliance costs and burdens on the U.S. frozen food industry.

On July 23, 1996, the U.S. Customs Service published a proposed rule to require front panel country of origin marking for frozen fruits and vegetables with imported content. The comment period closed on September 23, 1996. More than 400 comments were submitted to Customs during the comment period, only one of which supported the Customs proposal. Despite the overwhelming opposition to the proposed rule, Customs has yet to withdraw it. AFFI is strongly opposed to the proposal and believes it should be withdrawn immediately.

At issue in this rulemaking proceeding is whether Section 304 of the Tariff Act is fulfilled only if the country of origin marking is located on the front, or principal display, panel of frozen produce packages. AFFI does not believe the front panel is the only "conspicuous" place on packages of imported frozen produce for country of origin marking purposes. AFFI believes the plain meaning of the relevant language in Section 304 illustrates this. Section 304 does not require that the country of origin must appear in the most conspicuous place, nor does it require that the marking be as conspicuous as the article or container will permit. Congress chose different, and less restrictive, words to express the conspicuous place requirement than it chose to express the other three requirements, i.e., the requirements that the marking be as legible, indelible, and permanent as the nature of the article or container will permit in such manner as to indicate the country of origin to the ultimate purchaser.

AFFI is concerned about the international trade ramifications of the Customs proposal. The United States must ensure that country of origin marking requirements are not allowed to be misused as non-tariff barriers to trade or as anti-competitive measures. Discriminatory and unduly burdensome marking requirements, such as those contemplated by Customs, are a well-recognized non-tariff trade barrier and must be avoided.

Our North American Free Trade Agreement (NAFTA) partners have objected to the Customs proposal on the grounds that it violates Annex 311 of NAFTA. The objections raised by representatives of Canada and Mexico include the fact that Annex 311 provides that the NAFTA Parties "shall accept any reasonable method of marking" for a good of another party; requires that each Party accept a country of origin marking that is "conspicuous, legible and sufficiently permanent"; defines the term "conspicuous" as "capable of being easily seen with normal handling of the good or container"; and requires that the Parties minimize the difficulties, costs and inconveniences that the adoption or application of marking measures may cause to the commerce and industry of the other parties. Clearly, the pending Customs proposal does not satisfy these requirements.

In addition, the Uruguay Round of the General Agreement on Tariffs and Trade prohibits use of country of origin marking requirements as non-tariff barriers to trade. Imposition of the marking requirements contemplated in the Customs proposal could trigger retaliatory actions by U.S. trading partners and impede exports of U.S. agricultural products generally, including frozen foods.

Moreover, the Customs proposal is inconsistent with the Clinton Administration's established regulatory policies because it is unjustified by either a compelling public need or an appropriate cost-benefit analysis. As you know, an agency is obligated to regulate only when necessary and to the extent necessary to effectuate the intent of Congress. Consistent with established Administration policy and sound regulatory practice, AFFI believes this rulemaking procedure should be terminated immediately.

Customs states in its notice that the proposed regulatory action is necessary to address that which Customs alleges constitute instances in which markings on frozen produce packages are not sufficiently conspicuous. It is important to note, however, that Customs has made no effort to address the alleged problem through non-regulatory alternatives. Customs also fails to establish that its existing regulatory, enforcement and administrative authority is insufficient to address any compliance problems which may exist. Customs should be encouraged to enforce the current regulation on a case-by-case basis, if necessary, instead of promulgating a new layer of federal regulation. The Customs proposal cites a proceeding under Section 516 of the Tariff Act of 1930, as amended, as the justification for proceeding with a proposed rule. However, no Section 516 petition currently is pending before the Customs Service; therefore, there no longer is a basis for considering the action proposed by Customs. In light of this fact, AFFI questions whether pursuing such a rulemaking procedure is the most effective use of Customs' limited resources.

The proposed rule is unnecessary, discriminatory, arbitrary and capricious. It would impose needless and substantial relabeling costs on the frozen produce industry without providing a corresponding benefit to consumers. Frozen fruits and vegetables with imported content already are required to be marked with their country of origin; this marking typically is located near the information consumers want most, the nutrition and ingredient information, which Congress determined several years ago, in the context of the Nutrition Labeling and Education Act (NLEA), to be of vital importance, yet it is required by law to appear on the back panel of packages of these products.

As you know, as a result of the NLEA, food companies recently completed a total redesign of their packaging. A survey of AFFI member companies revealed that companies estimate compliance costs could range from $15,000 to more than $1 million per company for a one-year period for yet another change in labeling requirements.

