TRADE AGENCY BUDGET AUTHORIZATIONS AND OTHER CUSTOMS ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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TRADE AGENCY BUDGET AUTHORIZATIONS AND OTHER CUSTOMS ISSUES

TUESDAY, JULY 17, 2001

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

The Subcommittee met, pursuant to notice, at 3:00 p.m., in room B–318 Rayburn House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory and revised advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE CONTACT: (202) 225–1721
July 9, 2001
No. TR–5

Crane Announces Hearing on Trade Agency Budget Authorizations and Other Customs Issues

Congressman Philip M. Crane (R–IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on budget authorizations for fiscal years (FY) 2002 and 2003 for the U.S. Customs Service (Customs), U.S. International Trade Commission (ITC), Office of the United States Trade Representative (USTR), and on other Customs issues. **The hearing will take place on Tuesday, July 17, 2001, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

Oral testimony at this hearing will be heard from both invited and public witnesses. Witnesses are expected to include representatives from Customs, ITC and USTR. However, 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:

Budget Authorizations:

On May 9, 2001, the House passed H. Con. Res. 83 and established funding levels to accommodate the President's budget proposal. The President's budget proposal provided FY 2002 funding for ITC at $51 million, USTR at $31 million, and Customs at $2.7 billion (of which $257 million is designated for Customs automation). Additional legislative assumptions contained in the budget are described below.

Other Customs Issues:

Customs Automation: The current Customs automation system, the Automated Commercial System (ACS), is an aging 16-year-old system which has experienced several "brownouts." ACS is operating on the average at 90 percent to 95 percent of its capacity, which is above its design specifications, creating difficulties in accommodating surges in the filing of Customs entry documentation that may occur daily or seasonally. Many observers, including Customs, have said that ACS is headed for a major system crash which may have an adverse impact on trade. It is likely that any serious failure of ACS would have widespread economic effects on U.S. businesses all along the supply chain including manufacturers, suppliers, brokers, and retailers.

Customs plans to replace ACS with the Automated Commercial Environment (ACE) over the next four to seven years depending on funding. Some of the main differences between ACS and ACE are that ACE will use a single integrated system, modern standards, processes, techniques and language, and will be compatible with commercial software. By contrast, ACS does not have an integrated system, uses

outdated techniques and languages, and cannot use commercially compatible software. Maintaining the adequate funding for ACE will save taxpayers $130 million in annual ACS life support funding and allow for many important system improvements that are not supportable by ACS.

There are several issues for the Subcommittee to consider relating to ACE: (1) the cost of ACE, projected to be over $1 billion, (2) the need for additional funding for ACE in the FY 2002 budget, (3) the question of whether Customs' ACE design and architecture will meet future requirements, and (4) the role of the trade industry in building ACE.

Entry Revision Process (ERP): ERP is a plan under development to improve the procedures for allowing goods to enter the United States and be processed by Customs. Since passage of the 1996 Customs Modernization Act, Customs and the import community have been searching for ways to implement the Act by making entry of goods faster, cheaper, and easier. Studies by industry have shown that the costs of Customs administration can be as high as 5 percent of the costs of the goods sold. Many businesses rely upon just-in-time manufacturing and have a need for the entry process to better reflect modern ways of doing business. All agree that the current transaction-based method of operations no longer makes sense, and we must move to a simplified, account-based system. Issues for the Subcommittee to address involve whether Customs is appropriately fashioning a revised entry process to take full advantage of ACE and to meet the requirements of the modern business environment.

Compensation System for Customs Officers: Customs fees created by the Consolidated Omnibus Budget Reconciliation Act (COBRA) fund overtime and premium pay for Customs officers. The original overtime pay system for Customs inspectors was created by the Act of February 13, 1911, known as the "1911 Act." Section 13811 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), known as the Customs Officer Pay Reform amendments, amended the 1911 Act in an attempt to eliminate abuses and mismanagement of the prior system. The reforms were intended to limit overtime and premium pay for Customs inspectors and canine officers to hours of work actually performed.

In the 106th Congress, Chairman Crane introduced H.R. 1833, "The Trade Agency Authorization Act," which included budget authorizations for the ITC, USTR, and Customs and made reforms to Customs overtime and premium pay. H.R. 1833 was approved by the House on May 25, 1999, by a vote of 410–2. The Senate approved a modified version of the trade agency authorization that did not include provisions on Customs overtime and premium pay. No further action was taken.

In announcing the hearing, Chairman Crane stated: "As we approach the next millennium, we must make sure that our trade agencies have the tools they need to get their job done and done right, and maintain the capability to vigorously enforce our anti-drug and trade laws. However, we must do this in the most cost-effective manner, continuing to pursue needed reforms at Customs and elsewhere to ensure that the taxpayers who pay for these services are getting their money's worth."

FOCUS OF THE HEARING:

The hearing will focus on budget authorizations for fiscal years 2002 and 2003 for Customs, ITC, and USTR. In addition, the hearing will address other Customs issues, including: Customs automation and modernization efforts and the mechanisms needed to fund them, the progress of Customs Entry Revision Project, the progress in implementing the Trade and Development Act of 2000 (the Africa Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act), the compensation system for Customs officers, drug enforcement issues, and general Customs oversight issues.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bill Covey at (202) 225–1721 no later than the close of business, Wednesday July 11, 2001. The telephone request should be followed by a formal written request to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Rep-

resentatives, 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, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format,* of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than close of business on Friday, July 13, 2001.** 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 six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label*, by the close of business, Thursday, July 31, 2001, to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. 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, by close of business the day before the hearing.

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 submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. 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, company, address, telephone and fax numbers where the witness or the designated representative may be reached. 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://waysandmeans.house.gov/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
July 13, 2001
No. TR–5—Revised

CONTACT: (202) 225–1721

Change in Location for Subcommittee Hearing on Change in Time and Location for Subcommittee Hearing on Trade Agency Budget Authorizations and Other Customs Issues

Congressman Philip M. Crane (R–IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee hearing on budget authorizations for fiscal years 2002 and 2003 for the U.S. Customs Service, U.S. International Trade Commission, Office of the United States Trade Representative, and on other Customs issues, previously scheduled for Tuesday, July 17, 2001, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m., **will now be held at 3:00 p.m. in room B–318 Rayburn House Office Building.**

All other details for the hearing remain the same. (See Subcommittee press release No. TR–5, dated July 9, 2001.)

Chairman CRANE. If everyone will please take seats and discontinue conversation, we shall commence our hearing this afternoon.

And welcome to the Trade Subcommittee hearing on budget authorizations for fiscal years 2002 and 2003 for the U.S. Customs Service, the U.S. International Trade Commission (ITC), and the Office of the U.S. Trade Representative (USTR) and other customs issues.

The Office of the U.S. Trade Representative is responsible for developing, coordinating, and advising the President on U.S. international trade policy. USTR staff and consultants conduct our trade negotiations, seek new markets for U.S. goods and services, and defend our rights in the World Trade Organization (WTO). We should be impressed by the breadth and depth of USTR's work and accomplishments, especially now when we are asking them to undertake so many trade initiatives around the world.

We would also review the Customs budget request during our hearing. As a multi-mission organization, Customs is expected to meet a variety of demands and responsibilities, some of which might be conflicting. Customs is expected to facilitate trade to meet the fast deadlines for goods and services delivery while playing a critical role in border inspection, antiterrorism, and drug interdiction, which often results in delays.

Customs must recognize the need to facilitate the movement of legitimate commerce. This is where technology such as non-intrusive inspection technology or automated screening systems can assist Customs' efforts.

This is also where modern technology for trade data can also assist Customs' data processing efforts. It is essential to update U.S. Customs' automated systems for U.S. industry and the population at large.

Any potential slowdown or brownout in Customs' electronic entry process system can adversely affect critical imports.

Today we will hear views from Customs, the Treasury, the General Accounting Office (GAO), and the trade community about modernizing and funding for automation to meet the increasing volume of trade data. We will also hear about efforts to revise the process of bringing goods into the U.S. and what improvements are being proposed.

One of the most important points I want to make today is addressed to Customs and the Treasury Department. This Congress passed the Africa Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act with the intent of helping those regions develop. Some provisions are simply being ignored or given tortured meaning to render them null and void.

Where trade has been enhanced, Customs is virtually strangling it with regulations. Our message to the administration is simple: Implement this free trade law.

Customs faces enormous challenges, and every day Customs officers rise to meet these challenges. While I acknowledge the outstanding work of Customs officials, I remain concerned about the law written before Republicans took the majority that allows Customs officials to receive nighttime pay for working at noon.

I have an open mind about this matter, and I have asked several witnesses to address this matter, bringing new data to bear. I am very willing to listen to ideas of mending an apparent flaw while properly compensating Customs officers for their actual hard work performed.

Today, we will hear from the Office of the Inspector General, the General Accounting Office, and the union on these Customs labor issues.

Finally, Customs must take care that its integrity is intact and that its internal corruption tolerance rate is zero. Our ability to interdict drugs at our borders depends on maintaining sound integrity.

We will also receive testimony from the International Trade Commission. The ITC has a unique role within the Federal Government as an independent, nonpartisan, quasi-judicial agency. The ITC conducts trade investigations, provides Congress with technical assistance in developing trade policy, maintains the Harmonized Tariff Schedule, and offers technical advice to businesses seeking remedies under the trade laws.

The ITC and this Subcommittee have always enjoyed a close and supportive relationship.

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

[The opening statement of Chairman Crane follows:]

Opening Statement of the Hon. Philip M. Crane, a Representative in Congress from the State of Illinois, and Chairman, Subcommittee on Trade

Welcome to the Trade Subcommittee hearing on budget authorizations for fiscal years 2002 and 2003 for the U.S. Customs Service, the U.S. International Trade Commission, and the Office of the U.S. Trade Representative, and on other Customs issues.

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Customs must recognize the need to facilitate the movement of legitimate commerce. This is where technology such as non-intrusive inspection technology or automated screening systems can assist Customs' efforts. This is also where modern technology for trade data can also assist Customs' data processing efforts. It is essential to update U.S. customs automated systems for U.S. industry and the population at large. Any potential slow down or "brown out" in U.S. customs electronic entry process system can adversely affect critical imports. Today we will hear views from Customs, the Treasury, the General Accounting Office, and the trade community about modernizing and funding for automation to meet the increasing volume of trade data. We will also hear about efforts to revise the process of bringing goods into the U.S. and what improvements are being proposed.

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Customs faces enormous challenges, and every day Customs officers rise to meet these challenges. While I acknowledge the outstanding work of Customs officials, I remain concerned about the law written before Republicans took the majority that allows Customs officials to receive night time pay for working at noon. I to have an open mind about this matter, and I have asked several witnesses to address this matter bringing new data to bear. I am very willing to listen to ideas of mending an apparent flaw while properly compensating Customs officers for their actual hard work performed. Today, we will hear from the Office of the Inspector General, the General Accounting Office and the Union on these Customs labor issues.

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

I understand we are going to have quite a series of votes fairly soon, so let me do what I usually don't do, and that is submit this in the record. And I won't go over each and every one of these words for posterity.

But let me say just a few words then quickly about this authorization for some really important agencies.

ITC, I think we are fully aware of its significance, and that is today highlighted by the 201 investigation of the steel industry. The report is due within a few months, and it is a vital undertaking.

So I would hope that we would have some questions not about that per se, but about the work of the ITC and then get on with it.

But the same is really true of USTR. Its importance doesn't need to be underlined by me.

Mr. Chairman, you and I spend a lot of time with USTR.

I will be interested in the progress in the new positions that were created at USTR as part of the trade compliance initiative, and also the positions that were to be used to monitor China's accession and to make sure that it fulfills its commitments.

I hope the China commission that we created as part of Permanent Normal Trade Relations (PNTR) will soon be in operation.

As to Customs, I don't think I need to say anything at any length about the adjusted current earnings (ACE) program and how vital it is that we get on with it, among other improvements within Customs.

It has been a long time since we have passed an authorization for these agencies. And in recent years, we have been stuck on issues that I don't think are particularly salient to the overall operations of these agencies, including Customs.

I would hope, as we question, as the Chairman said, those who do so with an open mind, we can also remember the importance of looking at the larger picture and also the experience of officials as they operate these agencies. They have some wisdom, and I think we ought to listen to it.

So in a word, Mr. Chairman, I hope that we can agree on the need to reassert this Subcommittee and the Committee's voice in the appropriations debate and pass the budget authorization request for these three agencies.

And, again, I will submit my full statement for the record.

[The opening statement of Mr. Levin follows:]

Opening Statement of the Hon. Sander M. Levin, a Representative in Congress from the State of Michigan

Today we are here to discuss the budget authorizations for three federal agencies that, I believe, are critically important to the expansion of the U.S. economy and the functioning of U.S. trade policy and law enforcement. The U.S. International Trade Commission, the United States Trade Representative, and the U.S. Customs Service promote the expansion of U.S. export markets and protect our domestic workers and businesses from the perils of unfair trade and sudden import surges. I urge the subcommittee to support the work of these agencies, and recognize their importance to the U.S. economy, by approving in full their budget requests.

ITC

The United States International Trade Commission often stands between U.S. workers and the effects of unfair trade. In fact, the ITC is currently engaged in a number of antidumping and countervailing duty investigations dealing with unfairly traded steel. Additionally, the ITC has recently started a Section 201 investigation into the damaging level of steel imports in recent years. Their report is due out within the next few months, and represents just one example of the important work of the ITC.

USTR

The importance of the United States Trade Representative is not lost on this Subcommittee. The role that the USTR plays in expanding foreign markets for U.S. exports, maintaining the integrity of our trade laws, and ensuring that our trade partners live up to their international and bilateral obligations is critical to the health of our economy, and must be recognized by the Congress.

I do hope that Ambassador Allgeier will be able to provide us with additional information on the new positions created at USTR as part of the Clinton Administration's trade compliance initiative. In particular, I would also be interested in hearing how USTR will use the new positions to monitor China to ensure that it fulfills the commitments made as part of its WTO accession.

Customs

Strong congressional support for Customs will increase the agency's efficiency and vitality, lowering transaction costs, waiting periods and prices for U.S. importers and consumers. That is why I am urging the Subcommittee to approve the budget authorization for U.S. Customs, to support its efforts to increase efficiency—especially through the ACE program—and to address the issue of compensation in a rational and comprehensive manner.

The ACE program—or Automated Commercial Environment—is an effort to modernize the technology used by Customs officers as they monitor and regulate the flow of goods into our country. The current, outdated system is operating beyond capacity and appears to be reaching the end of its useful life. The pace at which the ACE upgrade may take place is contingent upon the level of funding provided by Congress.

Strong fiscal support will mean a more rapid increase in the efficiency of the Customs Service—a result that is positive for both taxpayers and consumers. Taxpayers will benefit by saving $130 million in annual life support that the current, antiquated system demands, and consumers will benefit as imports enter our markets more rapidly and at a lower cost.

As we consider modifying the compensation program for Customs officials, it is important that we address the payment system as a whole, avoiding the use of cosmetic measures that unfairly penalize one group of workers within the agency. In 1993, Congress passed legislation that overhauled the Customs payment program. The reforms reduced inefficiencies and the potential for abuse, and struck a balance between budget priorities and avoiding arbitrary salary cuts for Customs employees. Any solution to ongoing personnel issues should maintain the integrity of that balance by taking a comprehensive, not piecemeal, approach.

Conclusion

I do not need to remind the Subcommittee that it has been over ten years since the last passage of authorization for trade agencies. I find this to be a dangerous and unsettling abdication of Congressional input into the way in which our trade agencies use federal funds. It is my hope that this year will be different, but I fear that we are embarking on the same familiar path of disagreement and unproductive stalemate. Continuing to rehash the same arguments every year constitutes a disservice to our trade agencies and the public.

Once again, I would like to emphasize that piecemeal attempts to change the Customs payment system will create endless dissent within the Committee without opening the possibility for meaningful reform.

Mr. Chairman, I sincerely hope that we can agree on the need to reassert this Committee's voice in the appropriations debate, and pass the budget authorization requests for all three agencies.

Thank you.

Chairman CRANE. Without objection, so ordered. Thank you, Mr. Levin.

And today we will hear from a number of distinguished witnesses.

And in the interest of time, I would ask that you try and keep your oral testimony to 5 minutes or less. But all written statements will be made a part of the permanent record.

And we now have our first two witnesses, our distinguished colleagues, the Honorable Robert Filner from California and the Honorable Charles Gonzalez from Texas. And please proceed in that order.

STATEMENT OF HON. BOB FILNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FILNER. Thank you, Mr. Chairman.

Good afternoon. Thank you for holding this hearing and thank you for allowing your colleagues who are not on this Committee to speak.

I think I bring to you a very unique perspective on trade. As the congressman whose district sits on the Mexican-California border and includes the busiest border crossing in the world at San Ysidro and one of the largest commercial crossings at Otay Mesa, I think I can tell about the policies that certainly impede trade.

Having border crossings that are adequately staffed is a priority for all of us in the San Diego region. When the Customs inspection lanes are not open as they should be, waiting times increase to unacceptable levels. One hour or even three hour delays are not unheard of, affecting businesses throughout San Diego County and the livelihood of most of my constituents.

Long delays at the border impede what should be a normal, legal flow of goods, services, and workers between the United States and Mexico.

These border crossings simply are not adequately staffed. We have 16 lanes at Otay Mesa that Congress voted to build. We have 24 lanes at San Ysidro. Even at the times of greatest traffic, many lanes are routinely unstaffed.

The problems of the staffing are largely a function of the United States' difficulty in attracting and retaining Customs and Immigration and Naturalization Service (INS) inspectors. These inspectors face incredible day-to-day rigors on their jobs. I have seen them personally many times, as I try to share in their job on the border.

They risk encountering life-threatening interactions with smugglers intent to push their way into the United States at any cost. There have been shoot-outs at the border inspection stations.

Yet these valiant inspectors are not recognized with the status that we call "law enforcement status," which other Federal law enforcement officers enjoy. I continually hear stories in San Diego County of inspectors, who our country trains at our finest Federal law enforcement academies, leaving for other agencies, in the area that they do adequately recognize them for the law enforcement officers they are.

I know that a Customs inspector, for example, Roberto LaBrada, who was injured during a shoot-out with a drug smuggler a few years ago at the Calexico border crossings, finds this sad truth to be incredibly ironic: Had he or his partner, Inspector Nicolas Lira, been killed during the shoot-out, their names, Mr. Chairman, would have been inscribed on the walls of the National Law Enforcement Officers Memorial just a few blocks from here. Their names would have been inscribed on that wall. But in life, they have no such benefits or recognition.

That has to affect recruitment and retention. In fact, from 1998, when we had a peak of 701 inspectors, we are now down to 619 Customs inspectors. The INS has had difficulty maintaining its peak number also, and recruitment and retention is a key reason. INS inspectors also lack law enforcement status.

There is little incentive to take such dangerous jobs as they hold. Seventy-five Customs officers' names are inscribed on this memorial, the National Law Enforcement Officers Memorial, and each inspector knows that he or she could be next. It is just plain demoralizing for them to put their lives on the line without getting the recognition for the dangers of the job.

Thus far, we in Congress have said "no" to these officers and the hardworking Customs inspectors who work in long, polluted lines of cars, never knowing which one may have the next desperate smuggler.

They carry guns, make arrests, seize more illegal drugs than any other Federal group, and yet they do not have law enforcement officer benefits.

I do have a bill, H.R. 1841; others will mention it today. This changes that situation and it says "yes" to ensuring a strong and vigorous work force necessary for our country to have the finest level of protection possible.

Our country deserves no less, Mr. Chairman. And these valiant officers who protect us deserve no less.

Any costs created by the change of their status is offset by savings in training costs and increased revenue collection. A 20-year retirement bill for these employees will reduce turnover, increase yield, decrease recruitment and development costs, and enhance the retention of a well-trained and experienced workforce.

I hope that this Committee will consider these personnel and morale issues when discussing the important role that the Customs Service plays in our country's trade policy.

And I thank you, Mr. Chairman, for looking at these issues and allowing us the opportunity to be with you today.

[The prepared statement of Mr. Filner follows:]

Statement of the Hon. Bob Filner, a Representative in Congress from the State of California

Good afternoon, thank you for recognizing me, Mr. Chairman, and providing me the opportunity to speak. I am here to offer a very unique perspective on trade—as the Congressman whose district includes two of the busiest border crossings in the world, the San Ysidro and Otay Mesa crossings between San Diego and Tijuana, I can tell you about policies that impede trade.

Having border crossings that are adequately staffed is a priority for those of us in the San Diego region. When the Customs inspections lanes are not open as they should be, waiting times increase to unacceptable levels—45 minutes or even hours are not unheard of, affecting businesses throughout San Diego County. Long delays at the border impedes what should be a normal, legal flow of goods, services and workers between the United States and Mexico.

The border crossings simply are not adequately staffed—many of the 16 lanes at Otay Mesa that Congress voted to build, and the 20+ lanes at San Ysidro, are routinely unstaffed, even at the times of greatest traffic.

The problems of staffing are largely a function at the United States' difficulty attracting and retaining Customs and Immigration and Naturalization Service inspectors. These inspectors face incredible day-to-day rigors on their jobs. They risk encountering life-threatening interactions with smugglers intent to push their way in to the U.S. at all costs. There have been shoot outs at the border inspection stations, yet these valiant inspectors are not recognized with *law enforcement status* that

other federal law enforcement officers enjoy. I continually hear stories in San Diego County of inspectors who the U.S. trains at our finest federal law enforcement academies leaving for other agencies in the area that do adequately recognize them for the law enforcement officers they are.

I know that Customs Inspector Roberto LaBrada, who was injured during a shoot out with a drug smuggler a few years ago at the Calexico border crossing finds this sad truth to be incredibly ironic—had he or his partner, Inspector Nicolas Lira, been killed during that shoot out, their names would have been inscribed on the walls of the National Law Enforcement Officers Memorial a few blocks from the U.S. Capitol. But in life, they would have no such benefits nor recognition.