AFFI also commissioned a telephone survey by Opinion Research Corporation (ORC) which involved a national probability sample of 1014 adults 18 years of age or older, all of whom were living in private U.S. households. Of the total sample, 656 indicated they had purchased frozen fruits and/or vegetables in the previous three months. The latter group of respondents were asked a variety of questions, including the following: "What are the main things that influence which frozen fruits or frozen vegetables you purchase?" Only one respondent out of the 656—less than one percent—cited the country where a product is from as an important factor in his or her purchasing decision.

The ORC survey results reaffirm the results of a previous U.S. Food and Drug Administration survey with regard to the importance of country of origin information to consumers. In 1978, FDA sponsored a Consumer Food Labeling Survey. Respondents were asked, "What information, if any, printed on food packages and cans do you pay particular attention to or find helpful in any way?" Forty one percent of the respondents named ingredient information, 22 percent named nutritional information, and 18 percent named size/quantity information. Less than one percent named country of origin information.

The frozen produce industry should not be singled out for onerous marking requirements not applied to any other product category either within or outside the food industry. The Customs proposal arbitrarily and capriciously discriminates against the frozen produce industry by imposing a new "most conspicuous place" requirement and a new "consistent place" requirement, neither of which is provided for by statute, and neither of which Customs has ever imposed on any other class of products. The proposal would require virtually every producer and packer of foreign-origin produce to redesign its labels, regardless of the degree of conspicuousness of the country of origin marking that already appears on such labels.

AFFI does not believe there are legitimate reasons to single out frozen produce products for additional country of origin marking requirements. Any such regulation would be arbitrary and capricious and could raise the expectation that Customs would promulgate similar regulations for other classes of imported goods, particularly other products packaged and offered to the ultimate purchaser in cardboard boxes and plastic bags.

Thank you for this opportunity to express the concerns of the members of the American Frozen Food Institute. Please do not hesitate to contact me if you have any questions or if I may provide you with additional information.

Sincerely,

STEVEN C. ANDERSON
President and Chief Executive Officer

Statement of the American Iron and Steel Institute

The following statement on oversight of the U.S. Customs Service is submitted on behalf of the U.S. member companies of the American Iron and Steel Institute (AISI). Together, these companies account for approximately two-thirds of the raw steel produced in the United States.

The AISI, with the support of several other steel-related organizations, has a longstanding partnership with the U.S. Customs Service. Over the past 30 years, with the guidance and full support of Customs Headquarters management and staff, AISI has provided training to Customs personnel in the areas of steel product identification, classification, valuation, antidumping/countervailing duty circumvention, fraud, rules of origin, NAFTA, and other areas of mutual interest and concern. This program has resulted in Customs Field Operations and Strategic Trade Center (STC) personnel who are better prepared to perform their professional duties. It also allows AISI to offer more authoritative comments on the structure and operation of the Customs Service.

The Customs Modernization Act of 1994 (Mod Act) has generally been good for the steel importing community, the U.S. steel industry, the trade community (brokers and port operations) and the U.S. Customs Service. Customs operated under its old organization structure for many years, but was unable under that structure to keep pace with major changes in trade levels and trade practices. While AISI supports the Mod Act, the "new" Customs Service and most of its new structure and methodologies, we also have several concerns that need to be addressed if Customs is to meet its responsibility to provide full enforcement of trade laws while facilitating legitimate trade.

The AISI supports initiatives for:

- the facilitation of trade for importers who, over an extended period of time, prove that they are in full compliance with all Customs laws and procedures;
- the concentration of services at the ports of entry;
- the reduction of staff at headquarters in Washington, accompanied by the transfer of many former headquarters personnel to the field in both Strategic Trade and Field Operations positions;
- the establishment of Customs Management Centers and the elimination of regional and district offices;
- the implementation of regional STCs to target trade enforcement efforts.

Our concerns are these:

- Trade facilitation may have become a higher goal than enforcement. In this regard, examination/inspection rates are very low, and should be greatly increased, particularly for those importers who have compliance rates of less than 95%.

—personnel resources, while professional and capable, are too low in number to service properly and enforce the ever-increasing volume of imports. Customs' budget and staff are not projected to grow, which will exacerbate this situation.

—It is dangerous, from the standpoint of enforcement, to continue to move to ever-higher levels of computer support in lieu of human resources for the identification of possible violations.

• Steel, as a Primary Focus Industry, has a compliance rate goal of 95 percent. FY1996 compliance rates for steel in several geographic areas and violation categories are unacceptably low. In particular:

—Imports of steel through the Automated Commercial System Cargo Release program and classified in HTS Chapter 72 (steel mill products) plus rails and pipe from HTS Chapter 73 were only 82 percent compliant in FY1996.

—According to the January 1997 Trade Compliance and Measurement Report from the Customs Service to the Congress, there was an estimated $8,370,000 revenue shortfall as a result of the 18% non-compliance in steel import entries.

—Classification errors are the great majority of discrepancies, followed by marking, quantity and value.

• Compliance for steel entered by Line Release was just 60 percent for HTS Chapter 72 and 65 percent for Chapter 73 in FY 1996.

—Most errors are made by brokers at the time of entry release at the Customs booth, and involve truck entries along the northern border.

—Brokers are clearly not performing their function well, and require much greater attention.

• Of the top 20 steel Service Ports by volume, only New Orleans, Houston, Laredo, Port Arthur, Boston and Columbia-Snake (Portland, Oregon) are above 90 percent compliance. Among the worst ports, Detroit and Buffalo along the Northern border reflect broker-related truck entry problems under Line Release. Chicago's compliance is also very poor; issues there, too, must be addressed.

• Estimates are that one-half of the U.S. Customs Service's highly skilled Special Agents will retire by the end of 1998.

—Of the approximately 1,000 Special Agents, roughly half have responsibilities for drug interdiction; the other half are engaged in commercial enforcement.

—With respect to the 500 retirees, the impact is expected to be greater in the area of commercial enforcement, because the retiring Agents are reportedly concentrated in the commercial area.

• Customs is considering implementing a concept called "self-governance" as an optional, voluntary alternative to comprehensive importer audits. This program would allow high-compliance importers, under Customs direction, to conduct an ongoing internal audit as evidence of compliance with Customs rules, regulations and laws. Several Large importers, unrelated to steel, are currently participating in a test program. Self-governance, if successful, would remove the importer from the risk, burden and expense of comprehensive Customs audits.

—It is imperative to examine and test very carefully this concept and its details prior to endorsement and implementation. Particular attention should be paid to sampling techniques, the risk of subterfuge by audited companies and the allocation of resources (e.g., whether Customs would be spending more, rather than less, time and money on audits under self-governance than under the current comprehensive audit system).

—The importing community appears to be very receptive, which could indicate that they view self-governance as an easy way around Customs vigilance.

Finally, AISI is also following closely possible proposals for reorganizing STCs. If the STC concept is indeed under consideration for reorganization—and if improvement in service of Primary Focus Industries is part of any reorganization effort—thought should be given to locating the STC responsibility for steel closer to major steel-producing locations and steel-consuming markets. Chicago would be an excellent choice. In conclusion, AISI believes that a number of actions are needed for the U.S. Customs Service to continue the improvements made possible by the Mod Act and reorganization. Key among these are the following:

1. Customs, through Informed Compliance and the Automated Commercial Environment, should continue to develop and aggressively implement these programs in order to increase compliance rates.

2. Line Release standards should be more stringently enforced, particularly along the Northern border.

3. Sample sizes and examinations/inspections should be increased to improve the reliability of data and provide better enforcement. Improved targeting and increased document review are also necessary.

4. Classification accuracy (at the 10-digit HTS level) and marking requirements should be enforced.

5. Field staff, particularly Import Specialists and Inspectors, should be increased to handle the rapidly growing workload.

6. The physical location of Customhouses should be as close as possible to the port. In the absence of this, a small office manned by Inspectors and Import Specialists should be located close to the port to facilitate examinations and the daily interface between Customs and the trade community.

7. A phased training program should be implemented now to integrate replacement Agents into the system in order to avoid a major disruption in commercial enforcement near the end of 1998 caused by the retirement of a large number of Special Agents.

8. Customs should proceed very slowly and carefully with the concept of self-governance in lieu of comprehensive audits, and solicitation of input from all Primary Focus Industries should be an integral part of the evaluation.

9. In the context of any general reorganization of the STC structure, consideration should be given to moving STC responsibility closer to major markets (e.g., in the case of steel responsibility, this would mean possibly moving this STC to Chicago).

AISI is pleased to have this opportunity to provide comments to the House Ways and Means Trade Subcommittee on an issue of major importance to AISI's U.S. members.

Statement of the Joint Industry Group

The Joint Industry Group is a coalition of more than 100 companies, trade associates, professionals and businesses actively involved in international trade. We both examine and reflect the concerns of the business community relative to current and proposed customs-related policies, actions, legislation and regulations and undertake to improve them through dialogue with the U.S. Customs Service, other government agencies and the Congress.