How can such a sad and ironic truth NOT affect recruitment and retention? There are 619 Customs inspectors at our ports, down from a peak of 701 in 1998. The Immigration and Naturalization Service also has had difficulty maintaining its peak number of inspectors from 1998 and mentions recruitment and retention of their inspectors as a key reason.

Customs cannot fill these positions in many cases because there is little incentive to tackle such dangerous jobs. There are 75 Customs officers whose names are on the National Law Enforcement Officers Memorial—each inspector knows that he or she could be next. It is demoralizing for them to put their lives on the line without receiving appropriate recognition for the dangers of the job.

Thus far, Congress has said "no" to the fallen officers, and the hardworking Customs inspectors who toil daily in long, polluted lines of cars—never knowing which car may contain the next desperate smuggler. Customs inspectors carry guns, make arrests and seize more illegal drugs than any other federal group—it is unconscionable that they do not have a *law enforcement* officer benefit!

My Law Enforcement Officer Equity Act, LEO Equity Act, H.R. 1841, says "Yes!" to these officers. My LEO Equity Act says, "Yes!" to ensuring the safety of our country as these officers protect our borders and ports of entry. It says, "Yes!" to ensuring a strong and vigorous workforce necessary for our country to have the finest level of protection possible.

Our country deserves no less and these valiant officers who protect us deserve no less. Any cost created by this act is offset by savings in training costs and increased revenue collection. A 20-year-retirement bill for these employees will reduce turnover, increase yield, decrease recruitment and development costs, and enhance the retention of a well-trained and experienced workforce.

I ask the Committee to strongly consider these personnel and morale issues when discussing the important role that the Customs Service plays in our country's trade policy. Thank you Mr. Chairman.

Chairman CRANE. Thank you, Mr. Filner. Mr. Gonzalez.

STATEMENT OF HON. CHARLES A. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GONZALEZ. Mr. Chairman, and Ranking Member Levin, again, thank you very much for the opportunity of appearing before you today to testify on designating the San Antonio International Airport as a permanent port of entry for customs processing.

I know you have very weighty matters here today. This is a small piece of that puzzle. But it is very, very important to the community of San Antonio.

As you may be aware, San Antonio is located only about 150 miles from the Mexican border. Obviously, we have very strong cultural and economic ties with Mexico and have had for a number of years.

But with the advent of North American Free Trade Agreement (NAFTA), obviously this has increased tremendously. NADBank is actually located and headquartered in downtown San Antonio.

Approximately a year ago, with the help of this Committee and Members of this Committee, we were able to get our San Antonio International Airport designated as a port of entry. Unfortunately,

this was only for a period of 2 years. And at the expiration of those 2 years, obviously it no longer has that designation, and we will run into problems.

One barrier to our city's ability to attract international companies and their investment in San Antonio until last year was that businesses that fly private aircraft from Mexico had to make an interim stop to clear Customs before arriving at their final destination of San Antonio.

What does this mean to the individual businessperson? It means that that cost—they are only 150 miles from San Antonio—is $1,500 to $2,000 when they stop, and they lose 1.5 to 2 hours in time.

As indicated, we were able to remedy this last year, but now we are seeking a permanent designation of the San Antonio International Airport as a port of entry.

I do wish to advise Members of the Committee that I have personally gone out there to view the Customs operation as well as the Immigration operation there in the San Antonio International Airport, and I want to commend Mr. Gurdit Dhillon, the United States Customs Service director of field operations for South Texas, who was present there.

They have been doing a wonderful job. This is something that they can easily accommodate.

But to give you some idea of what is happening, in the first 6 months of the year 2000, the San Antonio airport accommodated 432 private aircraft on Customs processing. In the first 6 months of 2001, 675 private aircraft were processed. So as word gets out, obviously there is greater use.

I don't see that there is going to be any complications or that there is going to be a tremendous demand on resources of Customs in this particular case. But San Antonio has maybe finally arrived after many, many years of being the economic stepchild of South Texas. And I would really appreciate your support in seeking the permanent designation.

Thank you again.

[The prepared statement of Mr. Gonzalez follows:]

Statement of the Hon. Charles A. Gonzalez, a Representative in Congress from the State of Texas

Mr. Chairman, Ranking Member, and Members of the Committee. I thank you for the opportunity to testify on designating the San Antonio International Airport as a permanent port of entry for customs processing.

The City of San Antonio, Texas is located approximately 150 miles from the U.S.-Mexico border. Historically, the city has had strong cultural and business ties with Mexico. Since NAFTA was approved in 1993, these ties have only become stronger as we have seen the expansion of trade between the two countries foster economic development in our city. For example, the North American Development Bank, or NADBank, created under NAFTA, is located in downtown San Antonio. In addition, several of San Antonio's large corporations have business interests in Mexico and the City of San Antonio itself has instituted the CASA Program. The CASA Program complements state and federal export assistance programs, focusing on small and medium sized companies interested in conducting business in Mexico. Letters and an article from the *San Antonio Express-News* in support of this airport designation are attached for your review.

Moreover, in conjunction with the Free Trade Alliance of San Antonio, the City of San Antonio is working to develop the city as a competitive International Trade Center in the Americas to attract foreign investment and to facilitate improvements to the trade infrastructure that will reduce barriers to trade.

One barrier to our city's ability to attract international companies and their investment in San Antonio is that until last year, businesses that fly private aircraft from Mexico had to make an interim stop to clear customs before arriving at their final destination of San Antonio. Making this interim stop can cost the private aircraft owner $1,500 to $2,000 and a loss of 1½ to 2 hours in time. However, in the last session of Congress, we included a provision in the Miscellaneous Trade and Technical Corrections Act of 2000 to designate the San Antonio International Airport as an international port of entry. This provision allows private aircraft arriving from foreign destinations to fly directly into the San Antonio airport for customs processing.

However, the port of entry designation is a conditional provision lasting only two years and expiring in 2002. I would like to make this designation permanent and am here today to ask that the Committee adopt language in the Customs Reauthorization bill making the San Antonio International Airport's designation as an international port of entry permanent.

Private aircraft have been arriving at the San Antonio airport from Mexico for several months now and the program has been a resounding success. The travelers that have been able to fly straight into San Antonio, without an interim stop, have been especially pleased with the ease in which they can enter the U.S. to conduct their business. On a recent tour of the customs processing facility, I had the privilege of meeting and discussing the change with Mr. Gurdit Dhillon, the U.S. Customs Service's Director of Field Operations for South Texas. I was impressed by his enthusiasm and ideas for accommodating private aircraft landing in San Antonio and I am certain that under his guidance, the final, permanent implementation will be a success. I have also been recently informed that the airport is making enhancements by installing monitors and cameras in the customs and immigration area to improve both Customs' and INS's ability to process incoming aircraft.

The airport designation is an extremely important component of economic development for the City of San Antonio. By facilitating customs processing for private aircraft, the ability for companies on both sides of the U.S.-Mexico border to conduct business is enhanced by saving valuable time and money. The Customs Service's ability to process aircraft has already proven to be a success and will continue should the designation as a port of entry be made permanent.

I thank you again for this opportunity to testify before you and the Committee, and I look forward to working with you on policy that promotes trade and investment in the City of San Antonio.

[The attachments are being retained in the Committee files.]

Chairman CRANE. Thank you, Mr. Gonzalez. Do you have any questions, Mr. Levin?

Mr. LEVIN. No, just to say, we will work on both. And we are glad you are here to raise these issues. So we will work on both.

Mr. GONZALEZ. Thank you again.

Mr. FILNER. Thank you.

Chairman CRANE. Well, thank you for your participation.

And with that, I would now like to invite our first panel of witnesses, deputy U.S. Trade Representative, Peter F. Allgeier; acting Customs commissioner, Charles Winwood; and, ITC chairman, Stephen Koplan. And if you folks will please take seats.

And, again, if you can keep your oral testimony to 5 minutes or less. And that is what this little gadget in front here with that light is for, to go from the green light to the yellow light, the warning light, to the red light, which means stop. Please try and keep your oral testimony to 5 minutes or less. And any written statements, though, will be made a part of the permanent record.

And with that, Mr. Allgeier, you may proceed.

STATEMENT OF HON. PETER F. ALLGEIER, DEPUTY UNITED STATES TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Mr. ALLGEIER. Thank you, Mr. Chairman. I would like to thank you and Congressman Levin for holding this hearing.

And basically, I would like to make three points. One, to thank this Committee for the support that is provided in the past. Second, to explain how we have been using the additional resources that you have provided in this fiscal year. And third, to seek your support for our future operations.

First, we are very grateful of course for the addition to our budget in this current fiscal year and the additional staff.

Are you going to take a break?

Chairman CRANE. No, no.

Mr. LEVIN. Keep going.

Mr. ALLGEIER. OK, all right.

But particularly, we are very appreciative of the unwavering support for our overall mission of opening markets, getting rid of trade barriers, and enforcing our agreements and our trade laws.

And let me just say that the support that we have had from the Committee and from the staff has been very welcome and very much appreciated. It is at least as important as the financial support that we have gotten from you.

In the current fiscal year, we received an additional $4 million in our budget and 25 additional full-time equivalent staff to help us deal with the growing negotiations and caseloads that we have.

In terms of using or allocating the additional staff, more than half of the staff—13 positions—have been allocated for compliance and enforcement. Part of that has been to strengthen the general counsel's office, where the litigation in the WTO and NAFTA takes place, and part of it is to have compliance and enforcement capabilities within the functional offices and the geographic offices.

We don't just exercise compliance and enforcement through litigation, but also through trying to negotiate differences of interpretation and agreements.

Eleven of the new positions are for negotiators, and I think you know very well the additional negotiation burdens that we have. We have the ongoing negotiations in the WTO on agriculture and services. We are working toward launching a new round. But even as we do that, we have full-time negotiations on the Free Trade Area of the Americas and bilateral free trade agreements with Chile and Singapore.

The third area in which we have used the additional resources and money beyond negotiators and compliance is in the area of upgrading our communications security. Increasingly, we are doing our business across the Internet and through electronic communications. And it is vital, actually, to our mission that we have good security in those communications.

And so we have been using some of the additional financial resources over the last year to upgrade these aspects of our computer network as well as our communication with the State Department in transmitting electronically cables, which we will soon have that capability and that will increase our efficiency.

That, very briefly, is how we are using the additional resources that we have been granted this year. And as we approach the new fiscal year, we are requesting a very modest increase of 2.2 percent in our budget. That is $645,000. We are not seeking any additional increases in permanent staff.

And we will, however, use approximately $350,000 in carryover funds from last year, which of course will be very helpful as we prepare for the WTO ministerial in Doha.

One other point on resources, we are very fortunate that each year we have between 30 and 35 non-reimbursable detailees from other departments. These have proven to be essential for our mission, but I think it also has been very helpful over time in spreading trade expertise among the other agencies as these detailees go back to their home agencies, and that strengthens the overall U.S. negotiating approach or ability.

So in conclusion, thank you very much for the support that we have always had from this Committee. We look forward to working with you closely on these trade initiatives and trade promotion authority. And I would be happy to answer any questions that you have today. Thank you.

[The prepared statement of Ambassador Allgeier follows:]

Statement of the Hon. Peter F. Allgeier, Deputy United States Trade Representative, Office of the United States Trade Representative

Mr. Chairman and Members of the Committee, I welcome this opportunity to appear before the Subcommittee to present the budget request for the Office of the United States Trade Representative.

I will keep my remarks brief and will of course be happy to respond to any questions the Committee may have about USTR, its budget or its activities.

I want to begin by thanking the Committee for its unwavering support of our missions to open markets, expand trade, and enforce trade laws and trade agreements. We greatly value our close working relationship and look forward to continued constructive work on trade promotion authority and other trade priorities.

STATUS OF FISCAL YEAR 2001 FUNDING

25 new Positions

We are also grateful to the Congress for its support of USTR's budget in FY 2001.

This year, the Congress authorized an increase of $4 million and 25 full time equivalent staff to help USTR manage growing responsibilities and rising workloads. I am pleased to report that we are using those funds for exactly the purposes intended by the appropriation.

More than half of the new positions are targeted for enforcement and compliance. We have distributed these positions to strengthen litigation and legal services in our Office of General Counsel, and to improve our capabilities to monitor the practices of our training partners through staffing increases in geographic, sectoral and multilateral offices, such as the offices of China, Agriculture, Industry, and Services, Investment & Intellectual Property.

Twelve of the new positions this year are for new negotiators. We have allocated these to offices that will be impacted heavily by the trade agenda and the burgeoning workloads that will flow from the launch of a new Round and from other trade initiatives vital to the President's trade agenda. New negotiator positions are being assigned to the offices of WTO and Multilateral Affairs; Agriculture; Africa; the Environment; Asia; the Americas; and Japan.

Two of the 25 new positions are being assigned to USTR's Geneva Office, and one has been set aside for a full time Security Officer at USTR.

Congressional approval of the new positions in FY 2001 allows us to have the new staff on board at the start of FY 2002, which will go a long way in our preparations to launch a new Round after the WTO Ministerial in Doha, Qatar in November. These new staff will also help as we pursue regional agreements through the Free

Trade Area of the Americas, and in APEC, and bilateral agreements with countries like Chile and Singapore.

Equally important, the new compliance positions will permit USTR to sustain a strong monitoring and enforcement program. In FY 2000, USTR brought 32 cases before the WTO, and was a third party in 26 others. This year, we expect to increase these numbers. The addition of compliance staff in our bilateral and sectoral offices will also help us in identifying violations and pursuing enforcement actions at an early stage.

Computer and Security Improvements

This fiscal year, the Congress also allocated additional funding to strengthen computer security at USTR, and I am delighted to report that we are making real progress on this front. By the end of the FY 2001, we will have upgraded the firewall protecting USTR's computer network from unauthorized access via the internet.

We will also have tightened password protections, further insulating USTR's network from intrusions via remote locations.

With the additional funds provided by the Congress this year, we will also create the capacity to send cables to the State Department electronically, rather than relying on hard copy transmissions. That use of technology should save negotiators' time and speed the delivery of cables, especially classified cables, to intended recipients.

We plan to have each of these improvements operational by the Fall.

SENIOR LEVEL APPOINTMENTS

In the past six months, we have been comparatively successful in filling all senior level filled positions. Of the five statutory positions authorized in *The Trade Act of 1974, as Amended*, three officials have been confirmed: Ambassador Zoellick, Ambassador Linnet Deily, our Geneva Deputy, and myself as one of the two Washington Deputies. President Bush has nominated Jon Huntsman to be the other Deputy in the Washington Office, and Allen Johnson to be the Chief Agricultural Negotiator. We are hopeful that the Senate will act on the nominations of Jon Huntsman and Allen Johnson this month.

BUDGET REQUEST FOR FY 2002

The President's budget includes $30.1 million and 203 Full time Equivalent staff for the

Office of the U.S. Trade Representative in Fiscal Year 2002. This is the same staffing authorization and a $645,000 funding increase above the FY 2001 appropriation.

Together with funds carried over from FY 2001, the $30.1 million budget request will allow us to meet anticipated employee pay raise cost increases next year, and satisfy other rising costs of doing business in FY 2002.

In FY 2002, we will continue to use approximately 35 personnel detailed from other Federal agencies, such as the Departments of State and Agriculture. With these non-reimbursable details, the loaning agency pays the detail's salary and benefits, while USTR pays the cost of travel and office equipment and supplies. The direct salary and benefit value of these details is more than $3 million annually, and the contribution that these trade professionals make to USTR is incalculable.

CONCLUSION

In conclusion, Mr. Chairman, USTR's budget request for FY 2002 is a modest one, amounting to just 2.2 percent more funds than appropriated by the Congress for the current year.

Throughout its history, USTR has been a lean and effective organization, staffed with employees who are talented, industrious and dedicated. I can assure you that the current roster of USTR employees continues this rich tradition. You can be sure that the hard working staff of the agency will provide the President, the Congress, and the American public a great return on each dollar invested.

I thank you for your attention and I would be pleased to respond to your questions.

Chairman CRANE. Thank you, Ambassador Allgeier. Mr. Levin has a quickie.

Mr. LEVIN. Right.

The Chairman suggested, Mr. Allgeier, Ambassador, that maybe you don't need to wait. I am afraid that the rest of you will, as we go and vote. How many votes do we have?

Chairman CRANE. We have two, I think, at this time.

Mr. LEVIN. So let me just say, there are lots of substantive issues we could discuss, but this isn't the place for it. So we will do that another time.

And we are glad to hear about your use of these new positions, including for some important new compliance issues. As China ascends to the WTO, it is going to, I think, raise a number of continuing implementation issues, as you know so well.

We are glad that the USTR carried out what was the urgent request if not mandate of this Congress that there be an annual review within the WTO. And that is going to happen the first decade.

But there is a need for continuing review by USTR, Commerce, and State. And we are glad that you are going to use some of the staff to be active and vigilant. So best of luck.

And that is all I have to say, Mr. Chairman.

Chairman CRANE. Very good. Mr. Becerra, do you have any comments?

Mr. BECERRA. No, Mr. Chairman.

Thank you for being here.

Chairman CRANE. Well, with that, we are going to stand in recess, subject to call of the Chair, because we have to run over for the two votes.

But we will let you be excused, if you don't want to hang out. If you want to hang out, there may be questions later still.

But with that, we are in recess, subject to call of the Chair.

[Recess.]

Chairman CRANE. OK, folks, we are back in business. And I apologize to Commissioner Winwood. He most graciously has relinquished his seniority in line, and I know he was hoping that he had already made his last trip up to the Hill to give testimony before we asked him to come back.

But with that, I will now yield to our distinguished colleague, Mr. Koplan, and please keep your oral testimony to 5 minutes or less. And all written testimony will be made a part of the permanent record.

STATEMENT OF HON. STEPHEN KOPLAN, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION; ACCOMPANIED BY STEVE McLAUGHLIN, DIRECTOR OF ADMINISTRATION; ROB ROGOWSKY, DIRECTOR OF OPERATIONS; LYN SCHLITT, GENERAL COUNSEL; AND NANCY CARMAN, CONGRESSIONAL RELATIONS OFFICER

Mr. KOPLAN. Thank you, Chairman Crane and Congressman Levin.

On behalf of the United States International Trade Commission, I thank you for affording me the opportunity to discuss our budget request for fiscal year 2002 that is in the amount of $51.44 million.

I am accompanied today by Steve McLaughlin, our Director of Administration; Rob Rogowsky, our Director of Operations; Lyn Schlitt, our General Counsel; and Nancy Carman, our Congressional Relations Officer.

The Commission fiscal year 2002 budget request represents a 6.9-percent increase as compared to the fiscal year 2001 appropriation of $48.1 million. It has the unanimous support of all six Commissioners.

At the Subcommittee's request, the Commission has estimated our authorization requirements for fiscal year 2003. We estimate the need for an authorization level of $53.45 million for fiscal year 2003, a 4-percent increase as compared to our current fiscal year 2002 request.

I am appreciative that over the last several months, Subcommittee staff and personal staff of many of the Members took the time to meet with me, Commission vice chairman Deanna Tanner Okun, and certain of the agency's staff to discuss the Commission's justification for our fiscal year 2002 budget request.

The vice chairman would have participated with me this afternoon except for the fact that, at my request, she remained behind to take over the chairing of a Title VII antidumping countervailing duty hot-rolled steel hearing, covering 11 countries, that commission began at 9:30 this morning and that is expected to last all day.

We are also mindful of the bipartisan support that this Subcommittee provided for our fiscal year 2002 budget request in advance of the action taken by the House Appropriations Committee on July 10.

I refer specifically both to your letter, Chairman Crane, and to the joint letter of the ranking member of the full Committee, Mr. Rangel, and of the Subcommittee on Trade, Mr. Levin.

I need not review the details of our statutory mission. They are well-known to the members of this Subcommittee. It is the Committee on Ways and Means that publishes the overview and compilation of U.S. trade statutes, a book on the required reading list for everyone in the trade community. Indeed, we already have our order in for the new edition that I understand awaits printing at the Government Printing Office.

My submitted statement details the Commission's five operations. They are: import injury investigations; intellectual property-based import investigations; the research program; trade information services; and trade policy support. I will highlight some recent significant developments that we did not anticipate in preparing our current appropriation request.

First as to Operation 1. At the written request of the administration on June 22, we instituted an extremely comprehensive section 201 safeguard investigation regarding certain steel products. The request covers over 600 Harmonized Tariff Schedule item numbers. We have assigned the equivalent of four separate investigative teams to handle it. We must complete our work on this by December 19.

Second as to Operation 2, intellectual property-based import investigations. The number of new cases has increased from 12 newly instituted for all of fiscal year 2000 to 29 newly instituted in just the first 10 months of fiscal year 2001.

Third as to Operation 5, trade policy support. As the number of section 201 safeguard cases has grown significantly, so too has the amount of time and other resources that our Office of General Counsel has devoted, because of experience in appellate practice, to assisting USTR litigation teams at the World Trade Organization.

The key components of our total budget are personnel, approximately 72 percent; and rent, approximately 11 percent. This means that a significant part of our requested increase over last year's appropriation is necessary just to fund the anticipated 3.7-percent pay increase that will occur next January.

The Commission will commence a number of new projects in fiscal year 2002. They include a means for facilitating electronic filing of Commission questionnaires for our import injury investigations, because we are required to collect and analyze large amounts of statistical data that are not available from standard sources; system enhancement to our online Harmonized Tariff System database, used now by both the government and the public for more than 200,000 research actions annually; and the establishment of an internal data warehouse for labor cost, personnel, and accounting data, to generate regular reports to facilitate management oversight and tighter control over budget execution in conformity with the Government Performance and Results Act.

The Commission will also establish a new position of Chief Information Officer as part of our commitment to compliance with the Clinger-Cohen Act and the Government Paperwork Elimination Act.

Mr. Chairman, I ask that the full text of my submitted statement be included as part of the record of this hearing and welcome any questions.

Chairman CRANE. Without objection, so ordered.

[The prepared statement of Mr. Koplan follows:]

Statement of the Hon. Stephen Koplan, Chairman, U.S. International Trade Commission

INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am pleased to have this opportunity to discuss the budget request of the United States International Trade Commission for fiscal year (FY) 2002 and the authorization request for FY 2003. I am accompanied today by Steve McLaughlin (the Director of Administration), Rob Rogowsky (the Director of Operations), Lyn Schlitt (the General Counsel), and Nancy Carman, (the Congressional Relations Officer).