Strengthening of the Office of Regulations and Rulings

The Office of Regulations and Rulings ("OR&R") plays a very key role in insuring that the Customs Service upholds its bargain with the importing community to "inform" importers, brokers, consultants and counsel on important issues of classification and valuation. While the recent GAO study goes to some length to suggest that the staff levels withing OR&R are sufficient to discharge its mission, the Joint Industry Group perceives that the reduction in staffing over the past two years has played a significant role in causing most rulings to issue long after the 120 day "target" previously announced as the time frame in which an importer could expect to receive a ruling. Performance standards and guides are definitely needed. These, however, must go hand-in-hand with an adequate professional staff. The Joint Industry Group recommends, therefore, that the Committee on Ways and Means receive periodic reports from OR&R on both the inflow of ruling requests the Headquarters Office as well as the number of rulings issued, by attorney, during the same time period. Differentiation should be made between rulings involving issues of tariff classification and those involving valuation. While the latter are generally more complicated, it appears that the time required to obtain a valuation-related ruling must be improved upon. The two oft used sentence "We regret the delay in responding" should no longer be the last sentence of the opening paragraph of a valuation ruling.

Assistant Commissioner Stuart Seidel has advised the Joint Industry Group that it is one of his major goals to expedite and improve the ruling process. We support this effort and believe one of the keys will turn out to be a modest increase in staffing. Performance standards alone will not carry the day. The Joint Industry Group has pledged its support to assist in reaching Assistant Commissioner Seidel's sought-for goal.

The Informed Compliance Initiative Has Lost Momentum

The Customs Service initiated a series of "draft" programs and released them for comment on the Customs Electronic Bulletin Board. The Joint Industry Group and others provided comments. To date, few of these programs have made it to the Notice of Proposed Rulemaking stage, and the Joint Industry Group senses that this may be the result of unwarranted delay in moving the programs through the various approval stages within the Customs Service and at the Treasury Department. If the importing public is given 60 days in which to submit comments, the comments should be digested and turned around within the Customs Service in a like period of time. Those at the higher levels in the administrative review process have to un-

derstand that they, too, must promptly review and pass the program on if further review is required.

REGULATORY AUDIT

One of the major thrusts of the Joint Industry Group's efforts in working with the Customs Service in the drafting of the Customs Modernization Act was the Regulatory Audit program. While the Customs Service has announced an ambitious program to conduct audits of the 1,000 largest importers, that program has bogged down and woefully so. Our members report instances in which Customs auditors have requested 250 sets of records only to turn around and request another 200 sets in order to test a different issue. Based solely on rumor, since facts are not available, less than 50 audits appear to have been completed. At that rate, the initial round of audits for the 1,000 largest importers will be completed sometime in the next Millennium.

The Joint Industry Group believes that alternative approaches must be considered. Is there any reason, for example, not to permit importers and their consultants and counsel to conduct independent audits testing for issues such as proper tariff classification, proper valuation, proper recordkeeping, country of origin marking, etc.? For companies electing to do so, the Office of Regulatory Audit could run tests on the methods employed and the findings. Rather than select 250 new entries, modest incursions into other entry file folders should suffice to establish that "reasonable care" has been taken in the conduct of the self-initiated audit. If the Customs Service does not reach out, it cannot hope to complete even the initial phase of its mission.

CONCLUDING OBSERVATION

The Joint Industry Group believes that the Headquarters-initiated effort to forge a partnership between the Customs Service and the importing public is beginning to take effect in the Field. Instances have been reported by Joint Industry Group members where Import Specialists, Port Directors and others in the Field have actually looked for ways to assist importers in improving compliance with the diverse and sometimes arcane laws and regulations administered by the Customs Service. The Joint Industry Group thinks it is probably about time that data be gathered from importers, probably on an anonymous basis, in order that the Headquarters Office can measure how Field Offices are perceived by what are essentially their customers. As long as performance needs to be measured at Headquarters, it would not hurt to have some form of report card on how things are going in the Field.

Statement of the National Council on International Trade Development

The National Council on International Trade Development (NCITD) is an association made up of Fortune 500 companies, bankers, importers, exporters, trade organizations, carriers, forwarders, law firms and individuals who share a common goal in trade facilitation. Our membership represents more than $250 billion in US trade and focuses on every aspect of international trade. We appreciate the opportunity to comment on issues which greatly affect our members.

BACKGROUND

The NCITD was established in 1967 as a documentation facilitation council. The Customs Modernization Act necessitated a change in scope and focus of the association, and initiated a process adaptation to new business trends in a similar manner to the adjustments and changes taking place in the US Customs Service. We recognize that change is sometimes a slow and painful process. Businesses are using faster and more efficient means to conduct trade. Air transportation allows for products to be delivered overnight. Customs' responsibility for the monitoring of these goods and adapting to business needs has increased at a tremendous rate. We applaud the work of Commissioner George Weise and the US Customs Service staff in their efforts to modernize the US Customs Service and regret the negative comments made on "60 Minutes." It was apparent that a lack of understanding existed by those persons commenting on the program. Trade and drug interdiction are a serious part of Customs' daily business.

THE US CUSTOMS SERVICE

Budget: The NCITD has long maintained that the Customs Service must have additional resources to meet the demands placed upon them by the US Government and industry. We are mindful of budgetary constraints within government. However, the mandates of the Administration, the Legislative Branch and parents across the United States to stem the flow of illegal drugs into the country justifies the appropriation of additional resources for the Custom Service. Similarly, the Administration's emphasis on increasing US exports further validates additional funding.

Drug Interdiction: The NCITD does not believe that the burden of drug interdiction should be placed solely upon the US Customs Service. Just as industry has entered into a partnership with Customs on trade, we believe that industry should cooperate with government efforts to interdict narcotics. The NCITD also feels that Mexico is not living up to its responsibilities in drug interdiction. While we support NAFTA and do not believe a repeal of that trade agreement is a solution, we strongly believe that Mexican exporters should subscribe and implement procedural safeguards that must be enforced and audited by both US and Mexican customs officials.

Modernization Act Implementation: Our membership shares the belief that Customs is moving at just the right pace with some of their programs, and too slowly on others. Our group agrees that Customs is spreading itself too thin by working on too many projects at one time. Too many programs remain incomplete. For example, industry still waits for the informal entry limit to be raised to $2,500, a provision of the Mod Act passed three years ago.

INFORMED COMPLIANCE

The Compliance Assessment Teams (CAT's) are a sound part of "informed compliance." CAT audits are designed to measure the top 1000 importing companies' level of legal compliance. Before a CAT audit, a company receives a "self test" copy of the audit to prepare for the Customs auditing team. In this fashion, CAT audits seek to foster future legal compliance. Ironically, too often CAT auditors focus on past transactions. Many auditors performing the assessment tests are inexperienced, and frequently unable to make important judgements on the value and success of a company's self compliance review procedures. For example, a company may have a monthly self-audit that reveals data input, classification, or other errors. Many companies are having their corporate safeguards and systems misunderstood or ignored in the audit procedure, resulting in a review that suggests lower compliance levels. Voluntary tenders or admissions of mistakes are seen as a sign of a non-compliant company when, in actuality, the company's safeguards worked perfectly and detected the error. Punishing companies for voluntary tenders is a frightening step backwards from Customs' expectations for voluntary compliance. If companies are being punished for voluntarily admitting and correcting mistakes, the incentive to admit mistakes is removed. Chief Financial Officers may suggest not volunteering errors, since they'll be penalized anyway, and waiting instead to see if they're "caught."

Another drawback to the CAT program lies in Customs' communication process. The Customs Service communicates only with the companies being audited and not with industry as a whole. This approach is highly inefficient and will make it difficult to educate the top 1000 importers, and impossible to educate the thousands of small-and medium-sized importing companies concerning their legal obligations.

RECORDKEEPING

The Mod Act extended the legal obligations of companies to maintain accurate records detailing their transactions in electronic form. Customs was given authority to impose severe penalties on non-compliant companies. However, proposed recordkeeping regulations will place unnecessary financial burdens on industry and create new burdens for Customs auditors. Auditors, under the proposal, would be charged with reviewing individual company's alternative recordkeeping systems. The NCITD feels that the additional reviewing is, for the most part, unnecessary and a poor allocation of Customs' limited resources. Most companies, particularly those of our membership, already have corporate record retention policies and programs for tax and other purposes. Furthermore, Customs officials now have considerable power to assess penalties, deny tariff preferences, and otherwise take coercive action to those companies found to be non-compliant.