The U.S. International Trade Commission is an independent, nonpartisan agency with a wide range of trade-related mandates. The trade laws administered by the Commission encompass quasi-judicial investigations of import injury (commonly referred to as dumping, countervailing duty, and safeguard investigations) and unfair practices in import trade relating to intellectual property; major trade studies, research, and economic analysis; trade monitoring, data collection; development of uniform statistical data; and issues concerning the Harmonized Tariff Schedule of the United States.

BUDGET REQUEST FOR FY 2002/2003

The Commission's FY 2002 budget request is $51,440,000. It has the unanimous support of all six members of the Commission. That amount is necessary in order to fund existing mandated investigative activity and related operations, a manda-

tory 3.7 percent pay increase, and information technology (IT) projects that are designed to improve electronic transaction capability, provide broader public accessibility to public data, develop more timely and accurate trade information for the trade community, and improve transparency in the Commission's procedures and finances.

I would like to take this opportunity to thank both the Subcommittee staff and the personal staff of many of the Members who have met on numerous occasions with Commission officials, as well as with Vice Chairman Deanna Tanner Okun and me, to discuss the Commission's budget requirements and on occasion participate in briefing sessions regarding certain of our fact-finding investigations.

The FY 2002 request represents a 5.25 percent increase over our FY 2001 funding availability of $48,800,000 and a 6.9 percent increase over the FY 2001 appropriation of $48,100,000.

At the request of the Subcommittee, Commission staff estimated ours funding needs for FY 2003. We propose an FY 2003 authorization level of $53,450,000—an increase of four percent over our FY 2002 request. It is important to note that this figure sets the upper bound for any later appropriation. Our formal appropriation request for FY 2003 will be developed in the coming months by Commission staff and managers and then will be reviewed by the Commission itself before it is submitted to Congress in early February 2002. While it is premature to commit to an appropriation request for FY 2003, I am confident that we will be able to stay within our estimate.

COMMISSION OPERATIONS: SIGNIFICANT DEVELOPMENTS

Pursuant to the Government Performance & Results Act (GPRA), the Commission formulated its first Strategic Plan in 1995. The Strategic Plan organizes the Commission's activities into five Operations that, for the most part, mirror authorizing legislation authored by this Committee and the Senate Committee on Finance. The five Operations are (1) import injury investigations, (2) intellectual property-based import investigations, (3) the research program, (4) trade information services, and (5) trade policy support.

I need not review the details of the authorizing legislation that comprises our statutory mission. The specific procedural and substantive requirements of the antidumping and countervailing duty (AD/CVD) provisions, sunset review, the safeguard provisions, section 337 intellectual property cases, section 332 trade studies, and production of the Harmonized Tariff Schedules are under your jurisdiction. Indeed, you publish the Overview and Compilation of the U.S. Trade Statutes, which is on the required reading list for everyone in the trade community. For the record, however, I will review recent significant developments in these statutory areas and our workload expectations for the future.

OPERATION 1: IMPORT INJURY INVESTIGATIONS

The most significant development in the Commission's areas of responsibility in the last several years has been in import injury investigations (Operation 1), specifically the advent of sunset review. During the three year transition period (FY 1999–2001), the Commission conducted reviews of 309 outstanding AD/CVD orders. As this Subcommittee knows, this was a significant undertaking by the Commission and its staff and I am pleased to inform you that we completed the transition process four months ahead of schedule and without adding to our permanent staff.

The outstanding orders were consolidated into 105 separate investigations. Some of these original investigations stretched back to the early 1970s. As a result of this transition review process, approximately half of the transition orders were revoked, while the other half remain in place and will be reviewed again during FY 2004–2006. In addition to these transition orders, sunset review is now an ongoing and significant part of the Commission's annual workload. There will be between 5 and 10 regular sunset investigations every year.

We appreciate the bipartisan support that this Subcommittee has provided to our budget requests, not only in the last several years, but this year as well. Without that support, we could not have successfully completed the mandated three year transition process. For FY 2002 and FY 2003, there will be no transition review cases, but we will still have additional workload due to sunset reviews of new orders put in place in FY 1997 and FY 1998. In addition, since our import injury caseload is somewhat counter-cyclical, we have experienced increases in new filings of AD/CVD petitions, as well as a revival of safeguard cases, as the economy has slowed. In preparing our appropriation request for FY 2002, we did not anticipate this economic downturn and the increase in filings of new import relief petitions.

During most of the 1990s, the Commission rarely received more than one safeguard petition a year. For the last four years, the Commission has received at least

three safeguard petitions each year. As you know, these investigations must be completed by the Commission in 180 days. The reasons for this increased level of activity may be the subject of some debate, but it is clear that substantial resource requirements are necessary to service this increase.

Moreover, at the request of the Administration on June 22, we instituted an extremely comprehensive section 201 investigation regarding steel products. This investigation was instituted on a large number of products. As a practical matter, each individual product constitutes a separate investigation. The request covers over 600 Harmonized Tariff Schedule (HTS) item numbers. We have assigned the equivalent of four separate investigative teams to handle this one very broad investigation. Thus, from a practical staffing and workload view point, the investigation involving steel products results in at least four section 201 investigations, which must all be completed by December 19.

The Committee should be aware of the possibility that this safeguard investigation of steel products may be conducted simultaneously with an AD/CVD investigation of certain of the same products. This may occur under our statutes, but the standards for injury and causation vary and the scope of import coverage are different for these two types of import injury investigations. An AD/CVD investigation will take approximately 12 months. For example, today the Commission is conducting an AD/CVD hearing on hot rolled steel products from 11 countries. The hearing began at 9:30 a.m. and I will rejoin my colleagues immediately after I conclude my budget testimony.

OPERATION 2: INTELLECTUAL PROPERTY–BASED IMPORT INVESTIGATIONS

Fortunately, during the transition sunset period, workload in other Operations was relatively stable. However, that is no longer the case, particularly with regard to intellectual property-based investigations (Operation 2). Those investigations are conducted under section 337 of the Tariff Act of 1930. During the first six months of FY 2001, the number of new cases filed has increased dramatically. This increase in activity was not anticipated and appears to be the result of a number of external factors, including change in scheduling procedures in federal District Court for the Eastern District of Virginia (the alternative forum for patent infringement cases involving imported products).

Through the end of this month, we will have instituted 29 new investigations or related proceedings in FY 2001, compared with 12 for all of FY 2000, and we still have two months remaining in this fiscal year. This increased level of activity has put a tremendous strain on the offices responsible for handling those cases. To assist those offices we have created a staff attorney position in the Office of the Administrative Law Judges, which presides over these cases, and granted overhire authority to the Office of Unfair Import Investigations, which represents the public interest during the proceedings. If this caseload trend continues and the cases go to trial, we will be forced to add a fourth ALJ and additional support staff to our staffing plan for FY 2002.

OPERATION 3: THE RESEARCH PROGRAM

While the Commission is not a policy-making entity, through information and analysis, the agency contributes objective trade advice and policy support to the Congress, the President, the U.S. Trade Representative, and other interagency groups. Formal research studies produced at the request of the House Committee on Ways & Means, the Senate Committee on Finance, or the President comprise our third major operation, the Research Program. The Research Program is the Commission's largest strategic operation, now that the transition sunset process has been completed. Workload has been relatively stable for the last several years, although the subject matter of the studies obviously changes from year to year and the time periods for completing studies have been increasingly compressed. In the coming years, we anticipate increased activity and requests regarding such matters as the Free Trade Area of the Americas. We also have seen eight requests for a new kind of study conducted under the Research Program—"short supply" study requests—mandated by the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act. These are requests from the President for advice regarding whether additional preferential tariff treatment should be provided for apparel made in certain African and Caribbean nations because certain "fabrics of yarn" cannot be supplied by the domestic industry in commercial quantities.

OPERATION 4: TRADE INFORMATION SERVICES

The principal activities in this Operation are the maintenance and publication of the Harmonized Tariff Schedules (HTS), the maintenance of the Commission's Tariff

and Trade DataWeb (DataWeb) and other trade databases, providing substantive comments on miscellaneous tariff bills, and the maintenance of the Commission's National Library of International Trade. Later in my testimony, I will discuss the new developments in this area with respect to the IT initiatives that the Commission is conducting or planning. Most of them involve providing data and analysis to our customers, including Congress and the public at large. In a small agency where most of the budget reflects personnel costs, there is no IT capital fund, and thus new projects are reflected in increased costs. We ask for your continued assistance in obtaining the funding necessary to successfully complete these initiatives.

OPERATION 5: TRADE POLICY SUPPORT

Trade Policy Support is the smallest operation in terms of cost and full-time employees, but it reflects a commitment by the Commission to provide direct support to trade policy makers in the Executive and Congressional branches when needed. This operation includes periodic, intermittent support as well as formal details. Most of the details of Commission personnel are non-reimbursable details to USTR. These details benefit the Commission and its staff, and obviously benefit the recipients. However, both the intermittent direct assistance and the formal details result in increased costs to the Commission, both in terms of full-time employees who are not available for Commission work and related costs, such as travel. I know that the Subcommittee is aware of this practice.

One aspect of this Operation has grown significantly in recent years. As the number of cases litigated before the WTO has grown, so too has the amount of time and other resources that the Commission has devoted to assisting USTR litigation teams. Most of this time has been provided by staff attorneys in our Office of the General Counsel. That office has both trade expertise and experience in appellate practice and has provided invaluable advice and assistance to USTR in handling its large and growing caseload before the WTO.

COMMISSION SUCCESS IN CONTROLLING COSTS WHILE INCREASING RESPONSIBILITIES

As Chairman, I lead the Commission on administrative matters, including the budget, but management of the Commission's activities is a nonpartisan collaborative effort. As a result of this consensus approach, we have established a record of prudent fiscal management and cost control. Variability in workload has been met with flexible use of existing resources and a deliberate effort has been undertaken to better utilize resources and to limit the growth in the budget as much as possible.

The Commission has streamlined its procedures and contained costs by reducing staffing levels, space requirements, and other non-personnel costs in recent years. The key components of the Commission's total budget are personnel, approximately 72 percent, and rent, approximately 11 percent. Staffing levels are down 20 percent in the last ten years, including a 10 percent reduction-in-force in FY 1996. Rent costs are down over 25 percent in the last five years. Administrative staff support costs account for less than 10 percent of total labor costs and have been reduced by 45 percent since FY 1996.

When it comes to workload, the peak of the transition sunset period was absorbed by existing staff efforts to a large extent, with only marginal increases in overall staffing levels. Resources have been reprogrammed and staff reassigned to meet changing requirements. Virtually all of the increased staff resources consisted of term appointments of up to three years, rather than increased permanent staff. Most term appointments expired as the transition sunset workload dissipated, reducing the funding requirement for term personnel in FY 2001 and eliminating that cost completely in FY 2002.

The Commission's Strategic Plan has provided a guide to the budget process for the last several years. The Commission continues to use performance management principles to inform and shape resource allocation. In doing so, the Commission satisfies the requirements of the Government Performance and Results Act (GPRA), the Clinger-Cohen Act, the Government Paperwork Elimination Act (GPEA), the Federal Activities Inventory Reform Act (the FAIR Act) and other statutes, Executive Orders, and related OMB circulars, even when our independent status exempts us from those requirements.

PUBLIC ACCESS ENHANCEMENT PROJECTS AND OTHER INFORMATION TECHNOLOGY IMPROVEMENTS

This two year period between sunset transition cycles is an ideal time for the Commission to implement needed systems and infrastructure improvements. Our FY 2002 budget request includes funding for a number of IT projects to improve the way we conduct investigations, provide greater public access to our procedures and our public data, and improve data collection and dissemination.

These infrastructure improvements will have substantial public benefit. Our requested appropriation will allow us to continue to provide full free public access to our award-winning DataWeb site on the internet, will allow completion of the replacement for our document imaging system for the Commission's docket with enhanced public access capabilities, and will allow us to complete the replacement of our internal computer network, which is required due to lack of vendor support for the products we currently use.

These system improvements are required, not only as a matter of sound infrastructure planning, but also to comply with a variety of statutory mandates relating to strategic planning and the development of e-commerce capabilities to better serve the public.

New projects that will commence in FY 2002 include a means for facilitating electronic filing of Commission questionnaires, system enhancement to our online Harmonized Tariff System (HTS) database, the establishment of an internal data warehouse for labor cost, personnel and accounting data to generate regular reports to facilitate management oversight and tighter control over budget execution. We also will establish a new position of Chief Information Officer (CIO) to comply with the Clinger-Cohen Act and the strategic planning process. The best time to do these things is during the downturn of the sunset cycle, before the cycle begins again in FY 2004.

FY 2001 Projects with Recurring Costs in FY 2002

The Commission has established an interactive Tariff and Trade DataWeb (DataWeb) in response to our internal needs for our investigations and research. Updated monthly, the DataWeb offers data on imports and exports; U.S. import duties, staged reductions, and imports for trading partners; U.S. trade by region and by partner country; and detailed Commission trade database tables. DataWeb gives the Commission's staff the ability to respond quickly and authoritatively to informal and formal requests for trade information from the Commission's clients and furthers the Commission's commitment to the Government Paperwork Elimination Act (GPEA). In FY 1999, the Commission made the DataWeb available to other agencies, and then the public on a trial basis. The trial was an unqualified success. The Commission has now made DataWeb available to the public without restriction by funding needed hardware improvements. The system is now employed in all Commission investigations and is heavily used by Congressional staff, other Federal agencies such as USTR and Commerce, educational institutions, the private sector, international organizations, and the general public. The additional costs to make the DataWeb fully open to the public included about $200,000 of hardware expenses in FY 2001 and recurring operational costs of about $100,000 per year in service contracts and software licenses.

The Commission is preparing to replace its Electronic Dockets Imaging System (EDIS) and its companion system EDIS On-Line (EOL). EDIS makes all investigative case records (including title VII, section 201, section 332, and section 337 investigations) available to Commission staff from their desktops. Its internally developed interface, EDIS On-Line (EOL), allows parties to Commission proceedings and the public at large to have access to the Commission's nonconfidential records 24 hours a day, seven days a week This helps the Commission and the parties who participate in its investigations to meet strict statutory deadlines and increases the transparency of the Commission's processes. Early in FY 2002, the Commission will replace EDIS/EOL with a new system with enhanced capabilities and system improvements, including the possibility of providing access to confidential materials to authorized parties. Regardless of when the contract for this project is actually awarded, it will be funded from the FY 2001 appropriation.

By the end of this calendar year, the Commission will also replace the core software that runs the Commission's local-area network (ITC–Net). At the same time, business requirements for GPEA compliance, electronic services delivery and improved security require significant replacement of network infrastructure. The proposed new local area network will meet these needs with a strong emphasis on using public standards in key areas of the network. The FY 2001 budget includes $200,000 for purchase and implementation of this replacement system, and $100,000 in FY 2002 for any remaining work on the system.

New Projects for FY 2002

Import injury investigations are conducted within tight statutory deadlines. These investigations require collection and analysis of large amounts of statistical data that are not available from standard sources. Currently the Commission meets these demands through labor intensive processes involving the design, dissemination, collection, review, and analysis of customized industry questionnaires issued

to each party to a given case. Automation of this process by means of an Electronic Questionnaire System would provide many benefits, including more efficient processing of information and more flexible service to questionnaire recipients. The FY 2002 budget request includes $500,000 for the development of this system.

The FY 2002 budget request also includes funds for modernization of the Harmonized Tariff Schedules of the United States. As part of its effort to maintain, revise, and publish the Harmonized Tariff Schedule of the United States Annotated, the Commission has developed and maintained an HTS database and certain related electronic files. The HTS database is used by both the government and the public for more than 200,000 research actions annually. The database is also used widely within the Commission to update and validate the underlying trade data for all of our investigations and the DataWeb. The HTS and related files need significant upgrades to improve the production, timeliness and quality of their performance. The estimated cost of the upgrades are $150,000 in FY 2002 for system design, development, and integration, and $75,000 in FY 2002 and subsequent years as a recurring cost for data conversion and verification.

The Commission is planning to develop a Financial Data Warehouse that will automate a largely manual financial and budgetary process and provide for enhanced accountability. Such a system would provide better information for allocating resources and provide more timely and accurate budget execution and labor cost data. It would also satisfy requirements of the Government Performance and Results Act (GPRA), while facilitating the strategic planning process. The FY 2002 budget request includes $300,000 for design and implementation of this project.

The Commission is in the process of adding a Chief Information Officer (CIO). Appointing a CIO is part of the Commission's commitment to compliance with the Clinger-Cohen Act and the Government Paperwork Elimination Act. The CIO will assist the Commission in its ongoing efforts to better align information resources with strategic objectives, to better serve its customers, and to improve internal processes and controls.

CLOSING COMMENT

During my three years at the Commission, I have come to understand that this agency has repeatedly met new challenges, such as the transition to sunset, and done so while living within its means. In FY 2002 and FY 2003 we face more new challenges. Regular sunset investigations will become part of our normal routine, we will complete work on the mammoth section 201 investigation of steel products, and we will embark on several IT projects designed to provide broader public access to our work product and facilitate Congressional e-commerce initiatives. We again ask for your support in providing the means necessary to meet these challenges.

This concludes my prepared comments for today's hearing. Thank you again for the opportunity to present them, and I am prepared to address any questions or concerns you might have.

Chairman CRANE. And we will go forward with any questions that you might have of Mr. Koplan, since he is on a time restraint.

So if you have any questions, Sandy, fire away.

Mr. LEVIN. I will tell you, I think, for example, we need to be cautious about our increase regarding cases before you. So I will withhold those. Everybody understands the importance of those matters, both the 201 and the antidumping case.

So I think we can just wish you well.

Mr. KOPLAN. Thank you, Mr. Levin.

Chairman CRANE. Mr. Camp, do you have any question?

Mr. CAMP. Thank you, Mr. Chairman.

I think that a lot of concerns I have heard about are staffing levels, particularly with the increase in trade and on the concerns that that brings.

Will the automated commercial environment (ACE) and the entry revision project help you use the staff more productively? And is there any comment you can make on that, Mr. Winwood?

Mr. Winwood.

Mr. LEVIN. He hasn't testified yet.

Mr. CAMP. Oh, we haven't heard from all three? I came late.

Chairman CRANE. No.

Mr. CAMP. OK. Why don't we wait until you finish your testimony, then.

Chairman CRANE. Mr. English.

Mr. ENGLISH. For Mr. Winwood, I would just——

Chairman CRANE. Oh, no. This is just for Mr. Koplan, because he has to leave.

Mr. ENGLISH. OK, very good.

Mr. chairman, good to see you again, twice in 1 day. And I certainly appreciate the past hospitality you have shown.

I was wondering, do you consider the sudden increase in filings of investigations related to section 337, intellectual property rights violations, to be temporary or permanent?

Mr. KOPLAN. Permanent. And I say that because the U.S. Eastern District Court of Virginia is a place where—it's often referred to as a rocket docket—those cases were being filed.

And what happened in the last year, after we submitted our budget authorization, is that they decided that those cases could be scattered throughout that District, not just heard in Alexandria, Virginia. And what has happened is that there has been an influx of cases to us, and so we are way up over the number of cases that we had at this time last year, and it looks like that will be permanent.

And I think also that the increase in filings generally has been because of what has been happening with the tech industry. So we anticipate that this is going to continue.

Mr. ENGLISH. Thank you, Mr. Chairman. I have no further questions.

Chairman CRANE. Thank you.

Well, with that then, we express appreciation to you, Mr. Koplan. We are sorry to both of you for the delays, and would now like to yield to Mr. Winwood.

But you can depart.

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

Chairman CRANE. You bet. Thank you.

You may proceed when ready.

STATEMENT OF HON. CHARLES W. WINWOOD, ACTING COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. WINWOOD. Thank you, Mr. Chairman, Congressman Levin, and Members of the Subcommittee. And it is an honor, of course, to appear before you today to discuss the U.S. Customs fiscal year 2002 budget request.

I have submitted a comprehensive long statement for the record that I will summarize briefly for you today.

Customs' fiscal year 2002 budget request totals $2.39 billion. This budget will support Customs ongoing mission to facilitate the flow of international travel and trade while protecting America from drug smuggling, terrorism, money laundering, cyber-crime, copyright fraud, and other threats.

The rapid growth of our world economy poses key challenges for the Customs Service. The spiraling volume of people and goods

crossing our borders has put immense pressure on our resources. At the same time, we must accommodate a steady increase in new trade agreements and requests for services from the public.

Fortunately, Customs is supported by some of the most able, dedicated and best employees in the Federal government. The men and women of Customs continue to process passengers and trade in record numbers.

Last year, the Customs Service processed over 33.5 million trade entries, 150-percent increase since 1990. That volume is expected to double by year 2006. In addition, we processed about.5 billion travelers at airports, seaports and land border crossing. And thanks to the Congress, Customs has been able to acquire the resources to help meet the growing demand for our services.

In addition to support for Customs' annual budget request, the Congress established a collection of traveler and conveyance processing fees, otherwise known as Consolidated Omnibus Budget Reconciliation Act 1985 (COBRA) fees, to pay for enhanced inspection services.

Currently, COBRA fees pay for approximately 1,100 inspector positions as well as overtime and premium pay for all inspectors. The fees are also used to cover pre-clearance inspection and other essential operating costs.

Regrettably, the rapid growth in Customs resource needs has outpaced COBRA revenues. And we look forward to working with the Congress to address this funding shortfall to ensure that Customs maintains its current level of service.

Staffing in general will continue to be a critical issue for our agency. With the help of a leading consultant, we built a resource allocation model to help us project future staffing needs at our Customs locations.

The model was designed as a planning tool for management. It can be programmed to take into account changing scenarios that impact our mission, such as expanded volume of trade or a shift in threat.

Customs will rely increasingly on technology to supplement the skills of our people. We have obtained a range of non-intrusive inspection technology for our busy southern tier. The use of these tools has cut down our processing times significantly and enabled us to seize more illegal drugs.

Of the many tools under development at Customs to help facilitate border flows, none will benefit the America public in more ways than our new automated system for trade. Customs' ability to contend with a heavy workload hinges largely on the development of ACE.

Last year, we received the first appropriation for ACE in our 2001 budget. With part of that funding, we were able to select an ACE prime contractor this past April after an intensive bidding process.

The e-Customs Partnership, led by IBM Corp., was chosen to join with Customs to modernize our automated systems. Improved outreach to the trade community goes hand in hand with this ACE effort. We are working closely with the trade community on a proposal to streamline the entry process. We are also implementing risk management strategies throughout the agency that will lessen

the focus on compliant importers and concentrate our enforcement efforts where they are needed most. And we have assigned individual account managers to the largest importers, refined our audit processes, and begun to deliver on a range of benefits to low-risk companies.

With the continued assistance of the Congress, we look forward to building upon these successes, enhancing our level of service to the American public.

In that regard, I want to thank members of this Subcommittee for the support you provided to Customs in the recent markup of the 2002 Treasury budget. The additional funding recommended, particularly in the area of new automation, would enable Customs to stay on schedule with their ACE planning and deliver faster, safer, more efficient trade processing in as short of time as possible.

And thank you again for this opportunity to testify, Mr. Chairman. And I will of course be willing to answer any questions at your leisure.

[The prepared statement of Mr. Winwood follows:]

Statement of the Hon. Charles W. Winwood, Acting Commissioner, U.S. Customs Service

INTRODUCTION

Good afternoon, Chairman Crane, Congressman Levin and Members of the Subcommittee. It is a privilege to appear before you today to present U.S. Customs' Fiscal Year 2002 budget request, and to share with you some of our recent accomplishments and ongoing activities. Before I begin, I would like to thank you, Mr. Chairman, and the Subcommittee members for your constant support of Customs and our vital mission.

For over two hundred years, the U.S. Customs Service has facilitated the flow of our nation's commerce while protecting American business and consumers from contraband and other threats. Yet, the dramatic growth in global travel and trade over the past decade will continue to test our capacity to carry out our vital mission as never before. As the Subcommittee is aware, the United States faces a complex array of threats at our borders, including narcotics smuggling and international terrorism. It is the job of Customs to deter these threats while ensuring the smooth flow of people and goods into and out of our country. Meeting this challenge in an era of rapidly expanding growth for our world economy will require an effective balance of personnel resources, training, technology, and risk management strategies designed to maximize the impact of Customs operations.

Thanks to the Congress, Customs has been able to acquire the resources to help meet the growing demand for our services from the public. In addition to support for Customs' annual budget requests, Congressional authorization for the collection of traveler and conveyance processing fees, otherwise known as COBRA fees, has enabled Customs to fund numerous additional positions in our core operations to accommodate the growth in travel and trade. Currently, COBRA fees support approximately 1100 inspector positions, as well as overtime and premium pay for all inspection personnel at airports, seaports and land border crossings, and other essential equipment and operational costs.

COBRA fees are due to sunset on September 30, 2003. While the Administration is currently formulating views in advance of the sunset, we look forward to working with the Congress to address this issue.

In addition to this critical issue, Customs has focused significant attention on the following key challenges:

TECHNOLOGY

The Automated Commercial Environment (ACE)

The FY 2002 President's budget requests $130 million to continue work on modernizing Customs antiquated automated systems. The Automated Commercial Environment, otherwise known as ACE, will enable the Customs Service to utilize technological advances to meet the challenges of a rapidly growing international economy. Customs is the federal government's second largest source of revenue, col-

lecting $24 billion in FY 2000. Every year since 1993, Customs import workload has been at least double that of ten years earlier, and this trend is expected to continue through 2007. By 2004, Customs will be processing over 30 million commercial entries a year, a projected 30% increase over the 23 million entries processed in FY 2000. It is essential that we modernize our automated systems to improve response to the explosion in international trade and travel.

Customs current automated trade system is the 17-year-old Automated Commercial System (ACS). Until a new system is deployed, Customs will continue to rely on ACS. As trade volumes continue to grow dramatically each year, the ability of ACS to manage increased demand will decline. Using the $123 million in ACS "life support" funding provided in the FY 2001 appropriation, we have taken steps to improve processing time and storage capacity for the trade, and have improved the commercial interface with ACS. There is, however, more work to be done. With the additional $123 million requested for FY 2002, Customs will continue to improve the system's capacity and accessibility.

The Customs Modernization Act of 1993 mandated new account based import transaction processing that cannot be accommodated through ACS. ACE, in contrast, will address trade compliance and Mod Act requirements. ACE is being developed in four increments, with each successive increment expected to deliver benefits to both the trade community and Customs operations.

The consolidated appropriations of $130 million provided for ACE in FY 2001 enabled us to begin our first phase work on ACE. That work included award of the ACE prime contract to the "e-Customs Partnership," led by IBM. The "e-Customs Partnership" is a team of top-notch companies and highly qualified professionals who have successfully executed large information systems projects similar to this one in the past. In addition to the IBM Corporation, key team members include Lockheed Martin Corporation, KPMG Consulting, Computer Sciences Corporation, and Sandler & Travis Trade Advisory Services. The team also includes BoozAllen & Hamilton, ITS Services, and over 40 small businesses.

The President's FY 2002 budget builds on this effort by requesting an additional $130 million to expand the capabilities of the ACE software and to deliver ACE capability to more service ports and sites. Specifically, with the additional FY 2002 funding, we will extend the capability developed with the FY 2001 funding to air, sea, and rail imports; build an interface to the Automated Manifest System; and provide the trade with a common interface to ACE. We will also refine ACE requirements with the assistance of our prime integration contractor.

Non-Intrusive Inspection Technology

The use of non-intrusive inspection (NII) technology (e.g. truck, rail, sea container, vehicle, and mobile x-ray/gamma-ray systems) is crucial to maintaining the success of our interdiction efforts. Customs is in the final year of a 5-year technology plan that calls for the deployment of NII technology to blanket the Southern Tier and other high-risk locations. At the end of FY 1999, there were a total of 14 NII systems in place. During FY 2000, 23 additional NII systems were deployed throughout the nation. Currently, 50 systems are in operation, with an additional 45 systems funded and scheduled for delivery by the end of FY 2002. NII systems, in many cases, give Customs the capability to perform thorough examinations of cargo without having to resort to the costly, time-consuming process of unloading cargo for manual searches, or intrusive examinations of conveyances by methods such as drilling and dismantling.

In FY 1999, a total of 100,000 NII examinations were performed. For FY 2001, we have already performed over 260,000 NII examinations. These figures will continue to increase as Customs deploys additional systems.

Since the deployment of the first truck x-ray at Otay Mesa, California, in 1996, these systems have contributed to over 400 seizures totaling over 300,000 pounds of illegal drugs in commercial and passenger vehicles. Recently, in a single week, our NII systems contributed to the seizure of almost 9,000 pounds of illegal drugs.

In addition, on April 4, 2001, a Customs canine at the Otay Mesa port of entry alerted to a tractor-trailer carrying televisions from Mexico. The vehicle was subsequently scanned by a gamma-ray imaging system that led to the discovery of more than 15,000 pounds of marijuana. This was the largest single-seizure ever made at a border station.

NII technology has also benefited the passenger environment. We have deployed 15 body imagers at major land border crossings and airports to offer travelers selected for personal searches an option to a physical inspection. These systems are capable of detecting smuggled objects concealed under clothing.

Customs has also contracted for a service at nine international airports that enables us to determine in approximately 30 minutes if a passenger is carrying drugs

internally. This process used to require several hours and the participation of at least two Customs officers. The contracted service provides a mobile x-ray van and a licensed x-ray technician at the international arrival terminal for the screening of passengers suspected of concealing drugs or currency in or on their bodies. A trained technician performs an x-ray that is then transmitted digitally to a licensed radiologist for interpretation. Based on that determination, Customs may either release the passenger, or hold him or her for further investigation. Both the Body Imagers and the Mobile x-ray service examination are only used once all the requirements of Customs personal search policies are met.

Laboratories and Scientific Services

We are pleased to report that all eight laboratories of the United States Customs Laboratory System have received their International Standards Organization (ISO) Guide 25 Accreditation. The Customs Labs are the first Federal laboratory system to receive this professional accreditation.

I am also pleased to announce that twelve of our scientists have received board certification in criminology from the American Board of Criminologists. No other crime laboratory can boast this number of board certified criminologists. With this certification our scientists can now be considered true expert witnesses for Customs and the American criminal justice system.

Customs has embarked upon a laboratory construction plan that is scheduled to improve and update our aging laboratory facilities. The construction of laboratories in Los Angeles and Virginia have been completed. The New York Laboratory is currently under construction, and plans are underway to improve the facilities in New Orleans and San Francisco.

TRAINING AND DEVELOPMENT

The Office of Training and Development (OTD) was established to ensure that Customs employees receive quality and effective training. During its first year, OTD has built centralized training programs and systems, created a direct link between training and operational success, enhanced career development, expanded course offerings, and strengthened leadership development and professionalism.

One of the fundamental elements in Customs future training success was the development of The National Training Plan (NTP) which establishes core occupational instruction designed to keep our employees on the cutting edge of new skills and technologies. The NTP identifies the core, standardized, and recurring training requirements for employees at the entry, mid and advanced career levels. The NTP targets training areas with the greatest need to reach the maximum number of employees in the most cost-effective manner. Some of the key areas of training cover passenger and cargo drug interdiction, strategies targeting money laundering, stolen vehicle exporting, and anti-terrorism tailored to the Customs environment. Customs has developed training profiles for its mission-critical occupations, as well as rigorous training and tracking procedures. These procedures were designed to maximize the use of scarce training resources and deliver useful, real-time training to all of our employees.

In addition to the NTP, Customs has created the Customs Tuition Program, which last year provided over 600 employees nationwide with tuition assistance for job-related courses. This program supports the national strategy of raising the level of professionalism and education in the Customs workforce.

OTD has also played an integral role in addressing personal search policies and procedures, introducing change in national policy regarding the 24-hour carrying of firearms by Customs law enforcement personnel, and expanding the national strategy of risk management throughout all levels of Customs.

Through centralized planning and tracking, Customs delivered a record 100,731 instances of training in FY 2000. Since its inception, OTD has developed over 20 new training courses to address mission-critical needs. The measurement of OTD's success is seen throughout the Customs workforce. Customs dedicated training efforts increased morale and commitment to the Customs mission. Our training is continuously measured through an evaluation of training by students and supervisors to determine if students are applying newly learned classroom skills on the job. It is imperative that we maintain a well educated, customer-oriented workforce, which protects our officers and enhances service to business and the traveling public.

RISK MANAGEMENT STRATEGIES

As global trade has expanded, Customs' commercial workload has escalated dramatically. In FY 2000 the agency processed over 23 million trade entries—an increase of almost 10 percent from FY 1999.

Customs strategy to ensure greater compliance among importers with our trade requirements is focused around a comprehensive strategy of risk management. At its core, risk management involves the constant analysis of data and information to determine how to apply resources most effectively.

For the first time, that analysis is being built uniformly into the way Customs ports are managed. The Trade Compliance Enforcement Plan, which makes each Customs Management Center accountable for implementing Risk Management in all port operations, ensures that the relationship of resources to risk can be monitored on a Service-wide basis.

In addition, we have initiated monthly Management Accountability Reports from the field that provide immediate feedback on the effectiveness of our enforcement activities.

One of the goals of risk management is to ease the movement of goods for law-abiding members of the trade community. By implementing a data-driven focus on the most serious compliance problems, Customs will lessen its oversight of compliant companies. In fact, participants in the innovative Low Risk Importer Initiative can expect fewer cargo exams, document reviews and requests by Customs for more information. To qualify for this program, importers must undergo compliance assessments and pass a thorough evaluation process involving compliance measurement, account manager evaluations, and other reviews.

Customs is using a systematic process to identify those importers whose transactions represent the highest risk of non-compliance. Again, Customs will use this data to make informed judgements about the best use of its limited resources.

Another element in the Risk Management approach has been Customs increased use of account managers to focus on major importers. Since a relatively small number of large importers account for the majority of total imports, account managers provide even more leverage in elevating overall compliance with Customs commercial requirements.

In FY 2000, 392 consignees were responsible for half of the total value of all the imports into the United States. The top 1,000 consignees imported 61 percent, by value, of all imports. Customs has responded to this trend by increasing the number of managed accounts in FY 2001 to more than 1,100.

HUMAN RESOURCES MANAGEMENT

As we continue to build a Customs workforce worthy of the highest public trust, our Human Resources Management programs have continued to emphasize recruitment of the most qualified candidates for employment.

Our Quality Recruitment program has proven to be a success in filling our core occupations. Through this program we have hired 565 new inspectors and canine enforcement officers, and we have approximately 750 candidates in our hiring pool. We believe that we have attracted some of our Nation's best and brightest. This has been evidenced by the test scores from the basic training our new recruits go through as well as reports of their successes on the job.

We were pleased to obtain a new Schedule B hiring authority for special agents. In addition, Quality Recruitment, with its emphasis on testing and structured interviews, has been expanded to special agent positions. Through this program, we expect to build the pool of candidates ready to hire for our front-line occupations when they are needed.

Our marketing and recruitment efforts have been a success as we continue to attract quality candidates. Our recent announcement for inspectors and canine enforcement officers was open for 5 days and resulted in more than 5,500 applications. More than 1,500 of those applicants passed the test and structured interview. In the past 3 months 1,184 applicants have been tested for special agent positions.

Through our National Recruitment Program we are able to emphasize the importance of attracting a diverse pool of highly qualified applicants for our frontline positions. A recruitment plan is issued each year to ensure a national direction, professional advertising, and recruitment of a diverse applicant pool. We have installed 6 kiosks in selected universities to provide information about Customs occupations and job opportunities. Local recruiters represent Customs in conferences, job fairs, colleges, and general applicant inquiries. Our Office of Investigations recruiters recently held 9 open houses for universities in their geographic areas. In addition, we established a National Intern Program last year and hired 21 interns. Other student programs are also used throughout Customs to provide additional opportunities.

While we are actively filling our entry-level positions, we are also very aware of our aging workforce. Within the next 5 years 34 percent of our current employees will be eligible for retirement. The retirement bubble is particularly significant for our law enforcement employees as they face mandatory retirement. In addition, we anticipate losses in our supervisory and management positions. We have sophisti-

cated data systems that allow us to predict our attrition by occupation, grade, and geographic area. Human Resources Management and the Office of Training and Development are building a succession planning model to prepare for our future losses.

Defending our borders presents many challenges to Customs employees. Through our Employee Support and Assistance Unit we have an immediate response for employees and their families who experience serious injuries, illnesses or other crises. More than 120 collateral duty Family Liaison Officers were recently selected. After completing comprehensive training they will serve as the first line of counseling and advisory support for employees in need.

In addition, we have placed a heavy emphasis on our safety programs. We recognize that we cannot protect our employees and do our jobs effectively for the American public without first ensuring that we follow the highest safety standards in the workplace. Accordingly, Customs recently hired 5 additional safety and occupational health specialists and we are actively recruiting several others. We have also expanded our radiation safety program. As a result of our radiation safety committee's efforts, Customs has the most stringent radiation exposure standard of any Federal agency. We are also expanding our environmental management and hazardous material safety programs. In addition, we have placed greater emphasis on our tuberculosis, hepatitis B, and hearing conservation programs for our employees.

INTEGRITY

Customs core law enforcement responsibilities demand an unyielding commitment to the highest standards of ethical and professional conduct by our employees. For the past several years, the agency has been instituting a comprehensive series of reforms aimed at bolstering integrity within the agency. These include a renewed emphasis on our Office of Internal Affairs (IA), the lead office for integrity at Customs.

Internal Affairs has increased its focus on the Southwest Border. Additionally, Internal Affairs has reinvigorated its ranks by transferring 131 criminal investigators between Internal Affairs and the Office of Investigations since 1999.

The office is presently in the process of reassigning additional investigators; closing smaller, dispersed offices; establishing a larger office in San Antonio; and expanding other offices to concentrate investigative resources. It has also activated a fully operational Special Investigations Unit comprised of senior investigators who conduct investigations into critical and sensitive incidents. In its first six months since activation, the unit completed 21 investigations, seven of which were presented for criminal prosecution.

IA recently revised and published its investigative guidebook to provide special agents with clear, applicable policy regarding nearly every aspect of investigations.

Investigative policy is now disseminated using electronic publishing so as to provide instant access to updates. IA Regional Operations Managers and specialized experts with legal and law enforcement experience now provide on-call guidance to special agents. These personnel provide constant oversight of all aspects of investigations to ensure the resulting investigative reports are accurate, timely, and comprehensive.

A new automated Case Management System is being developed that will more efficiently integrate with other Customs human resource and investigative systems. This system will utilize Web-based technology to provide Internal Affairs with accurate data capture and retrieval, improved accessibility, enhance overall systems durability, and lead to more cost-efficient maintenance. All allegations are tracked from initial receipt to final disposition through the Customs Service's allegation and intake process. This process is continually refined to ensure allegations are handled efficiently and correctly. The process features a combined effort between IA, the Office of Human Resources Management, and the respective Assistant Commissioners.

In addition, Customs recently published the first annual "Report on Conduct and Discipline." The report provides a summary and overview of discipline cases resolved within Customs for fiscal year 1999. The report emphasizes our primary goal to bring greater fairness, objectivity and consistency to the discipline process. It is another tool to keep employees informed about conduct and discipline matters. It also provides them with an opportunity to learn from others and to gain a clearer sense of what types of behavior can result in disciplinary action.

CUSTOMS CORE MISSION ACTIVITIES AND ACCOMPLISHMENTS

Customs core mission has evolved significantly over its two hundred-year history to meet the nation's changing needs. Once concerned primarily with the collection of tariff duties, Customs now serves as one of the federal government's leading drug interdiction agencies. In addition, it is involved in a wide range of trade and enforcement activities related to the flow of people and goods across borders. Balancing the

need for efficiency in trade facilitation with effective enforcement of U.S. laws is the agency's most fundamental challenge.

Over the last ten years, trade entries (the number of individual shipments of goods processed) have more than doubled, jumping from 9.2 million to over 23 million. By the year 2004, Customs will be processing over 30 million entries.

On a typical day, Customs officers process 1.3 million passengers and nearly 350,000 vehicles at ports and border crossings around the country. They seize over 4,000 pounds of narcotics and upwards of $1 million in monetary instruments and proceeds generated from criminal activities. Yet drug smuggling organizations continue to demonstrate flexibility in response to our interdiction efforts. We must constantly adapt to their changing methods.

Customs is responsible for enforcing hundreds of Federal statutes for dozens of federal agencies. In addition to seizing narcotics and dismantling smuggling organizations, Customs enforcement actions protect domestic manufacturing industries from unfair foreign competition and help ensure the health and safety of the American public. Through our Strategic Investigations and Antiterrorism initiatives, Customs aids in the national effort to prevent rogue states, terrorist groups, and criminal organizations from obtaining sensitive and controlled commodities including weapons of mass destruction. Customs is also a recognized leader in the investigation of Internet crime, notably child pornography, as well as the smuggling of stolen art and artifacts and violations of intellectual property rights.

Narcotics Smuggling

In FY 2000, Customs seized approximately 1.5 million pounds of illegal narcotics, conducted 39,000 investigations, effected more than 24,765 arrests, and seized over $587 million in currency and ill-gotten assets.

Customs approach to fighting narcotics smuggling is multifaceted. It includes traditional searches by our Inspectors and Canine Enforcement teams; partnerships with industry to prevent drugs from being imported in their merchandise or conveyances; air and marine interdiction; and the work of our Special Agents in dismantling and disrupting drug trafficking and money laundering organizations.

The Southwest Border (SWB) continues to be a major crossing area for illegal drugs of all types, including cocaine, marijuana, heroin, and methamphetamine. Customs enforcement records indicate that 79 percent of all Customs narcotics seized in FY 2000 occurred at the SWB. From October 2000 through May 2001, Customs made 537 seizures totaling $11.7 million in undeclared currency bound mostly for Mexico. In FY 2000, approximately 293 million travelers, 89 million vehicles and 4.5 million trucks entered the U.S. through the SWB. Also in FY 2000, Customs seized a total of approximately 1.1 million pounds of illegal narcotics including heroin, cocaine, marijuana, and methamphetamines along the SWB.

In addition to the drug threats coming from our Southern Hemisphere, Customs has proactively redirected resources to address the growing threat of Ecstasy. Western Europe now serves as the main source for Ecstasy smuggling. In February 2000, Customs created the Ecstasy Task Force. The mission of the Task Force is to act as a command and control center to maximize the level of interdiction and case exploitation relative to Ecstasy investigations. Customs currently has approximately 240 Canine Enforcement teams trained to detect Ecstasy and is in the process of training additional teams. In FY 2000, Customs seized approximately 9.3 million Ecstasy tablets. That is a more than a 2,300 percent increase from the 400,000 tablets seized in FY 1997.

Customs actively participated in the recent Presidential Commission on Seaport Security. Customs has always recognized the threat that internal conspiracies pose at our land, sea, and air ports of entry. To combat this risk, Customs has successfully deployed several investigative initiatives that have had a positive impact on this challenge. Operation River Blue and Riversweep are among the successful initiatives that have targeted drug smuggling organizations operating in port environments in the South Florida area.

In addition, Customs is one of the key agencies in a joint operation made up of federal, state, and local agencies to stop narcotics smuggling on the Miami River, a key drug trafficking route. Florida Governor Jeb Bush announced a 2-year initiative known as Operation River Walk on February 7, 2001, in Miami. Operation River Walk began on February 15, 2001. Customs plays the chief coordinating role for boardings and searches of vessels arriving and departing by the Miami River.

At a national level, a total of 82 additional Special Agents are being strategically deployed at both border and inland command and control cities to conduct long-term, complex investigations that focus on the most significant drug smuggling organizations. These investigations are designed to increase the risk borne by drug traffickers and impede their smuggling operations.