AUTOMATION

The Mod Act authorized Customs to extend the automation of commercial transactions, and establish new procedures to substitute account-based processing for individual entry-by-entry processing of Customs commercial transactions. The progress of implementation has been painfully slow. Generally, Customs' automation initiatives are more than two years behind schedule, and over budget. The agency has been unwilling or unable to commit adequate resources to automation initiatives. This is evident in the "remote entry filing" prototype developed in the 1980's. Since its inception, the program has undergone two phases that are not significantly different from the original.

Prototype tests for the Mod Act-authorized reconciliation program have not progressed as anticipated. Account based processing procedures are only now getting under way, on an extremely limited basis, and at only a few selected ports of entry. The Customs' N/CAP prototype has been so long in the making that it can only be viewed as a disappointment at this point, with only five importers certified to participate in the program.

OFFICE OF REGULATIONS AND RULINGS

Recently, the General Accounting Office (GAO) completed a less than flattering review of the Office of Regulations and Rulings (OR&R). While preparing their report, the GAO surveyed our Customs Committee. The NCITD firmly believes the plan outlined by Assistant Commissioner Stuart Seidel to the Subcommittee should be implemented. OR&R is one of the agency's traditional functionaries. The quality of its work has suffered with OR&R unable to meet its self-imposed 120-day deadline for responding to classification ruling requests, nor its 30-day deadline for the issuance of textile origin regulations.

Many of these delays can result in significant cost increases to industry members who attempt to "guess" what the classification ruling will be so that they may continue to do business. In fact, delays of as much as two years in the issuance of rulings, requests for reconsideration of port rulings, internal advice rulings, and requests for further review of protests are not uncommon. In some cases, Customs has delayed rulings as long as five years in processing requests for rulings on valuation issues, even in cases where there was no pending litigation addressing the issues. Many of these delays result from insufficient resources in OR&R, or from the fact that OR&R officials are frequently reassigned to other duties. However, the delays are frustrating, costly, and there are times when Customs publishes few or no rulings for weeks on end.

In addition, delays in Customs' processing of administrative protests have increased, a factor which can be particularly costly to Customs, as it is now required to pay interest on duty refunds issued to importers.

The Automated Export System (AES): has recently been scrutinized in a letter sent to Customs by the Exporter's Coalition. The Coalition maintains that AES is not living up to its billing. Too much information is being required pre-departure. The AES–PASS, which was designed to give preferential treatment to highly compliant companies and require less information pre-departure, has not been implemented as expected. While the NCITD supports the AES concept, it must be tailored to the air, truck, rail, and ocean environment. To date, AES is not seen as successful and may require a major overhaul or elimination. There are better ways to obtain statistical trade data.

SUGGESTIONS

Regrettably, the Mod Act has not met expectations. Industry and Customs need to refine the Mod Act, with particular emphasis to the Automated Commercial Environment (ACE) and remote entry filing procedures.

Customs should be permitted to charge other government agencies for services that extend beyond Customs' basic services. For example, Commerce and the Federal Trade Commission place requirements on Customs to perform inspection services beyond those included in the Customs charter.

Customs must have additional resources to meet the demands of government and industry and to keep pace in an expanding global market. Customs should be congratulated on their accomplishments while working with a budget that has not even kept pace with inflation.

There is a need for better balance between the enforcement and commercial trade facilitation responsibilities of the Customs Service. The conflicting demands for drug interdiction and law enforcement activities on one hand, and the promotion of trade and competitiveness for American business on the other, must be carefully mon-

itored to preclude an adversarial relationship between Customs and the people they serve.

CONCLUSION

The NCITD is pleased to have the opportunity to submit comments on the oversight of the US Customs Service. In closing, we urge the Administration to move quickly to fill the enormous void created by George Weise's departure. Our new Commissioner should be devoted to drug interdiction, and familiar with the complexities of international trade. The new Commissioner must understand the importance of continuing the partnership established between Customs and industry both in law enforcement and commerce.

Sincerely,

JASON CLAWSON
NCITD

Statement of Robert M. Tobias, National Treasury Employees Union

Chairman Crane, Ranking Member Matsui and Members of the Subcommittee, my name is Robert M. Tobias, and I am the National President of the National Treasury Employees Union (NTEU). Speaking for the more than 150,000 federal government employees represented by NTEU, I would like to thank you for this opportunity to submit testimony in response to some of the issues raised in the oversight hearing on the U.S. Customs Service held on May 15, 1997.

NTEU is very appreciative for the opportunity to express its views regarding the payment of Sunday premium pay and night differential. NTEU believes that certain federal employees should be exempted from Section 630 of the Omnibus Appropriations bill for fiscal year 1997. NTEU believes that it is inappropriate to reduce the wages of individuals who work shifts on a regular or permanent basis when these individuals are out for military leave, jury duty, other uncontrolled leave or even holidays.