Customs Air and Marine Interdiction Division (AMID) plays an instrumental role in our National Drug Control Strategy. AMID's mission is to protect the Nation's borders and the American people from the smuggling of narcotics and other contraband with an integrated and coordinated air and marine interdiction force. This strategy impacts drug smuggling organizations because it denies drug traffickers the use of aircraft and vessels to smuggle drugs into the U.S., thus forcing them to choose other modes of transportation or geographic locations that are less profitable or riskier.

In the arrival zone, Air and Marine assets are strategically located along the Southern Border of the U.S. and in Puerto Rico and the Virgin Islands. The primary focus of these Branches is to detect, sort, and intercept suspect air and marine targets. The AMID also provides assistance to the enforcement efforts of Customs and other Federal, State, and local law enforcement agencies to stop the flow of money and equipment to drug smuggling organizations.

In the transit and source zones, AMID crews work in conjunction with the law enforcement agencies and military forces of our partner nations in support of counterdrug programs. AMID supports other Western Hemisphere nations with airborne detection and monitoring, interceptor support, and coordinated training with military and law enforcement agencies. Customs P–3 airborne early warning (AEW) aircraft provide radar coverage over the jungles and mountainous regions of Central and South America. They also patrol the international waters of the transit zone to monitor shipping lanes and air routes in search of smuggling activities.

AMID aviation assets include jet interceptors and long-range trackers equipped with radar and infrared detection sensors, high performance helicopters, single- and multiengine support aircraft, and sensor-equipped marine search and detection platforms. AMID maritime assets include interceptor go-fast boats with a complement of utility and blue-water support vessels that are equipped with marine radar systems, radios, and other sensors.

Coordinated air and marine interdiction operations have been highly successful, particularly in Southeast Florida and the Caribbean. Customs air and marine interdiction efforts during FY 2000 resulted in the seizure of more than 187,000 pounds of marijuana and close to 44,000 pounds of cocaine. Air and marine personnel also supported law enforcement efforts that resulted in the seizure of over $17 million in narcotics proceeds and 760 arrests.

As smugglers change their patterns of behavior, AMID must be flexible to meet new threats. A fleet modernization program has been developed by the AMID to combat the current threat and meet future needs. Modernization will help to reduce the strain on crew requirements and increase mission effectiveness, thereby saving money for operations and maintenance.

Cooperation with the Drug Enforcement Administration (DEA)

Since signing the Memorandum of Understanding with the DEA in August 1999, Customs has been working with DEA to coordinate the process to place permanent intelligence teams in selected drug source and transit countries. Customs sent teams on two 30-day trips to Mexico, and one team each to Ecuador, the Netherlands, and Thailand. These trips were designed as surveys to determine whether a permanent team should be placed in each of these countries, and were found to be very successful. The teams gathered valuable information and made useful contacts. In coordination with DEA, Customs has held discussions with the Ambassador to Mexico and obtained his approval of the concept. Currently, we are proceeding with the official request to get the proper Department of State approvals for the placement of a permanent team in Mexico. Other countries being considered for placement are Colombia, Venezuela, Panama, Hong Kong, and Brazil.

Personal Search

As the Committee is aware, the Customs Service has been faced in recent years with allegations that the agency was engaged in racial bias in the selection of certain members of the travelling public for personal searches at our nation's airports. Under no circumstance does Customs tolerate race-based and gender bias discriminatory treatment of individuals. Nonetheless, we have taken these allegations very seriously and implemented a series of reforms to ensure that the rights of the travelling public are protected.

We appointed a Personal Search Review Commission (PSRC) in April 1999 that reviewed the policies and procedures used by Customs to process passengers at our major international airports, including our personal search procedures. The PSRC made several recommendations. In order to address these recommendations, Customs convened the Assessment Implementation and Monitoring (AIM) Committee in

July 2000. Significant progress has been made towards implementing actions based on the PSRC recommendations.

Customs also established the Passenger Data Analysis Team (PDAT) to review and analyze personal search data. In addition, Customs has improved the personal search data collection process by making specific input of data mandatory. Additional data is now collected on travelers selected for a personal search. This data is reviewed daily by management.

In November 1999, the new Personal Search Handbook was issued and training was provided to over 8,000 Customs Officers. In an effort to provide continued training, a Personal Search Computer Based Training course was developed. All Customs officers who perform personal searches are required to take this course annually.

Additional training was provided to all Customs Inspectors and completed by December 31, 2001. This Inspection and Interaction Skills Workshop offered 16 hours of refresher training in the areas of interpersonal communications, cultural sensitivity, verbal judo, passenger enforcement selectivity and personal search.

I am pleased to report that these combined reforms have helped Customs to reduce its searches of law-abiding passengers dramatically, while maintaining our overall levels of narcotics seizures. To provide you an example, Customs reduced searches from 23,108 passengers in fiscal year 1999 to 9,008 in fiscal year 2000. Yet our seizures of illegal narcotics from passengers in the air environment were approximately the same. That trend continues for 2001.

Combating Terrorism

Customs' mission in combating international terrorism is two-fold: to protect the American public from Weapons of Mass Destruction (WMD) and other instruments of terror and prevent international terrorists from obtaining WMD materials and technologies, arms, funds, and other material support from U.S. and foreign sources.

Customs plays a central role in preventing the smuggling of nuclear, radiological, chemical, and biological weapons, arms, and other instruments of terror into the U.S. for use in terrorist attacks against our citizens. The increasing terrorist threat has led to the development and implementation of an alert plan that outlines four alert levels, each with a very specific set of actions designed to ensure an appropriate response to the threat at hand, while ensuring minimal disruption to normal border traffic flows. Trained volunteers and specialized equipment are on hand to respond to a heightened state of alert. Customs has also established an external and internal antiterrorism intelligence communications infrastructure that enables the agency to obtain threat information on foreign terrorism and disseminate it to field positions.

Customs conducts investigations into violations of U.S. laws by terrorist groups, and participates in interagency intelligence groups, and shares in joint international investigations with foreign customs and law enforcement counterparts through our Customs Attaché offices abroad. Additionally, Customs is an active participant in FBI-sponsored Joint Terrorism Task Forces located throughout the U.S. that are designated to conduct investigations involving outbound counter-terrorism.

Public Law 106–346 and Public Law 106–554 provided additional resources to increase Customs counter-terrorism activities. Funding was provided for 48 additional Special Agents to increase Customs ability to counter the threat along the Northern Border and 17 additional Special Agents to participate in Joint Terrorism Task Forces. Resources were also obtained to fix and replace aging Northern Border security infrastructure, including NII technology, gates, signage, and video security systems.

CyberSmuggling Center Activities

Customs has assumed a leading role in the fight against various forms of Internet crime, thanks to the funding provided for the agency's Cybersmuggling Center. One of the Cybersmuggling Center's most critical areas of activity is the investigation of the transmission of child pornography via the Internet. We have had numerous successes in this area and continue to monitor this growing enforcement concern. In addition, Customs has tackled other forms of Internet crime, including the illegal on-line sale of pharmaceuticals, controlled substances, pirated software, music and movies, counterfeit watches, clothing, and other goods. We are also actively pursuing cases involving the use of the Internet for financial crime and fraud. The number of "on-line" criminal cases has risen dramatically, from approximately 40 investigations in 1999 to 190 in 2000. To date in FY 2001, Customs has initiated 302 Internet investigations unrelated to child pornography.

Stolen Vehicles

Customs has expanded its partnership with the National Insurance Crime Bureau (NICB) in its efforts to identify possible stolen automobiles presented for export.

NICB examiners and Customs Inspectors review vehicle identification numbers (VINs) and associated ownership documentation for authenticity at the 28 busiest vehicle export locations across the country. Vehicle identification data is transmitted via the FBI's "VINNY" system for query against FBI and NICB databases. "VINNY" is an electronic reporting system targeting possible stolen or altered vehicles. Vehicles identified as being stolen, salvaged, or plated with false VIN numbers are flagged for intensive examination and possible seizure by field personnel. Further investigation is conducted by Customs Special Agents working cooperatively with State and local law enforcement stolen vehicle task forces.

Forced Child Labor

The investigation of imports alleged to have been manufactured with convict or indentured child labor is among the most difficult aspects of our mission. These investigations demand a unique balance of investigative and diplomatic skill due to their highly sensitive nature.

As a result of funding provided by Congress in fiscal years 1999, 2000, and 2001, Customs has begun to formulate a better understanding of the extent to which products manufactured or produced with some form of proscribed labor are imported into the U.S. Additionally, Customs has sought to create bilateral relationships with foreign governments' labor and law enforcement officials, who recognize the importance of working together to dismantle the organizations that recruit and utilize these labor tactics.

Customs has issued 32 detention orders against foreign manufacturers that utilize prison/forced labor to assemble or cultivate their goods for export to the United States. U.S. Customs, at the request of the Mongolian Government, conducted an investigation and substantiated forced labor allegations against a Chinese-owned textile manufacturer in that country. The Mongolian Government requested Customs assistance because their labor system would not take action against the manufacturers unless the violators came under scrutiny by the importing countries.

Customs is also in the process of opening two Foreign Attach Offices in the Philippines and Brazil to assist in these types of investigations. We anticipate opening an office in India, pending the authorization of the Government of India.

Tobacco Smuggling

Customs has experienced a dramatic increase in international tobacco smuggling investigations in the past year. This includes smuggling both into and out of the U.S. In addition, Customs is conducting joint investigations with foreign law enforcement agencies, primarily in Europe, to combat international tobacco smuggling. International organized crime groups continue to expand their tobacco smuggling ventures.

Importations of paper wrapped cigarettes reached an all time high in calendar year 2000, with a total value of $265 million. This figure surpassed the previous high of $153.7 million in 1993, which was predominantly comprised of Canadian brand name cigarettes imported into the U.S. to be smuggled back into Canada. As a result of a recent amendment to the Tariff Act of 1930 that became effective in December 2000, importations of cigarettes with brand names registered by the U.S. Patent and Trademark Office will require the permission of the trademark holder to be imported into the U.S. Enforcement of this new statute is likely to become a considerable challenge, as smugglers may seek to evade the new requirement. In an effort to cope with the increase in international cigarette smuggling, Customs has formed a multi-disciplined task force to coordinate all tobacco-related investigations. The coordination includes intelligence collection and analysis, liaison with domestic and foreign law enforcement agencies, and liaison with tobacco manufacturers and importers.

Intellectual Property Rights

The enforcement of Intellectual Property Rights (IPR) continues to be a top priority mission for Customs. In order to accomplish this mission, Customs concentrates its efforts in three principal areas: trademarks, copyrights, and patents. Customs routinely pursues criminal, civil, and administrative investigations of individuals, companies, and organizations that utilize illicit trade practices to circumvent and unlawfully exploit Intellectual Property. The goal of Customs in its IPR enforcement effort is to allow for the successful prosecution of violators and to diminish their economic base through the seizure of all prohibited items and merchandise, the assessment of penalties and sanctions, and the collection of lost revenue.

Customs unique border enforcement authority places it at the forefront of IPR investigations. In FY 2000, Customs effected approximately 3,357 IPR seizures valued

at an estimated $60.3 million. These enforcement efforts resulted in a dramatic increase in IPR and Internet-related investigations.

Customs latest IPR initiative is the formulation of the National Intellectual Property Rights Coordination Center (IPR Center). Located at Customs Headquarters in Washington, D.C., the IPR Center is a joint Customs/FBI center responsible for the coordination of a unified federal response to IPR enforcement issues. Particular emphasis is given to investigating major criminal organizations and those utilizing the Internet to facilitate IPR crime. The IPR Center's positive influence on IPR enforcement worldwide has been widely recognized. The Center is currently coordinating a transnational IPR investigation involving specific strains of counterfeit computer software. This coordination involves the direct oversight and analysis of intelligence and information from over 80 related investigations currently being pursued by Customs and the FBI.

Textile Smuggling

Customs continues to increase its efforts in combating the smuggling and illegal transshipment of falsely declared textiles and wearing apparel. Violators utilize illegal schemes to circumvent U.S. quota and visa restrictions to gain unfair trade advantages over U.S. manufacturers. It is anticipated that, with the elimination of the current quota system in 2005 and the implementation of a new system/rules, illegal textile transshipments to the U.S. will increase. Customs has developed a strategic plan to address the issue of illegal textile transshipments and smuggling utilizing the coordinated efforts of Textile Production Verification Teams and domestic investigations.

In FY 2000, Textile Production Verification Teams were deployed to 7 foreign countries and conducted visits to over 450 foreign textile factories to verify production capabilities and identify illegal transshipment schemes. The Office of Investigations, through the use of undercover and special operations, successfully identified transnational criminal organizations responsible for smuggling millions of dollars worth of textiles and merchandise into the U.S. In one such investigation, Customs identified an organization responsible for smuggling in excess of $2.3 million of trademarked and quota/visa restricted merchandise into the commerce of the U.S. The head of the organization was convicted of smuggling and faces 20 years incarceration in addition to payment of criminal fines and restitution to Customs of approximately $700,000.

Financial Investigations

Customs and the Department of the Treasury are leaders in the Federal Government's efforts to combat money laundering. Customs provides key support to the National Money Laundering Strategy. Customs has been given a broad grant of authority to conduct international financial crime and money laundering investigations. This authority is primarily derived from the Bank Secrecy Act and Money Laundering Control Acts of 1986 and 1988. Customs has implemented an aggressive strategy to combat money laundering and now dedicates in excess of 400 full time equivalent (FTE) positions worldwide to money laundering investigations. These efforts against money laundering are not limited only to drug related money laundering, but to proceeds of all criminal proceeds laundered in a variety of ways. During Fiscal Years 1998, 1999, and 2000, money laundering investigations conducted by Customs resulted in the arrest of over 3,100 violators and the seizure of more than $625 million.

Funding was provided in FY 2001 for the creation of multidisciplinary teams which will give Customs the organizational capacity to identify important patterns of noncompliance with the Bank Secrecy Act, identify and establish an expertise in money laundering systems that impact Customs jurisdiction, and equip Customs with the ability to address patterns and trends effectively.

Bulk Cash Smuggling

We have seen a growing problem in the bulk smuggling of cash. Because U.S. banks have become more vigilant about reporting large cash deposits, many traffickers opt to avoid U.S. banks altogether. They smuggle their drug cash out of the country and deposit it into foreign locations where reporting requirements are less stringent or non-existent. U.S. Customs has permanent full-time inspectors assigned to outbound programs, and in part they conduct examinations to search for bulk cash shipments. Additionally, Customs is in the process of deploying new technology in an effort to conduct less intrusive and more effective outbound searches. Seizures of outbound currency rose from $49 million in FY 1996 to $62 million in FY 2000.

Intelligence Collection and Analysis Teams

Customs has begun implementation of a plan for establishing field intelligence units for the collection and dissemination of tactical intelligence in support of the Customs mission. Two of these units, called Intelligence Collection Analysis Teams (ICATs), were established in FY 2000: one in Blaine, Washington, and one in Los Angeles, California. Customs has begun a programmatic review of the ICATs along the southern tier to ensure compliance with the national standard operating procedure. Any issues identified through this review are being immediately addressed to ensure that the ICATs continue to provide intelligence support in the port environment.

Tactical Communications

Tactical communications and investigative information support is administered to field law enforcement staff 24 hours per day, 7 days per week by the Tactical Communications Division, which delivers services through its principal field entity, the National Law Enforcement Communications Center (NLECC). This activity directly affects officer safety and the successful accomplishment of the tactical enforcement operations. There are some significant challenges facing this program in the near term. User training on network capabilities and operation is an increasing requirement due to a dispersed user population, added network complexities, and increased functionality. Establishment of a tactical communications training element focused on delivering regular user training through various methods to field enforcement staff is a high priority.

Trade Outreach

The Customs Service continues to work collaboratively with the trade community to achieve greater streamlining and uniformity of cargo entry processes. The highly successful Customs Trade Symposium 2000, an all-day conference hosted by Customs for business and industry, highlighted agency trade priorities including the Entry Revision Project and the Low Risk Importer Initiative.

The Entry Revision Project is a proposal to develop consensus between Customs and the trade community on a legislative framework to extend modernization to the import entry process. This is second only to the Automated Commercial Environment as a top Customs trade priority. We have met frequently with trade consortia to help build a new entry system that will better meet government and business needs.

Along with risk management and improved oversight, our efforts to enhance compliance have emphasized the need for uniformity. Customs must provide the international trade and travel communities with consistent handling of their transactions at all locations. To help ensure this, we established a new and ongoing process at Headquarters to identify, address and monitor uniformity problem areas. We met with the trade at many outreach events around the country, and used risk management tools to target major areas of need. We have already achieved notable progress with what were once viewed as intractable problems, and we are also giving uniformity top priority in our written directives. Over 5,000 Customs Management Center and port standard operating procedures (SOPs) have been reviewed to ensure alignment with national policies, and we will continue to treat uniformity as a minimum standard of excellence for our Service.

In addition to day-to-day interactions, Customs has also engaged the trade community in numerous fora, including a series of high-level roundtables held around the country at which we discussed specific trade concerns. We have also increased our network of Customs account managers, whose outreach efforts identify and help resolve systemic issues. We are fully committed to continuing and expanding our trade outreach efforts to further improve all areas of our commercial operations.

International Affairs

In the international arena we continue to see an expanding role for Customs in the trade facilitation and law enforcement areas. As the primary border enforcement agency for the world's largest economy, the Customs Service sets the global standard for effective and transparent customs operations. Our international efforts focus on streamlining the flow of global trade, increasing compliance, building effective alliances to combat transnational crime, reducing corruption, strengthening border controls, promoting the rule of law and enhancing economic stability throughout the world. Customs enlists the support of foreign governments to further those objectives and to support the foreign policy goals of the United States.

Customs Attachés represent the Customs Service in foreign countries. They are responsible for investigations, liaison, training coordination, infrastructure building and regulatory and compliance functions. They employ an integrated strategy to de-

liver law enforcement expertise, training and technical assistance and effective partnerships to combat transnational crime, money laundering and trade fraud. This integrated strategy provides Customs with unique access and influence abroad, which contributes to better outcomes in foreign legislation, trade practices and international law enforcement.

Customs has played a critical role in a number of important international investigations such as operations *Blue Orchid* (child pornography), *Multi-core* (illegal export of arms), and *Journey* (drug smuggling), as well as counterfeit software and tobacco smuggling cases. Collectively, these investigations have resulted in the seizure of over 2,600 videotapes containing child pornography; the indictments of individuals involved in the illegal export of military aircraft and missile parts from the U.S. to Iran; the arrest of a foreign national who headed a major distribution network of counterfeit software; the seizure of 22,489 kilograms of cocaine, 43 arrests, and multiple convictions.

At the Headquarters level, we support the United States Trade Representative and other organizations in bilateral and multilateral negotiations concerning deregulation, protection of intellectual property rights and harmonized Customs procedures. We also service U.S. travelers, the international trade community and the expatriate community by responding to numerous inquiries regarding U.S. import and export laws and procedures.

Customs has also established partnerships with the private sector in order to promote U.S. business interests in foreign countries. The business community frequently cites foreign customs procedures and regulations as one of the most significant obstacles to the efficient, cost-effective movement of goods across international borders. Through our global network of contacts, we provide an important entrée for U.S. business to negotiate foreign regulations.

Customs is proud of its work with the private sector through our Industry Partnership Programs (IPP). Currently, over 4,800 air, sea, trucking, and railroad carriers have signed Carrier Initiative Agreements with Customs. In FY 2000, these carriers provided information to Customs that resulted in 82 domestic seizures totaling 27,014 pounds of narcotics. During the same period, these carriers helped intercept 44,122 pounds of narcotics from conveyances or freight destined for the U.S. from abroad.

Over the last 6 fiscal years (1995–2000), participants in IPP programs have provided information to Customs that has resulted in domestic seizures totaling over 91,823 pounds of narcotics. During the same 6 fiscal years, IPP participants helped intercept over 195,306 pounds of narcotics destined for the U.S. from abroad.

In addition to our Carrier Initiative programs, Customs is actively working with foreign business communities through the Business Anti-Smuggling Coalition (BASC). BASC is an industry-led, Customs supported program. The goal of BASC is to enhance security from the point of manufacture in foreign countries through the distribution chain in the United States. There are currently 17 BASC chapters established by foreign business communities and Customs throughout Colombia, Ecuador, Venezuela, Panama, Peru, Costa Rica, and Mexico.

FY 2002 BUDGET REQUEST

For FY 2002, the Customs Service proposes a total program level of $2,385,226,000 and 17,849 Full Time Equivalents (FTEs), all of which will be directly appropriated. The FY 2002 budget represents an increase of 4.6 percent above the FY 2001 enacted level.

The explosive growth in the volume of trade will place an even greater demand on Customs to address pressing trade and enforcement issues with limited staffing and resources. The FY 2002 budget includes $130 million in base funding to continue development of the Automated Commercial Environment (ACE). ACE is designed to replace our current antiquated commercial processing system, and help Customs manage its expanding workload.

As part of the FY 2002 President's Budget submission, $35 million is requested in the Air and Marine Program to support the Western Hemisphere Drug Elimination Act. These funds will be used towards Customs interdiction efforts primarily in the source and transit zones. Specifically, the resources will support acquisition of maritime patrol aircraft; implementation of various safety enhancements for flight crews; replacement of aging P–3 Forward Looking Infrared sensors (FLIR); replacement and modernization of current marine vessels; and replacement of deteriorating and obsolete equipment associated with the Customs Air and Marine Interdiction Coordination Center.

This concludes my statement for the record. I appreciate the opportunity to appear before you today. Again, I want to express my thanks to the Subcommittee for its tremendous support of Customs in the past. We look forward to your continued

support as we strive to meet the dramatic challenges faced by the Customs Service in this dynamic era of global trade and enforcement.

Mr. WINWOOD. But I would like to make one statement. I didn't know that by conceding to your wishes that you would empty the table and leave me here by myself. [Laughter.]

Chairman CRANE. Well, we figured that since this was your last visit and you had anticipated having to come back again, that we should feature you solo. [Laughter.]

Mr. WINWOOD. Well, I appreciate that.

Chairman CRANE. Well, we thank you for being here today, and we thank you for all the good work you have done.

Your successor-apparent, Mr. Bonner, will soon take over the reins of Customs Service. And what good advice would you leave him with?

Mr. WINWOOD. Well, Mr. Chairman, I truly believe that I am in no position to give a man with his distinguished career, his background, and his experience, coming back to the Federal government, any advice at all.

I would just simply say that we look very much forward to Mr. Bonner's arrival to the Customs Service. I think he is going to bring a new era of further growth and development to our agency, and I think he will be a tremendous asset to the Federal government.

Chairman CRANE. Thank you.

Sandy.

Mr. LEVIN. You know, your testimony was 19 pages long, and I think it shows the breadth of the functions of your institution. So I am not quite sure where to start. I am sure my colleagues will cover different territory than I.

Mr. Rangel was not able to be here today. And if he were here, he was going to ask some questions, I think perhaps you know—about the implementation of African Growth and Opportunity Act (AGOA) and Caribbean Basin Initiative (CBI).

Is it fair for me to ask you those questions? Are you in a position to respond or not?

Mr. WINWOOD. Well, I will try to respond to your questions, but if they get into a very technical area, I will be more than glad to supply detailed information for the record.

Mr. LEVIN. OK. That is fair enough.

And these aren't entirely new issues, as you know. Some of them relate to the Customs definition of words or implementation of certain phrases.

And the first one relates to the phrase "fabric cut and assembled." And the phrase has recently been defined to exclude knit-to-shape apparel, as you know, I think, when Customs has traditionally included knit-to-shape apparel within that definition.

How do you explain that? Or do you want to do it for the record?

Mr. WINWOOD. Well, that is the one I would like to do for the record.

I will tell you, Congressman Levin, that is a somewhat technical issue, and I think it would be best-served to address it for the record.

Mr. LEVIN. OK, you may be saved by this bell. [Laughter.]

Mr. LEVIN. It is frustrating. We apologize to everybody.

Chairman CRANE. Oh, we are in recess——

Mr. LEVIN. Are we?

Chairman CRANE. Subject to call of the Chair, apparently.

Mr. LEVIN. Then you are not saved by the bell.

Chairman CRANE. Maybe we adjourned. [Laughter.]

Mr. LEVIN. No.

Mr. WINWOOD. But if I may say for the record, Congressman Levin, that we have instituted interim regulations that have been published. We have done a tremendous amount of work particularly with the African nations in the form of training help.

We have had several of our Customs officers visit the continent and several countries at least four times. As a matter of fact, we have a couple of our Customs officers there right now, talking to the different nations about what they need to do to help them, education, awareness, the steps they need to take.

And we also, when the legislation was first passed and we were ready to put out interim regulations, we had 90 individuals from 24 countries brought to the United States. And we spent a full week with them with our Customs staff and representatives from other government agencies associated with imports and textiles, and so forth, to talk about the procedures and steps we take to institute this revision of law.

Mr. LEVIN. All right, well, there is a similar question regarding the definition of fabric. I think what we will do is to submit these questions to you, though I think you already have them. And I think they will belay your testimony on it.

But these discussions have been going on for a long time——

Mr. WINWOOD. Yes, sir.

Mr. LEVIN. To put it mildly.

All right, let me just ask you about another controversial issue, and I guess we are going to be talking about the whole compensation issue, as you part, do you want to say anything about that?

Also, you know there is the proposition to make the officers, the inspectors, eligible for law enforcement status. Would you like to comment on that?

Mr. WINWOOD. Yes, sir.

On the whole concept of compensation for what we consider to be law enforcement officers who conduct a very critical, dangerous job, I think if there is going to be any review of any form of compensation—it was passed by Congress in 1994—it should be a holistic review.

We shouldn't be looking at one aspect first or another, because that package was put together as a total compensation package for individuals doing a very critical job.

I am very much in favor of adequate, proper compensation, both in the form of pay and additional compensation and protection for officers who do the type of work that these Customs officers do in the field every day. If we are going to look at the compensation program, the whole program should be looked at.

Mr. LEVIN. How long have you been with the service?

Mr. WINWOOD. Pardon me, sir?

Mr. LEVIN. How long have you been with them?

Mr. WINWOOD. Thirty years.

Mr. LEVIN. So you talk about a comprehensive look at it and not taking it piecemeal, you are drawing on your three decades of service within the service to say that? I mean, do you feel deeply about that?

Mr. WINWOOD. Most certainly, sir. I will tell you that when the law was passed in 1994, from my understanding and watching how the Congress worked and the different pieces were brought together, the attempt was to take a holistic look at the entire compensation package prior to the new enactment of the law in 1994.

If there was to be a review of that, I think we should, again, take a look at the whole package and not divide it up into segments.

Mr. LEVIN. Thank you.

Mr. WINWOOD. Yes, sir.

Chairman CRANE. Thank you.

Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

I was interested in the staffing levels. Obviously, they have had a lot of demands placed on them because of increased trade. And I wondered what your thoughts were on that; and whether you thought that the ACE and entry revision project would allow the staff to be used more productively; and if you did, how you thought that would work.

Mr. WINWOOD. Congressman Camp, I think that is an excellent question. I think the future, the next generation of what we need to do to further enhance the economy and world trade and global trade, is to make sure we have the right combination of well-dedicated, trained, professional staff supported by the proper technology and supported by automation to enable them to work efficiently.

I am firmly convinced that the ACE modernization and the entry revision, as we continue to work with the trade to add that procedure to the ACE automated system, will definitely enhance the ability of our officers to work more efficiently. And it will cause us not only to work more efficiently, but be able to maintain some semblance of keeping up the tremendous growth that we know we are going to face.

Mr. CAMP. What are some of the efforts that you have on maintaining the integrity of the staff, given the amount of material that has been seized, in terms of money, drugs, contraband, other things? And are there any recent instances where there has been wrongdoing among the staff that you can relay to us?

Mr. WINWOOD. First of all, I would like to say emphatically that the Customs Service and all its employees have a zero tolerance toward any type of violation of the integrity of the organization and violations of the laws which we are sworn to support.

We have made major changes to our effort to help our officers stay with the highest level of integrity. We have new procedures in place.

We have reorganized our internal affairs office, have special organizations set up within internal affairs to do certain types of investigations. We have a special intake group that reviews every allegation that comes into the Customs Service and determines at

what level it should be reviewed and what type of investigation should be done.

We have new procedures that we have documented, with the help of our employees, to make sure that people have logical, systematic processes that they can follow.

We have also set up not only announced inspections with an inspection program, but we also have unannounced inspections to ensure that we are all maintaining the level of professionalism and integrity that we agreed to maintain.

Now, with that being said, we do have some officers from time to time that cross the line. And we take it very seriously. We have several cases right now that we are working, where I think they made a major mistake by violating the law. We will prosecute those individuals, when they are found to have been guilty of violating the law, to the fullest extent that we can.

Mr. CAMP. All right, thank you. Thank you, Mr. Chairman.

Chairman CRANE. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman.

Rather than ask a question, I would simply like to extend my thanks to Mr. Winwood, and specifically to three Customs agents who assisted a community in my district, Millcreek Township.

Millcreek Township participated in a joint investigation with Customs from June 1999 through February 2000. The joint investigative operation was successful in its efforts. However, reimbursement to the Millcreek Police Department was belated and entangled in red tape; I might add, not through any fault of Mr. Winwood's.

There were three agents in particular who worked with my office and got this situation fixed, and I would like to acknowledge them if I could: Mr. Gary Lang, the associate special agent in charge of the Baltimore field office; Mr. Bill Reid, the assistant director for policy and planning, Washington, DC; Mr. David Callahan, the resident agent in charge of the Philadelphia field office.

Let me say that this is a small matter in the scheme of things, but to me it is suggestive of an agency that is trying to work very closely and build a good interaction with local agencies to extend its reach, extend its resources, and when mistakes are made, address those problems.

Mr. Winwood, I would like to commend you for the way your agency responded to this situation in my district.

And, Mr. Chairman, with that, I will yield back the balance of my time.

Chairman CRANE. Thank you.

Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman.

I apologize for being tardy, but simultaneously we were in another Subcommittee, debating the issue of tax simplification.

Chairman CRANE. OK. [Laughter.]

You got it simplified, I trust. [Laughter.]

Mr. NEAL. Well, we got it done. [Laughter.]

Chairman CRANE. Oh, very good. [Laughter.]

Mr. NEAL. I was able to rush over here, Mr. Chairman.

Mr. Winwood, let me be specific. Mr. Camp was general in his questioning.

The Port of Boston. The Coalition for New England Companies, they have been complaining vociferously now for a period of time about staffing levels in Boston. And they believe that trade is beginning to slow on the basis of staffing levels in Boston.

I don't expect you at this session to be able to specifically address the question, but it really is important.

Barney Frank wrote you, I believe on June 10, as a follow-up to a letter that the coalition had written on March 8 of this year. And if your staff could let me know what their analysis of staffing level has done in Boston?

As you know, the Port of Boston is very, very busy. And I would hope that you might be able to give us some answers in the near future. But it is a question now that comes up regularly when we discuss trade issues back in the State of Massachusetts, what is happening with the staffing levels at the Port of Boston.

Mr. WINWOOD. Congressman, I assure you that I will personally make sure that this is looked into and that we will respond with an analysis of the situation in Boston and give you a detailed accounting.

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

Chairman CRANE. Well, we thank you, Mr. Winwood, for all of your stellar service. And we especially thank you for going through the ordeal of coming back again as a witness, and we look forward to working with you in your next capacity.

Mr. WINWOOD. Thank you, Mr. Chairman.

Chairman CRANE. And with that, let me bring our next panel to the fore. And that is Dennis Schindel, deputy inspector general, U.S. Department of the Treasury; and Laurie Ekstrand, director, justice issues, U.S. General Accounting Office.

And before we commence, let me remind you to please try and keep your oral testimony to 5 minutes or less. And all written testimony will be made a part of permanent record.

And with that, we will proceed with Mr. Schindel.

STATEMENT OF DENNIS S. SCHINDEL, DEPUTY INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE TREASURY

Mr. SCHINDEL. Thank you, Mr. Chairman, Members of the Subcommittee, I am pleased to appear before you today.

In April 1999, I testified before the Subcommittee on the results of an audit that we conducted on the impact of the Customs Service Officers Pay Reform Act (COPRA) on Customs' overtime and premium pay. That audit found that while the COPRA legislation was expected to reduce the Customs overtime costs for inspectional services, it in fact increased those costs.

COPRA became law as part of the Omnibus Budget Reconciliation Act 1993. It created a new and exclusive overtime compensation and premium pay system for Customs officers performing inspectional services. The intent of COPRA legislation was to more closely match earnings to hours worked.

A 1993 House report estimated that COPRA changes would result in overtime savings of $12 million in both fiscal year 1994 and 1995 with total savings through fiscal year 1998 of $52 million.

Our audit found, however, that premium pay expenses for Customs, specifically, the night work differential, substantially increased under COPRA. Instead of the significant reduction in Customs overtime costs that COPRA was anticipated to provide, costs increased when both overtime and premium pay were added up. Clearly, this was not the expected result when COPRA was passed in 1993.

From the data available from Customs, we determined that in fiscal year 1993, the last full year under the prior pay legislation, commonly know as 1911 Act overtime, Customs' total overtime costs, including shift differentials, were $99.2 million. Of this, approximately $51,000 was due to night differentials.

Looking at fiscal year 1995, the first full year under COPRA, we found that total overtime costs increased to approximately $106.1 million. Of this, $8.9 million was specifically attributable to night differentials. Therefore, COPRA substantially increased Customs' costs for night differential pay from $51,000 in 1993 to $8.9 million in 1995.

Customs has continued to experience higher costs each year. In fiscal year 1997, total overtime pay, including premium pay, was $126.8 million of which $9.3 million was due to night differentials. In fiscal year 2000, the costs were $158.9 million and $14.4 million, respectively.

One of the major reasons for the increase in Customs' premium pay costs and, more specifically, the night differential, is that the enactment of COPRA greatly increased the number of available hours in which a Customs officer could earn night differential. Also, COPRA increased the night differential amount from 10 percent of basic pay to 15 percent or 20 percent, depending on the time of day.

Specifically, the time period that qualifies for night differential premium pay extends from 3 p.m. to 8 a.m. or 17 out of the 24 hours of the day. The period from 3 p.m. to 12 a.m. qualifies for the 15-percent differential, and the period from 11 p.m. to 8 a.m. qualifies for the 20-percent differential.

The night differential provision in the COPRA also provides that if the majority of a shift falls within a night differential period, then the entire shift qualifies for the night differential premium.

For example, a Customs officer can earn a 15-percent night differential for the entire 8 hours of a shift that starts at 12 noon and ends at 8 p.m. That officer can earn a 20-percent night differential for an entire 9-hour shift that starts at 3 a.m. and continues through 12 noon. Likewise, a shift that runs from 8 p.m. until 4 a.m. would also qualify for night differential pay at the 20-percent rate.

What this means essentially is that all 24 hours of the day can qualify for night differential premium pay, and a tour of duty, such as 12 noon to 8 p.m., which most of us would consider primarily daytime hours, qualifies for 8 hours of night differential pay.

Another factor increasing Customs night differential expenses was an arbitration ruling, which was issued in 1995. A panel arbitrator ruled in favor of the National Treasury Employees Union, which protested Customs' refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer.

The ruling required Customs to pay officers COPRA night differential even when they are on leave, if those leave days would normally qualify for night differential had the officers been at work. This created a situation where officers received night differential premium pay even if they were on vacation.

In summary, the overall cost to Customs for overtime has shown an increase rather than a decrease after the passage of COPRA and has steadily increased every year since 1995.

The night differential portion of that total cost has substantially increased from $51,000 in fiscal year 1993 to $14.4 million in fiscal year 2000. That substantial increase will remain a part of Customs' total overtime costs and continue its upward trend unless the provisions of COPRA outlined in this testimony are eliminated or modified through new legislation.

That concludes my remarks, and I would be happy to answer any questions.

[The prepared statement of Mr. Schindel follows:]

Dennis S. Schindel, Deputy Inspector General, Office of Inspector General, U.S. Department of the Treasury

Mr. Chairman, members of the Subcommittee, I am pleased to appear before you today. In April of 1999, I testified on the results of an audit we conducted on the impact of the United States Customs Services Officers Pay Reform amendments (COPRA) on Customs' overtime and premium pay. Our audit, which was completed in September of 1996, found that while the COPRA legislation was expected to reduce the United States Customs Service (Customs) overtime costs for inspectional services, it in fact increased total overtime and premium pay costs.

COPRA became law as part of the Omnibus Budget Reconciliation Act of 1993. It took effect January 1, 1994. COPRA created a new and exclusive overtime compensation and premium pay system for Customs officers performing inspectional services. The intent of the COPRA legislation was to more closely match earnings to hours worked. House Report 103–111, dated May 25, 1993, estimated that COPRA changes would result in overtime savings of $12 million in both Fiscal Year (FY) 1994 and 1995 with total savings through FY 1998 of $52 million.

Our audit found that premium pay expenses for Customs, specifically, the night work differential, substantially increased under COPRA. Instead of the significant reduction in Customs overtime costs that COPRA was anticipated to provide, costs increased due to the use of both overtime and premium pay. Clearly, this was not the expected result when COPRA was passed in 1993.

According to data available from Customs budget account summaries, we determined that in FY 1993, the last full year under the prior pay legislation, commonly know as "1911 Act overtime", Customs' total overtime costs including shift differentials were $99.2 million. Of this, approximately $51,000 was due to night differentials. Looking at FY 1995, the first full year under COPRA, we found that total overtime costs increased to approximately $106.1 million. Of this, $8.9 million was specifically attributable to night differentials. Therefore, COPRA substantially increased Customs costs for night differential pay from $51,000 in 1993 to $8.9 million in 1995. Customs has continued to experience higher costs each year. In FY 1997 total overtime pay, including premium pay was $126.8 million of which $9.3 million was due to night differentials. In FY 2000 the costs were $158.9 million and $14.4 million, respectively.

One of the major reasons for the increase in Customs premium pay costs, and more specifically the night differential is that the enactment of COPRA greatly increased the number of available hours in which a Customs officer could earn night differential. Also, COPRA increased the night differential amount from 10 percent of basic pay to 15 percent or 20 percent depending on the time of day.

Specifically, the time period that qualifies for night differential premium pay extends from 3 p.m. to 8 a.m. or 17 out of the 24 hours in the day. The period from 3 p.m. to 12 a.m. qualifies for the 15 percent differential and the period from 11 p.m. to 8 a.m. qualifies for the 20 percent differential. The night differential provision in the COPRA legislation also provides that if the majority of a shift falls within the night differential period, then the entire shift qualifies for the night differential premium. For example, a Customs officer can earn a 15 percent night differen-

tial for the entire 8 hours of a shift that starts at 12 noon and ends at 8 p.m. In addition, that officer can earn a 20 percent night differential for an entire 9-hour shift that starts at 3 a.m. and continues through 12 noon. Likewise, a shift that runs from 8 p.m. until 4 a.m. would also qualify for night differential pay, at the 20 percent rate. Essentially, all 24 hours of the day can qualify for night differential premium pay and a tour of duty such as 12 noon to 8 p.m. which most of us would consider primarily daytime hours, qualifies for 8 hours of night differential pay.

Another factor increasing Customs night differential expenses was an arbitration ruling, which was issued on December 9, 1995. A panel arbitrator ruled in favor of the National Treasury Employees Union which protested Customs refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer. The ruling required Customs to pay officers COPRA night differential even when they are on leave, if those leave days would normally qualify for night differential had the officers been at work. This created a situation where officers received night differential premium pay even if they were on vacation.

In summary, the overall cost to Customs for overtime has shown an increase rather than a decrease after the passage of COPRA and has steadily increased every year since 1995.

The night differential portion of that total cost has steadily increased from $51,000 in FY 1993 to $14.4 million in FY 2000. That substantial increase will remain a part of Customs' total overtime costs and continue its upward trend unless the provisions of COPRA outlined in this testimony are eliminated or modified through new legislation.

Chairman CRANE. Thank you, Mr. Schindel. Ms. Ekstrand.

STATEMENT OF LAURIE E. EKSTRAND, DIRECTOR, JUSTICE ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Ms. EKSTRAND. Thank you, Mr. Chairman.

I am going to very briefly discuss the results of three recent reports that GAO has done concerning the Customs Service, and let me start with Customs' automated commercial environment, ACE.

As you know, ACE was intended to replace Customs' current aging and error-prone system for import processing. Customs also plans to acquire a system known as the international trade data system (ITDS) that is to provide importers with a single interface with the Federal Government.

When Congress appropriated money for ACE and ITDS, they also stipulated that ACE funds may not be obligated until Congress approves the ACE expenditure plan that meets a number of management and oversight requirements, including review by GAO.

Customs submitted its first expenditure plan seeking the release of $45 million in March 2001. On April 23, 2001, we reported to the Customs Appropriations Subcommittee that the expenditure plan satisfied the appropriations act conditions and was consistent with our open recommendations concerning ACE.

We concluded that the plan constituted a reasonable first step in a complex, long-term modernization program. We made some additional recommendations for Customs actions, and they have agreed to implement them.

GAO will continue to monitor Customs' ongoing modernization efforts.

Next, let me turn to some work we have recently done concerning Customs Office of Regulations and Rulings, known as OR&R. This office is very important to importers because, among its duties, it issues rulings on such things as proper classification and valuation of imported goods. And these rulings are very important to the

business decisions importers make and in some cases are time critical.

We reviewed a representative sample of headquarter's rulings that were requested and issued between January 1997 and October 1999. We found that about two-thirds were not completed within OR&R's 120-day benchmark for these rulings.

Indeed, about 16 percent took longer than a year to process. In response to our draft report, OR&R acknowledged problems with the timeliness of headquarter's rulings and attributed the delays to staffing shortages and competing workload demands.

We made a number of recommendations intended to resolve the problem, and Customs has indicated they will act on them. And we will again follow up in terms of the recommendations.

Finally, let me turn to our recent work concerning Customs officers' night differential pay. Specifically, we focused on the potential effects of two provisions of subsection C of H.R. 1833, which was introduced in the 106th Congress. And Mr. Schindel has just been over those two subsections. One deals with paying officers that are working night shifts for the time they are on annual, sick or other leave, and the other would change and reduce the number of hours in a day that Customs officers could earn night differential.

Our analysis of Customs data show that about 6,500 officers received about $13.5 million in night differential pay in fiscal year 1999, about $11 million of this was paid for work on six shifts. Had sections 123(a) and 123(b) been in effect for these shifts, Customs officers would have earned about $5 million less. In contrast but to a lesser extent, 122 officers would have received net increases of a total of $17,000 had the proposed changes been in effect.

Our analysis of the potential impact of the proposed changes across five selected ports showed that the extent of the impact would vary widely, depending on the size and staffing patterns of each port.

This concludes my oral statement. And of course, I would be happy to answer any questions you may have.

[The prepared statement of Ms. Ekstrand follows:]

Statement of Laurie E. Ekstrand, Director, Justice Issues, U.S. General Accounting Office

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss (1) an update of our work on the Automated Commercial Environment (ACE), which is intended to be Customs' new import processing system, (2) findings from our report on the timeliness of Customs' Office of Regulations and Rulings (OR&R)[1] in issuing headquarters rulings on such things as the proper classification and valuation of imported goods, and (3) findings from our recent report on the effects of proposed legislation (H.R. 1833, sections 123 (a) and (b), 106th Cong.) on Customs officers' night pay.[2] Our report on Customs officers'[3] night pay was requested by Senator Grassley as Chairman of the Senate Caucus on International Narcotics Control.[4] At the close of fiscal year 2000, Cus-

[1] *U.S. Customs Service: OR&R Needs to Resolve Timeliness and Data Problems Involving Headquarters Rulings* (GAO/GGD–00–181, Sept. 7, 2000).

[2] *Customs Service: Effects of Proposed Legislation on Officers' Pay* (GAO–01–304, Jan. 2001).