NTEU asserts that reducing the wages of some workers is hardly just because a holiday falls on a day when they ordinarily would be working. Federal employees who do not regularly work periods for which they are paid pay a premium or a differential receive their normal take home wages. Yet for those federal workers who do work these unusual hours on a regular or permanent basis, application of this general prohibition results in a reduction in the ordinary take home wages.

Nor is it fair to reduce these workers' take home pay because a court has summoned them for jury duty or they choose to participate in the National Guard or reserves. Again, workers that do not regularly work period for which a premium or differential is paid receive their normal take home wages. Yet for those federal workers who do work these unusual hours on a regular or permanent basis, application of this general prohibition results in a reduction in the ordinary take home wages.

Lastly, reducing these workers' take home pay in instances when they are not able to work for reasons beyond their control is equally unfair. For example, if Customs orders that these workers remain at home during a natural disaster, Congress should treat them the same as any other federal worker. If Customs pays wages to all workers, then it is inappropriate to only reduce the paychecks of those who work these unusual hours on a regular or permanent basis and not similarly reduce wages of all other workers. NTEU is not suggesting that wages be so reduced for others, but questions whether the application of this general prohibition is appropriate when it has a disparate impact on the employees who are specifically paid a higher amount in order to compensate them for the hardships associated with working these odd shifts.

Thus, what otherwise appears to be a simple, common sense approach to a perceived problem can have significant unintended consequences. NTEU notes that Subcommittee staff is in the process of drafting a permanent prohibition along the lines of the language included in the Omnibus Appropriations bill for FY 1997. Therefore, NTEU requests that the Subcommittee include a specific exemption from the general prohibition for federal employees who work shifts on a regular or permanent basis for which a premium or differential is paid.

NTEU also appreciates the Subcommittee's interest in the current $25,000 annual overtime cap for Customs inspectors and Canine Enforcement Officers. As the Subcommittee is aware, the Congress recently raised the overtime cap for INS inspec-

tors from $25,000 to $30,000. Ironically, INS inspectors also receive overtime compensation based upon package modeled after the system Customs inspectors received prior to 1993.

NTEU disagrees with Commissioner Weise's position that increasing the cap to $30,000 should not be done at this time because Customs needs more experience with the recent changes in the pay system. The Commissioner's remarks fail to point out that the current cap was not affected by the recent pay system changes. Instead, it has been in place as is since 1983 (Congress first capped annual overtime compensation at $20,000 in 1979). Using a conservative wage inflation factor of three percent and the simplest method of compounding wage inflation, today's $25,000 cap represents only 66 percent of what it would have been today had it been indexed for wage inflation.

Customs inspectors and officers, especially those stationed at land borders, ordinarily work overtime. Overtime compensation often represents about 30 to 40 percent of take home pay; for these employees, the cap amounts to a permanent pay freeze despite cost of living increases in their basic pay. Moreover, the federal government's contribution toward retirement for these employees is limited to only half of the overtime pay earned in any year—a private employer is generally prohibited from limiting contributions in this manner.

Besides its unfairness to Customs inspectors, officers and their families, the suppressed cap makes little sense from an administrative standpoint. The cap often increases or shifts costs rather than reducing them. Air carriers frequently experience flight delays which, in turn, cause Customs to alter staff scheduling. Later arrival tends to disrupt individual passenger planning but it is not as unsettling as Customs informing a carrier that it must divert traffic to another port because the scheduled port does not have inspectors available for overtime duty due to the cap. While Customs' costs are merely shifted to another port, the passengers and carriers face extraordinary transportation costs and delays. Imagine if you had expected to arrive at National Airport in the early evening and because of the cap, your late flight was diverted to Dulles instead. And worse, these events do not occur that frequently, but do occur and most often occur during peak holiday travel at the end of the year.

Customs sometimes assigns inspectors from other posts of duty to handle the overtime inspectional duties in ports where the inspectors are not available to overtime duty because they have already reached the cap. In these instances, the cap actually increases costs given the added per diem and other travel-related costs which must be paid to the inspector(s) from other posts of duty.

The cap also makes little administrative sense because it compromises the quality of the work performed by decreasing the level of experience of inspectors available for scheduling at any given time. As senior inspectors make more money, they simply cannot work as many overtime hours as those with less experience. The cap causes Customs to work junior inspectors and raw recruits more often for these overtime shifts—efficiency and depth of inspections decline.