[3] For the purposes of this testimony, when we used the term Customs officers, we are referring to both inspectors and canine enforcement officers.

[4] The Caucus has been concerned for some time about the manner in which Customs provides compensation to its officers, who are on the front line of the nation's drug interdiction efforts. Customs' responsibilities include preventing the smuggling of drugs into the United States.

toms had a permanent work force of about 20,000 employees, including about 8,000 officers.

In summary, on our first issue, concerning ACE, a more capable import processing system designed to replace Customs' current aging and error-prone system, we concluded that Customs' plan constituted a reasonable first step on a complex, long-term modernization program. Pursuant to our obligation to review ACE expenditures, we plan to continue monitoring Customs' ongoing modernization efforts. Second, we found that OR&R headquarters did not issue the majority of its rulings in a timely manner. Third, we found that if proposed legislation on Customs officers' night pay had been in effect during fiscal year 1999, the officers would have received about $6 million in night differential pay—about $5 million less than what they actually received during that year. Further, across the five ports we reviewed, the impact on officers' pay varied widely because of the differences in shift patterns.

Customs Is Taking a Reasonable First Step on Long-Term ACE Modernization Program

Let me start by updating you on the progress of Customs' ACE. As we have previously testified, the need for Customs to modernize its import processing is undeniable.[5] In the face of burgeoning trade workload forecasts, a commensurate increase in Customs' human capital resources is neither planned nor the appropriate solution. Moreover, Customs' current system for import processing, the Automated Commercial System, is paper-intensive, error-prone, transaction-based, and out of step with the just-in-time inventory practices of the trade community. To address this challenge, and consistent with our prior recommendations on ACE, Customs plans to incrementally acquire and invest in a more capable import processing system known as the Automated Commercial Environment, or ACE, and retire its existing system. Also consistent with our past recommendations, Customs plans to acquire on behalf of the many federal agencies that collect, use, and disseminate trade data, a system known as the International Trade Data System, or ITDS, that is to provide importers with a single interface into the federal government.

For fiscal year 2001, the Congress appropriated $130 million and $5.4 million as the first installments on the ACE and ITDS investments, respectively.[6] In the act appropriating these funds, the Congress also stated that the ACE funds may not be obligated until Customs submits to the Congress for approval an ACE expenditure plan that meets a number of management and oversight requirements, including review by us.

Customs submitted its first expenditure plan seeking release of $45 million on March 26, 2001. On April 23, 2001, we provided the results of our review of the plan to the Customs' appropriations subcommittees.[7] In sum, we reported that Customs' expenditure plan satisfied the appropriations act's conditions and was consistent with our open recommendations concerning ACE, and we thus concluded that the plan constituted a reasonable first step on a complex, long-term modernization program. However, we also reported that (1) opportunities for improving modernization management existed because the expenditure plan excluded relevant ITDS investment activities and allowed these activities to proceed outside of the scope of the modernization program without justification for doing so and (2) the plan provided for conflicting roles and responsibilities for the modernization program's independent verification and validation agent.[8]

Accordingly, we recommended that Customs (1) transfer responsibility and accountability for the ITDS pilot to the ACE modernization program manager; (2) include further ITDS investment plans and supporting information in the next ACE expenditure plan; and (3) clarify the roles and responsibilities of the ACE modernization IV&V contractor to ensure independence. Customs agreed with our recommendations, and to date has either implemented or is in the process of implementing these recommendations. Currently, Customs is working with its recently selected modernization integration contractor to define the initial contract task orders, which the $45 million is to fund. In fall 2001, Customs plans to submit its second expenditure plan seeking release of funding to carry the program through

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[5] *U.S. Customs Service: Observations on Selected Operations and Program Issues* (GAO/T–GGD/AIMD–00–150, Apr. 20, 2000).

[6] The Consolidated Appropriations Act, 2001 (P.L. 106–554, Dec. 21, 2000).

[7] *Customs Service Modernization: Results of Review of First Automated Commercial Environment Expenditure Plan* (GAO–01–696, June 5, 2001).

[8] The purpose of independent verification and validation is to provide an independent review of system processes and products to ensure that quality standards are being met. The use of independent verification and validation is a recognized best practice for large and complex system development and acquisition projects, like ACE.

its next increment. Pursuant to our obligation to review ACE expenditure plans, we are currently monitoring Customs ongoing modernization efforts.

OR&R Headquarters Did Not Issue the Majority of Its Prospective Rulings Within Its Timeliness Goal

Last year, we responded to your Committee's request that we examine the timeliness with which Customs' OR&R issues rulings on such things as the proper classification and valuation of imported goods. OR&R issues rulings to advise importers of Customs regulations and assist importers in making marketing and pricing decisions.

We found that OR&R headquarters did not issue the majority of its prospective rulings—those requested by an importer on goods that are proposed for entry into U.S. markets—in a timely manner. Our review of a random sample of 70 hard-copy case files representing approximately 610 rulings showed that about two-thirds of the rulings that were requested and issued between January 1, 1997, and October 26, 1999, were not completed within OR&R's 120-day benchmark for those rulings. We estimated that about 16 percent of the rulings took longer than 365 days to process and issue.

OR&R acknowledged problems with the timeliness of headquarters rulings, and attributed many of these problems to staffing shortages and competing workload demands. We made several recommendations regarding actions to address the problems and improve OR&R's performance. In commenting on a draft of the report, Customs officials discussed actions they intended to take to implement each of our recommendations. We concluded that while most of the actions proposed by Customs appeared to be steps in the right direction, they may not fully resolve the problems discussed in our report.

Most Customs Officers Would Receive Less Night Differential Pay Under Proposed Changes

In January 2001, we reported on the extent that Customs officers' night differential[9] pay would be increased or decreased by proposed legislation introduced by this Subcommittee. Specifically, our report focused on the effects of sections 123 (a) and (b) of Subtitle C of H.R. 1833,[10] introduced in the 106th Congress, which would change how Customs officers' night differential pay is calculated.

We compared current law to proposed changes in H.R. 1833 and analyzed Customs data nationally and at five ports of entry.[11] Section 123 (a) would have prohibited Customs officers who are scheduled for night shifts from receiving night differential pay when they take annual, sick, or other leave. Section 123 (b) would have changed the times and reduced the number of hours in a day that Customs officers could earn night differential pay. Night differential pay would be limited to hours worked on a midnight-to-8 a.m. shift, and for all other shifts, hours worked between 6 p.m. and 6 a.m. Table 1 below shows the decreases, and to a lesser extent increases, in the number of available hours that Customs officers could earn night differential pay for various 8-hour shifts in a day if the proposed change was enacted.

Table 1: Comparison of the Number of Night Differential Hours Currently Available and as Proposed

8-hour shift starting and ending time	Night differential hours available		Increase under proposed changes	Decrease under proposed changes
	Current law	Proposed changes		
12 noon to 8 p.m.	8	2		6
1 p.m. to 9 p.m.	8	3		5
2 p.m. to 10 p.m.	8	4		4
3 p.m. to 11 p.m.	8	5		3

[9] Night differential pay for Customs officers consists of a 15—or 20-percent differential above the basic hourly rate.

[10] An Act to authorize appropriation for the United States Customs Service, and for other purposes. In May 1999, the House of Representatives passed H.R. 1833 that contained amendments to change Customs officers' night pay. In August 1999, the Senate passed another version of H.R. 1833, which did not contain the pay amendments.

[11] We judgmentally selected, based on the number of air and land passengers processed, three large airports, one medium airport/seaport, and one large land border crossing. The ports selected were John Fitzgerald Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Miami International Airport, Baltimore-Washington International Airport and Seaport, and San Ysidro land border crossing near San Diego.

Table 1: Comparison of the Number of Night Differential Hours Currently Available and as Proposed—Continued

8-hour shift starting and ending time	Night differential hours available		Increase under proposed changes	Decrease under proposed changes
	Current law	Proposed changes		
4 p.m. to 12 midnight	8	6		2
5 p.m. to 1 a.m.	8	7		1
6 p.m. to 2 a.m.	8	8		
7 p.m. to 3 a.m.	8	8		
8p.m. to 4 a.m.	8	8		
9 p.m. to 5 a.m.	8	8		
10 p.m. to 6 a.m.	8	8		
11 p.m. to 7 a.m.	8	7		1
12 midnight to 8 a.m.	8	8		
1 a.m. to 9 a.m.	8	5		3
2 a.m. to 10 a.m.	8	4		4
3 a.m. to 11 a.m.	8	3		5
4 a.m. to 12 Noon	0	2	2	
5 a.m. to 1 p.m.	0	1	1	
6 a.m. to 2 p.m.	0	0		
7 a.m. to 3 p.m.	0	0		
8 a.m. to 4 p.m.	0	0		
9 a.m. to 5 p.m.	0	0		
10 a.m. to 6 p.m.	0	0		
11 a.m. to 7 p.m.	0	1	1	

Source: GAO analysis of current law—U.S.C. 267(b)(1)—and proposed changes—section 123(b) of H.R. 1833.

Our analysis of Customs data showed the extent to which sections 123 (a) and (b) of H.R. 1833 would affect Customs officers' pay. Nationwide, our analysis of the Customs data showed that 6,510 Customs officers received about $13.5 million in night differential pay in fiscal year 1999. Over 80 percent of the $13.5 million in night differential pay was concentrated in six shifts, which generated $11 million in night differential pay (see table 2 below). Had sections 123 (a) and (b) of H.R. 1833 been in effect for these six shifts during fiscal year 1999, Customs officers would have received about $6 million in night differential pay, about $5 million less than what they actually received that year.

Table 2: Total and Average per Officer Amount of Night Differential Pay Under Current Law and Under H.R. 1833 Sections 123 (a) and (b) for the Six Top ''Differential Earning'' Shifts Nationwide During Fiscal Year 1999TotalAverage per shift, per officer

Shift hours	Total			Average per shift, per officer		
	Current law (actual)	Proposed (estimate)	Difference (decrease)	Current law (actual)	Proposed (estimate)	Difference (decrease)
4 p.m. to 12 a.m.	$4,087,828	$2,584,188	$1,503,640	$22.25	$16.56	$5.69
1 p.m. to 9 p.m.	2,059,029	643,686	1,415,343	23.87	8.89	14.98
12 a.m. to 8 a.m	1,956,775	1,706,846	249,929	29.80	29.69	0.11
12 p.m. to 8 p.m.	1,310,974	276,381	1,034,593	23.18	5.76	17.42
2 p.m. to 10 p.m.	972,762	410,872	561,890	22.66	11.27	11.39
3 p.m. to 11 p.m.	654,615	346,833	307,782	22.69	14.07	8.62
Total	11,041,983	5,968,806	5,073,177			

a This shift, 12 a.m. (midnight) until 8 a.m., is preserved in H.R. 1833 so that officers working this shift would continue to earn 8 hours of night differential. Therefore, any reduction because of the proposed legislation is attributable to section 123 (a) eliminating payment of night differential while officers are on leave. Source: GAO analysis of Customs data.

Extent of Night Differential Pay Reductions Varied by Port

Our analysis of the Customs data for five selected ports showed that nearly all (97 percent) of the 1,377 Customs officers receiving night differential pay at these ports would have received less night differential pay had the proposed changes been in effect. Customs officers working at ports with shifts starting in the early afternoon, such as those at JFK, would have had the largest pay decreases.

The amount of pay decreases and number of Customs officers affected varied across the five ports we analyzed, as shown in table 3 below. For example, of the 464 Customs officers who received night differential pay at JFK, 148 (32 percent)

as shown in the shaded areas of the table, would have had their night differential pay decreased by over $3,000 had the proposed changes been in effect. In contrast, the proposed changes would not have had as much of an impact on Customs officers working at the Baltimore-Washington International Airport and Seaport, a smaller port with fewer officers earning night differential pay. Of the 53 Customs officers who received night differential pay at the Baltimore-Washington International Airport and Seaport, 44 (83 percent) would have had their pay decreased by $500 or less if the pay provisions in H.R. 1833 had been enacted. None would have had a pay decrease of over $3,000.

Table 3: Potential Night Differential Pay Reductions Had Sections 123 (a) and (b) of H.R. 1833 Been in Effect in Fiscal Year 1999 at Five Selected Ports

Potential pay reductions	Officers at each port									
	JFK		LAX		Miami		Balto.-Wash.		San Ysidro border	
	No.	%	No.	%	No.	%	No.	%	No.	%
$500 or less	97	21	99	42	186	51	44	83	93	43
$501 to $1,000	41	9	41	17	89	25	3	6	34	16
$1,001 to $2,000	87	19	63	27	74	20	5	9	55	26
$2,001 to $3,000	91	20	19	8	12	3	1	2	22	10
$3,001 to $4,000	83	18	11	5	2	1	0	0	8	4
$4,001 to $5,000	48	10	3	1	0	0	0	0	1	<1
$5,001 and over	17	4	1	<1	0	0	0	0	1	<1
Total	464	.....	237	.....	363	.....	53	.....	214	.....

Note: Percentages may not sum to 100 due to rounding.

Source: GAO analysis of Customs data.

In contrast, but to a lesser extent, 122 officers at four of the five selected ports would have received net increases in night differential pay totaling $16,943 by the end of fiscal year 1999 had the proposed changes been in effect. The net increases primarily would have resulted from early morning shifts.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you may have.

GAO Contacts

For further information regarding this testimony, please contact Laurie E. Ekstrand at (202) 512–8777 or Darryl Dutton at (213) 830–1000.

Chairman CRANE. Thank you very much for your testimony.

Let me first ask Mr. Schindel, how would the proposed legislation reduce the expenditures for Customs? And is this a sound way of trying to address some of the problems?

Mr. SCHINDEL. Well, clearly, it would reduce some of the expenses because it would cut back on the number of hours that available to earn night differential, instead of the 17 hours out of the day.

And also, it would eliminate the majority of hours rule, so that the pay would more closely match the hours worked. So if you were in a shift that 3 or 4 of the hours qualify or fall into the night differential period, you only get paid for those 3 or 4 hours at night pay and not the entire 8-hour shift.

And of course, doing away with the provision that would pay for leave, sick leave or annual leave, would also address some of the reasons why the costs increased after COPRA.

Chairman CRANE. Ms. Ekstrand, in your experience with both Federal and private sector employees, is it unusual for someone to be paid nighttime premium pay for working in the afternoon?

Ms. EKSTRAND. There are so many different configurations of pay, sir, that it is hard to generalize. I don't know of other Federal employment situations where this is the case, but there certainly could be.

Chairman CRANE. There could be, but you don't know of them yet.

Ms. EKSTRAND. I don't know of them.

Chairman CRANE. OK.

Ms. EKSTRAND. We have not looked at them, if they are there.

Chairman CRANE. Under my proposal of last year, would some officers make more money?

Ms. EKSTRAND. A small number of officers, specifically those that work in early morning hours, would make a small amount more money.

Chairman CRANE. And the Treasury employees union states that it would be appropriate for Customs officials to receive benefits as law enforcement officers. Can you compare the pay and benefits of both? And under such status, state how Customs would improve or not improve?

Ms. EKSTRAND. Well, certainly, a big portion of the difference between status of law enforcement officers versus others relates to retirement. Law enforcement officers get a 20-year retirement. That is an enormous part of the benefit.

Chairman CRANE. All right, Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

I didn't hear what you said before. I know we have gone through this as well in the past, so let me just ask a couple of quick questions.

I know that there is an issue of pay here with regard to what some of our Customs employees are making. And I know that in the Office of Inspector General report, you looked at absolute increases in the amount of pay.

I am trying to figure out if you can tell me if it would be better to try to differentiate between the different types of pay that we provide to our Customs employees, in trying to determine the substantial increases that we have seen for Customs employees can be attributed to more than just one particular level of employee and shift.

And I hope that made sense.

Mr. SCHINDEL. Of course, our work is somewhat dated now, but going back to looking at the initial passage of COPRA, the biggest increase we saw was in the night differential category. 1993 was the last full year before COPRA came into effect, and the Customs accounting record showed around $51,000 for night differential pay. And 1995 was the first full year after COPRA was in effect, and that figure went to $8.9 million, so it was a substantial increase in that one category.

I think, in fact, that some of the provisions of COPRA that were expected to reduce overtime costs in general did in fact general overtime a little bit, when you compare 1993 to 1995. But because night differential went up so substantially, total overtime and premium pay costs did not go down. In fact, it went up.

Mr. BECERRA. Ms. Ekstrand, I don't know if you want to answer or give us any of your thoughts right now, but I do have a followup.

Ms. EKSTRAND. We recently reported that certainly night differential provisions in COPRA have resulted in some increases in premium pay. In our recent report, we noted that the number of officers since 1995 to 1999 have increased by about 950 officers, and the number of hours has also increased.

So this is part of the picture of the increase, but we haven't done an analysis to ferret out the different parts of it.

Mr. BECERRA. The 1996 report that you all did, did not tell us whether there were more hours worked, if there was a higher volume of work that was required and that was the reason you saw such an increase in night differential pay. It didn't really dissect that, did it?

Mr. SCHINDEL. No, sir.

Mr. BECERRA. And wouldn't it be worthwhile to know if indeed—I mean, I know in my Port of Los Angeles, we have seen a tremendous increase in work, and that could have an effect on how much we are paying in a lump sum, in a total amount, to Customs employees.

And unless you take a look, it may give the appearance that night differential pay was the cause of increased costs, but indeed you had a high volume or an increased volume of work, and employees had to put in longer work hours.

That could also explain why you saw an increase in night differential pay as well, couldn't it?

Mr. SCHINDEL. Yes. Clearly, some of the increases, when you compare 1995 to 1997, or 1997 to 2000, is going to result from the the fact that there are more inspectors on board and more night differential hours being worked.

Our feeling was that when we compared 1993 to 1995, that there would not have been that much difference in the amount of officers on board in those 2 years, yet the night differential went up so substantially, from $51,000 to $8.9 million, that it was clear that some of these provisions in COPRA were having a direct impact on that substantial increase.

Mr. BECERRA. If some of the employees are working later into the night than usual, that is going to cost us more simply because they are working longer hours, and chances are, we are paying them more to do that, aren't we?

Mr. SCHINDEL. That is correct. The later hours in the night differential shift also earn the higher premium, which is 20 percent versus the 15 percent.

And, certainly, the COPRA legislation, part of the increase was also due to the fact that the premium was increased. It was 10 percent across the board for night pay before COPRA and then it went 15 percent and 20 percent, depending on the different shifts.

Mr. BECERRA. I am sorry, Mr. Chairman, if I could just conclude?

It seems to me that we have to update the report before we can reach and particular conclusions about what is happening with night pay differential and make some good, solid conclusions.

Mr. SCHINDEL. Well, again, I think that the recent GAO work, while it wasn't directly targeted at looking at how much night differential overall had been increased by some of these other factors, it was looking at what these provisions in the H.R. 1833 law

would—what kind of impact they would have on the dollars as far as what it costs Customs for those types of premium pays.

So that data is pretty fresh.

Mr. BECERRA. Mr. Chairman, I know my time has expired. Thank you.

Chairman CRANE. Mr. Levin.

Mr. LEVIN. Mr. Becerra, I would be glad to yield to you.

Mr. BECERRA. Actually, Mr. Levin, that is fine.

Mr. LEVIN. I was going to ask some of the same questions, and I am sorry that I had to miss some of the testimony.

Though I must say, I am not sure there is anything new. I mean, how long have we been on this argument about data from 1993, 1995, updated by GAO to some extent, challenged by the GAO, I think? I don't know what we are doing.

And then I reread the letter to Mr. Rangel of January 14, 2000, from the Treasury Department that indicated that we cannot separately identify the increases due to mandatory pay raises—that is inflation, in part, right—within grade increases or promotions? There has been intensified effort in recent years to align the staff in a port with the hours when most of the weekend comes in.

I don't know what we are doing.

Would you disagree with the suggestion of the acting commissioner that we ought to take a look at the whole thing rather than doing this piecemeal, Mr. Schindel?

Mr. SCHINDEL. I haven't looked at it from that perspective, but certainly a more comprehensive review of compensation probably would be more beneficial than piecemeal.

The only point I would make is that while our work is somewhat dated, again, I think that the GAO review, which attempted to put a dollar figure on the impact of some of the provisions of H.R. 1833, cutting back on the number of hours that are available to earn night differential, doing away with the majority hours rule and doing away with the provision to pay for sick leave and annual leave, there is current data to show how much savings would be involved in that. So, by extension, it gives you an idea of how much of the night differential increase is due to those provisions.

I believe that the figures were around $5 million would be reduced.

Ms. EKSTRAND. It would be slightly over $5 million. The majority of that money is saved in relation to the provisions of majority of hours, as opposed to paying officers who are scheduled to work nights but are on some type of leave.

Mr. LEVIN. I would think any reasonable person listening to the two of you would say a comprehensive look might be in order. Thank you.

Mr. BECERRA. Mr. Levin, if you would yield just a second?

Mr. LEVIN. I would yield.

Mr. BECERRA. I don't know if this was answered or not, but did you find any abuse by management in the use of night differential pay or in the scheduling of Customs officers?

Mr. SCHINDEL. We did look at that in our review, and we did not. The shifts that were worked continued to be the shifts that were normal for those ports or airports, and we didn't see any indication

that they were trying to arrange the shifts so that they could get the maximum benefit of the new provisions.

Mr. BECERRA. So there is nothing to indicate that anything other than just a workload and volume is causing Customs to have its employees work these particular hours and these scheduled times?

Mr. SCHINDEL. That is correct.

Mr. BECERRA. OK, thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. No, no questions.

Chairman CRANE. Well, with that, let me express appreciation to both of you for your testimony today, and we look forward to continuing to work with you.

Mr. SCHINDEL. Thank you.

Ms. EKSTRAND. Thank you.

[Questions submitted from Messrs. Crane, Shaw, and Neal to Mr. Winwood, and his responses follow:]

U.S. CUSTOMS SERVICE
WASHINGTON, DC 20229
August 27, 2001

Hon. Philip M. Crane,
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

1. What contingency plans do you have if ACS crashes for more than a few hours? Can you describe how you see Customs automation system functioning over the next several years while ACE is built?