The cap also disrupts delivery of services to the taxpayer. Some ports must greatly restrict the hours of operation to avoid any inspector from exceeding the cap. Even those willing to pay the entire cost, typically trade merchants and transhippers, must secure inspection services when the Service determines these services will be provided. Private aircraft owners face scheduling processing headaches; some report that the hours of operation on weekends and holidays vary significantly among the ports.

As previously stated, the cap forces Customs to over utilize junior grade inspectors and raw recruits for these overtime shifts. Excessive overtime demands on these younger inspectors too often cause conflicts with family obligations. As a result, Customs loses many of these younger inspectors to other federal agencies and local law enforcement which offer more family-friendly working hours. Training costs rise and the aggregate productivity of inspectors who remain declines.

And finally, the unreasonably low overtime cap makes little administrative sense since it requires an inordinate amount of time and resources to manage. At the local level, additional personnel are needed to monitor overtime usage and deal with the unnecessarily complex overtime scheduling duties. These costs go far beyond the ordinary expense of accounting to assure individual inspectors remain below the suppressed annual overtime cap.

Before concluding, I believe it is important to note that only one of the witnesses testifying at the oversight hearing, the General Accounting Office, submitted testimony regarding the current overtime compensation system. NTEU notes that GAO's testimony amounted to a summary repetition of its own 1991 report that evaluated an overtime compensation system that has since been modified.

NTEU specifically directs the attention of the Subcommittee to Customs Commissioner Hallett's rebuke of GAO for its failure to follow "normal and usual procedures" in its preparation of the report, including "denying the Customs Service the opportunity to review the report prior to its being finalized." (GAO/GGD–91–96, at p. 55). Customs disagreed with the unsubstantiated finding by GAO that "the special payments were premised on conditions which no longer existed," overtime compensation; Customs' response states:

—"Inspector's themselves are required, as a condition of employme nt, to make themselves available to meet unexpected service demands reagardless of weather, time of day or night, family or other personal considerations. The employee's personal life is disrupted by the demands of the service at any time. The employee suffers this hardship because the compensation is deemed adequate.

—The service demands are often irregular and unpredictable. Airline and vessel arrivals are subject to sudden changes, requiring a rapid expansion in the assigned work force. We are required to provide service 24 hours a day, 365 days a year. Clearly, the ability to utilize overtime enables the government to expand service to the public at the least cost whenever the demand arises." (GAO/GGD–91–96, at p. 59).

As you know, Mr. chairman, the Customs' overtime law, which has been in effect since 1911, was just changed in 1993, at the initiation of this Committee. NTEU worked very closely with the Members of this Committee and the Senate Finance Committee to ensire that all of the very complex issues involved were fairly addressed. While NTEU remains willing to work with you and others Members to address any concerns you may have regarding the new overtime system, , I would strongly urge caution against any changes to the system at this time given the long and precarious route of its enactment. Thus, I believe Congress should at least defer any efforts to change system until Customs has more experience with it.

NTEU again thanks the Chairman for this opportunity to submit testimony for the hearing on the oversight of the U.S. Customs Service. NTEU continues to pledge to do all that it can to assist the Chairman and the other Members of the Committee in their efforts to satisfy their oversight responsibilities.

This concludes my testimony. I would be happy to provide any further information the Chairman, the Ranking or any of the members of the Subcommittee may have.

Statement of U.S. Rep. Jim Ramstad, a Representative in Congress from the State of Minnesota

Mr. Chairman, thank you for calling this hearing today on oversight of the U.S. Customs Service.

As we all know, the U.S. Customs Service plays an important role in ensuring that all goods and persons entering and exiting the U.S. do so in accordance with all our laws and regulations. I appreciate any steps Customs takes under the Customs Modernization Act to reorganize and make the agency more effective and efficient in their efforts to facilitate trade, interdict illegal narcotics and halt money laundering activities.

As a Member of the Trade Subcommittee, I am particularly interested in the Customs Service's efforts to facilitate trade. When we think about trade barriers for American products, we often focus on the tariff and non-tariff barriers of our trading partners which hamper our exporters' access to foreign markets. Yet, we must also make sure that our own federal laws and regulations to do not place unnecessary burdens on our exports or impede the importation of legitimate, useful products and input parts.

Mr. Chairman, thanks again for calling this hearing. I look forward to listening to the testimony of today's witnesses and learning more about Customs' efforts to develop a fully-automated commercial environment to help them carry out their facilitation and enforcement responsibilities.

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