Customs has established a port-specific Business Continuity plan designed to address the contingency of an unexpected ACS outage, which provides for specific trade processing functions to successfully revert to manual operations after certain periods of time have passed.

The Office of Information Technology has established a Disaster Recovery Operations Center (DROC) team that is solely focused on disaster recovery and continuity of operations. An engineering plan is being developed to use a Commercial recovery Facility (CRF) for contingency operations. The CRF is planned to be operational by the first quarter of FY 03.

ACS will require life support and maintenance during the period that ACE is under development. Life support funding will be used to upgrade the mainframe computer and the communications network to maintain adequate service levels as trade growth continues and transaction volumes increase.

Additional infrastructure equipment (specifically desktops, local area networks) will require renewal as well. Software licenses and software upgrades will be required to meet ongoing regulatory updates and changes to the law.

ACS will continue to provide current capabilities while modernized trade business processes, called for by the Customs Modernization Act, will be delivered as ACE functionality is rolled out. ACE planning is staged such that as major new functional elements are deployed, corresponding ACS functions can be taken off line.

2. At the current funding level, how long will it take Customs to build ACE and what needs to be done to accelerate this? Also, the House appears to be ready to approve higher funding for ACE. Assuming such higher funding is given every year, what is the minimum amount of time it will take to build ACE?

At the current funding level, it is estimated the project will require 14 years to complete.

An accelerated ACE development could be safely accomplished if the increased funding was manageable.

There are limitations to the number of software developers that can be applied to the program to accomplish a program more quickly. Adding more people does not complete the project more quickly. There are software development modules that must be completed before others are started.

In addition, Customs will need to divert a number of subject matter experts from day-to-day operations to support ACE software development teams. Adding additional development teams would severely degrade field operations and the accomplishment of the Customs mission.

3. The Customs Service has been working for years to update the Automated Commercial System (ACS) with the Automated Commercial Environment (ACE). I understand that Congress has appropriated substantial funding this year to achieve this end. What assurances can you give the Committee that this money will be used to launch a version of ACE that reflects current technology rather than a version which reflects the design process Customs undertook several years ago when the idea was first conceived?

Customs has hired a world-class prime contractor, the e-Customs Partnership (e-CP), to build ACE. The e-CP is led by IBM Services and includes Lockheed Martin, a CMM level five software manufacturer. The e-CP created the Technology Vision Council (TVC) to provide input on current and emerging technology and assist in the revision of the enterprise engineering and infrastructure planning of ACE.

Customs and the e-CP negotiated a performance-based contract that will provide the e-CP with the incentive to be far reaching in its efforts to make ACE a world-class system. The ongoing and dynamic relationship between Customs and e-CP, with Customs servicing as a guide on a daily basis, will ensure the success of ACE.

As part of the first three tasks with the e-CP, business process redesign review and validation will be conducted to ensure that design processes reflect current thinking and allow maximum flexibility to react to changing global environment.

ACE will allow for the insertion of new technology as advances become more available and business needs change. Since Customs Modernization is considered ongoing, the systems renewal process will never end. The ACE system should never become obsolete.

4. During the hearing we heard from two Members about staffing levels. What is Customs doing to meet increased demands created by the substantial growth in trade, and will ACE and the Entry Revision Project allow you to use current staff more productively? If so, how?

ACE will allow Customs to distribute routine workloads evenly, freeing up Customs officers to concentrate their efforts on high-risk shipments.

Current paperless rate is averaging 38 percent, which equaled 10.4 million paper entries in 2000. At this rate, with our current system, Customs will be inundated with over 25 million paper entries by 2009. With ACE, paperless rates will increase, based in incremental deployment, to 99 percent, resulting in only 400,000 paper entries. This will free up our front line resources to concentrate on conducting enforcement actions because ACE will perform many of the clerical duties they are currently forced to perform.

The two-year dialog with the trade on the Entry Revision Project reinforced the approach to streamline the entry process by offering an automated account-based system. This approach will minimize the amount of redundant data that is currently required and allow for periodic reporting of entry summary data.

Increased targeting capabilities will result in more effective examinations.

The trade community will have better access to their data. This increased access would allow the trade community to identify and correct potential compliance issues.

5. What is the status of the implementation of Foreign Trade Zone data automation that was required to be implemented by January 2000? I am told it has not yet been implemented.

Customs has completed the technical specifications for the necessary enhancements to the Automated Commercial System. The project is currently going through the Investment Management Process and is scheduled for review by the Customs Investment Review Board this August.

Due to the lack of funding, the pending development of ACE and the related freeze on enhancements to the Automated Commercial System, the Investment Review Board will most likely decide not to approve the Foreign Trade Zone automation project for ACS. Instead, this effort will be deferred for inclusion in ACE. The schedule for implementing Foreign Trade Zone automation in ACE will be determined under ACE Task #3, which is expected to be completed by the end of January 2002.

6. What is the status on the implementation of the provision in the Tariff Suspension and Trade Act of 2000 that allows multiple entries of merchandise to be listed as a single transaction? This simplification was intended to allow importers of large machinery and equipment to make one entry with one value rather than a very long list of parts and values.

The law as amended deals with two distinct issues, each presenting unique operational problems. It was determined to address the issues presented in separate regulatory projects, the first dealing with shipments which are expected to arrive on a single conveyance but which are split at the initiation of the carrier (split shipments). The second project is directed toward the large articles which exceed the capacity of a single conveyance and thus must necessarily be shipped on multiple conveyances (large articles).

A Notice of Proposed Rulemaking addressing the split shipments has been prepared and is presently in Customs review. Following this review, the document will undergo necessary review and approval by the Treasury Department prior to publication for public comment in the Federal Register.

A group comprising multiple Customs disciplines has been convened for the purpose of addressing large articles. The work product expected to emerge from this group is also a Notice of Proposed Rulemaking. The document will undergo a similar review and approval process prior to publication.

7. A large portion of the Customs budget is provided from user fees. Customs has difficulty providing budgetary information on whether fee money is being spent on commercial activity or non-commercial activity. I note that the Treasury Inspector General has several times commented on the need to improve core financial systems to provide more complete and accurate data. What improvements to Customs financial systems are needed to provide Congress with greater cost accounting details on where fee proceeds are being spent? How much will such a system cost and how long to implement?

Customs does collect fees for providing numerous inspectional services including the processing of air and sea passengers, commercial vehicles, vessels and rail cars. These fees, known as COBRA processing fees are collected and used by Customs to fund enhanced inspectional overtime.

Customs does have a cost management information system (CMIS) in place which does provide greater detail on the cost of providing services. Continued emphasis and training on the CMIS is a priority to ensure the accuracy of Customs fees and activity costing.

Customs also collects a fee for the processing of merchandise that is formally and informally entered into the country. The fee, known as the Merchandise Processing Fee or MPF, is set legislatively and offsets a portion of the costs for Customs commercial operations. However, Customs does not have access to the MPF collections.

In addition to the Inspector General, Customs has reported the need to improve deficiencies in providing complete and accurate information for financial reporting since 1993. Long term solutions include the implementation of ACE and an off the shelf enterprise resource planning software package called Systems Applications and Products (SAP).

8. Seizures along the Southwest Border continue to increase. The Customs Service should be congratulated for these seizures. However, what evidence do we have that demonstrates Customs is seizing a greater percentage of drugs rather than finding the same percentage of a much larger supply?

The Customs Service, as the nation's frontline agency in the counter-drug effort, seizes more drugs in each of the major drug categories than any other Federal agency.

Measurement of the worldwide production of illegal drugs, however is very difficult due to a number of widely fluctuating variables. Nonetheless, the best available production estimates, compiled by law enforcement and intelligence community experts indicate that drug production, particularly opium and coca, in the major source countries has either remained stable or steadily increased.

Coca production in Colombia has increased steadily over the past 2–4 years. This increase in Colombian production has replaced the coca production of a number of other coca producing countries such as Bolivia and Peru. Opium cultivation in Colombia, by the same token, has also expanded over the past several years. The result of the increased production and the shifts in production locations, is that supplies of these illegal drugs remain widely available for shipment to the United States, as well as other areas such as Europe.

Estimates on the percentage of the total amount of illegal drugs that Custom seizes are difficult to gauge with any degree of accuracy.

Information and intelligence indicate that Customs drug seizures do have an impact on traffickers and their operational planning. However, traffickers are resilient and constantly seek opportunities to move drugs into the United States.

The Customs Service continues to focus on increasing our drug seizures not only along the Southwest border, but also at every major port of entry, as well as dis-

rupting and dismantling drug smuggling groups through effective and efficient investigative, intelligence and interdiction strategies.

9. Drug seizures always raise questions. How can one use those rates to determine the success of drug interdiction efforts? For example, if you are successful and there are fewer drugs coming across the border, your seizure rates will come down. Lower rates could also suggest you aren't catching enough.

While drug seizure rates do have value in determining the success of drug interdiction efforts, they are not in and of themselves blanket indicators of success or failure. Drug seizure rates are perhaps most useful in determining the effectiveness of operations or tactics in a specific area. For example, Customs air interdiction capability efforts have resulted in an apparent decrease of smuggling into the United States via small aircraft.

Concentrated enforcement efforts along the Miami River in South Florida appear to have impacted the traffickers in that area as indicated by an apparent reduction in smuggling via Haitian coastal freighters. Even more to the point, a well-coordinated intelligence, aviation and investigative effort in the Eastern Pacific has resulted in multi-ton seizures of cocaine (over 100 metric tons in the past 18–24 months). Finally, Customs ecstasy seizures have tripled in the last 4 years, 400,000 in 1997 to well over 9 million in 2000, as we have moved to assertively target and interdict this drug.

Despite the above seizures, however, Customs is not in a position to draw conclusions as to the long-term impact of these impressive statistical successes. It should be noted that there are a number of interagency working groups operating under the auspices of ONDCP that are studying the long term impact of these types of enforcement and interdiction efforts. In the short term, intelligence does show that Customs enforcement and interdiction efforts do have a significant impact on drug smuggling groups and their operations.

10. Given that NAFTA prohibits the collection of user fees and Customs must use appropriated funds to operate the border activities, what cost accounting system does Customs have in place to tell Congress what funding is needed to process these entries and releases exempted by law? Is Customs subsidizing these activities at the border, which are exempt from user fees with the money collected elsewhere?

The merchandise processing fee (MPF) is not collected on the value of merchandise arriving from Canada and Mexico. The MPF collections are deposited into a special fund to offset the cost of commercial activities in the Customs appropriation. Since Congress appropriated the full amount necessary for Customs activities, both NAFTA and non-NAFTA, all Customs activities are funded through appropriated sources.

Customs does not have a system in place to estimate the funding used to process NAFTA and non-NAFTA merchandise. Customs does have a cost accounting system (Cost Management Information System CMIS) in place to estimate the cost of activities related to COBRA processing fees on arriving passengers and commercial conveyances.

11. Customs must perform financial audits on importers for various reasons. Financial auditing of many different types of businesses (of all sizes) obviously takes very specialized auditing skills and a need for keeping proprietary information strictly confidential. An inadequately trained auditor can miss instances of non-compliance as well as wrongly accuse business, which are in compliance. I have heard some concerns about the financial auditing skills of Customs, but I am not is a position to determine whether these are anecdotes or systematic problems. Can you describe the qualifications and auditing training your staff receives and whether improvements are possible?

We believe that Customs Regulatory Auditors receive excellent training throughout their careers with the Service. Our training program is based on standards set by the General Accounting Office (GAO) which are comparable to those help by private sector professional auditors. Upon initial entry, all auditors receive at least a total of nine weeks of basic Regulatory Audit training broken out in three classes of four, three, and two weeks, which prepares them for audits of major companies. In addition, all auditors are given advanced training classes in areas such as drawback, foreign trade zones, NAFTA, and other specialized audit areas after the nine weeks of basic Regulatory Audit training is completed. Customs auditors also receive continual training classes for audits of major importers to ensure all Regulatory Auditors are updated with the latest policies and procedures. Customs has also committed to provide all auditors with at least 80 hours of continuing professional education every two years.

12. GAO reported that rulings from Customs take a very long time. Since rulings are critical to importers' ability to operate, what improvements or increase in resources are needed for Customs to speed the process?

Customs has undertaken a review of the entire Customs ruling process through the publication of a notice of proposed rulemaking on Part 177 of the Customs Regulations, which covers the binding rulings program. After consideration of public comments in conjunction with recent Supreme Court decisions such as *U.S.* v. *Haggar* and *U.S.* v. *Mead*, Customs will re-examine the current process requiring issuance of binding rulings on a per request basis and other ways to fulfill informed compliance under the Mod Act.

During the past 2 years, OR&R has lost and re-hired approximately 29 attorneys (two waiting to come on board). While the office has re-staffed to prior levels, it has not increased its attorney staff level during the past six years. The OR&R has projected a need for six to eight attorneys to help increase the timeliness of rulings.

The office has developed a Cross-Training Program for its attorney staff, not only to provide the basic training for new attorneys but also to increase the technical diversity of all attorney staff. This allows for more attorneys to be assigned a variety of cases, which helps cover shortfalls in certain subjects when persons resign or retire.

13. COBRA fees are declining. What impact has that had on the reserve fund which is supposed to maintain a minimum balance? Also, has Customs precipitated this result by being too optimistic about expected fee receipts while obligating those receipts with permanent staff positions?

COBRA fees have been relatively stable but have not kept pace with inflation. Customs is maintaining the mandatory reserve of $30 million. Under the COBRA legislation, we must maintain this balance in case there are unforeseen downturns in revenue.

In addition to this reserve, Customs had $42 million in carryover funding at the start of this fiscal year. These funds, in addition to current year collections, estimated at $300 million, are available to cover specified inspectional activities.

Customs has been tracking revenues and costs closely to ensure that we do not exceed the available budget. For FY2001, Customs developed a financial plan that keeps current year costs approximately equal with anticipated collection levels. Customs is managing its inspectional staffing levels, overtime/premium pay and related costs to this level.

14. Customs staff handles an immense amount of seized drugs, goods, and money. Can you update us on ongoing efforts to ensure integrity is maintained among staff, and have there been any recent instances of wrongdoing?

To address the issue of integrity regarding seized property, we have created a senior management position of Director, Narcotics and Currency Inspections, in the Office of Internal Affairs. The purpose of this position is to monitor and inspect the direction, policies and activities related to the control and disposition of contraband materials, especially narcotics and currency.

As a result of the creation of this new position, many of the integrity vulnerabilities normally associated with seized contraband have been substantially reduced. Many policies and procedures have been revised to ensure that tighter controls and proper safeguarding and handling procedures were implemented throughout the Customs Service. In addition, new physical security standards were established for both temporary and permanent storage vaults, particularly along the Southwest border.

To ensure managers throughout the agency comply with Customs policy and procedures, Customs has instituted the Self-Inspection Program. Each Customs unit conducts an inspection tailored to its own organization every six months, documenting areas of compliance, improvement and deficiency. Areas addressed involve the seizure and storage of narcotics and federal deposition of currency.

Internal Affairs developed and distributed a computer-based integrity training program for every U.S. Customs employee, around the world.

To track allegations of serious misconduct and criminal activity; including those involving seized contraband, Internal Affairs formed an Intake Review Group and developed a case tracking system. Centralized receipt and classification of allegations has standardized the process nationwide, insuring every allegation is properly tracked and addressed by IA.

Office of Internal Affairs Recent Reports of Wrongdoing

On June 27, 2001, a Federal grand jury in El Paso returned a multi-count indictment against former Customs Group Supervisor Ramon Torrez and a current Border Patrol agent. Torrez was charged with the importation of multi-ton loads of mari-

juana into the United States, accepting bribes and conspiracy to defraud the United States. The indictment followed a lengthy investigation by Customs Internal Affairs and the FBI. Torrez resigned from the Customs Service during the investigation.

On July 13, 2001, U.S. Customs Special Agent Robert McNaught was arrested by Customs Internal Affairs and the FBI in New York. McNaught was charged with Federal narcotics conspiracy offences. McNaught allegedly offered to transport cocaine along the East Coast for a trafficking organization.

On July 16, 2002, Customs Internal Affairs agents and Postal Inspectors arrested a U.S. Customs Mail Technician in the JFK Mail Facility in New York for felony violation of 18 USC 1702 (obstruction of mail). The technician was observed stealing items, including jewelry, from parcels at the mail facility between November 2000 and July 2001.

15. Since the Customs Reorganization and the passage of the Mod Act, the Customs Service has conducted compliance audits of hundreds of businesses and even whole industries. What criteria are used in deciding which industries or particular businesses to audit? Are these general criteria? Why audit, say, the electronics sector and not some other sector?

Since the passage of the Mod Act, Customs has utilized several factors in selecting businesses for audit. Customs has concentrated on certain industry sectors because of their size and importance to the U.S. economy. Customs has termed these sectors Primary Focus Industries (PFI's), and devoted particular attention to verifying import records in the industries. Within PFI's, Customs audited those businesses with the greatest volume of imports. Audit was concentrated on particular import requirements such as antidumping assessments, quotas, duty collections, and special duty exemption provisions.

Based on our experience for the last 5 years, Customs has decided to add certain risk factors to the company selection process for audit. While company size will be a criterion for selection, other factors such as involvement of the company in certain high-risk trade issues will distinguish the company for the purpose of possible audit. For example, companies that import through several special duty exemption programs such as NAFTA and GSP would be selected before companies that import regularly under tariff provisions that do not have special requirements. Companies that import merchandise in a sector subject to antidumping assessments would be selected before companies that do not. Companies with documented compliance problems would be selected before companies whose records did not indicate patterns of non-compliance.

Questions from Congressman Shaw

1. I am concerned that the explosive growth in trade through gateways such as south Florida is not amply accounted for in the kind of statistics being kept by Customs and other commerce and trade agencies of the U.S. Government. As tariff rates among the U.S. and our trading partners decline, less revenue is collected upon entry but volume increases. Are resource and personnel allocation formulas going to need to be adjusted for different factors as our trading profile changes? What are the most relevant factors in determining manpower and equipment allocations, as a function of volume, number of container/passenger landings, or other statistics? What studies or audits, either government-sponsored or privately undertaken, have been produced in recent years to analyze the trends in imports and exports to determine the effect that Customs procedures, processes, and resource allocations have on the positive flow of trade?

When Customs developed the Resource Allocation Model (RAM), it took into account the need to be flexible with workload and data drivers and assumptions on which the projections for personnel requirements would be based.

Global workload growth rates were set using straight-line projections based on the past 3–5 years of performance measurement data, tempered with some industry data. This was calculated using a variety of workload drivers such as passengers processed, entry releases, examinations, and container sweeps, just to name a few.

As this data changes, the output from the allocation model would also change.

The most relevant factors considered to address resource allocation include: workload growth, border presence, and enforcement threat. For these factors, Customs management information systems provide numerous categories of data and statistics on which the RAM projections are based.

In addition, Custom is engaged in in-depth discussions on the implication and impact of the future on Customs operations. Because Customs mission is so diverse and because it interfaces with such a variety of stakeholders, it is necessary to begin to look at the future and review how industry, business, national security, global

economy, and technologies will change and how Customs must change to adapt to this future environment.

We are in the process of developing a report which summarizes future trends, implications on Customs and professional observations that can assist Customs in meeting the challenges of the future. Our review to date has confirmed that trade volume will increase and tariff rates and revenue are likely to decrease especially because of the international free trade agreements.

2. As the flow of agricultural products and services trade both increase, what new challenges does Customs foresee in how goods are handled, inspected, and cleared? How will this require changes in operating procedures, training of personnel, or upgrades in technology?

Currently, Customs enforces over 400 laws for over 40 agencies. Customs enforcement efforts for other agencies range from admissibility concerns to data verification. Admissibility issues, such as the identification and detainment of shipments that may be contaminated with Foot and Mouth disease, pose an additional workload burden on Customs Inspectors. Import Specialists are required to manually verify Antidumping/Countervailing Duty transactions, thereby significantly increasing their workload.

With the increased threat to the health and well-being of the American public and the economy of the Nation, Customs faces even greater challenges to meet the enforcement requirements of other agencies. To effectively meet these challenges, Customs applies and promotes a risk management methodology. This risk management approach effectively targets suspect shipments, thereby maximizing efficient use of Customs resources. In additional, when applicable, Customs is promoting a "Pre-Approval Process" to other agencies. This process places the responsibility of other agency data verification directly in the hands of the subject matter experts at the other agency.

3. Are specific resource allocation formulas or differentials used for high intensity drug traffic areas or other areas of national security concern, whether that concern includes interdiction of drugs, firearms and other weapons, or chemical/biological agents? What additional resources should Congress be committing to the Customs Service in coming years, and is that solely in the domain of annual appropriations or should this Committee consider changes in current law?

The threat, whether from narcotics, firearms, chemical/biological agents, or other types of cross-border criminal activity, is a key factor in determining the allocation of Customs resources nationally. The Resource Allocation Model took these threats into consideration in projecting Customs staffing needs.

Customs receives the bulk of its funds to respond to these threats through annual appropriations. However, some additional funding is provided through accounts such at the HIDTA (High Intensity Drug Trafficking Area) program administered by the Office of National Drug Control Policy.

4. How sustainable is a fee-for-service arrangement beyond immediate needs for areas with unforeseen short-term needs or growth in a particular area? Should Congress undertake a more comprehensive inspection of how our border controls are managed and how fees are collected and allocated before re-authorizing such a system?

Fee-for-service arrangements have proven to be successful. Customs currently provides service on a fee basis to over 30 small airports, as authorized under the COBRA provisions (19 U.S.C. 58c). A Memorandum of Agreement has been developed to provide 24-hour cargo inspection on a fee-for-service basis at an international airport (Broward County), under the pilot program authorized by P.L. 106–35, Sect. 2425. We also developed a standard template that can be used to establish the cost of the service for possible future fee-for-service arrangements.

A Customs work group is currently reviewing all existing fees and reimbursable services work to determine the appropriate fees to be charges for services.

5. In addressing both traffic congestion issues and streamlined customs procedures, the fate of so-called "reliever airports" is often dependent upon our assuring responsive Customs coverage during peak hours and availability during non-peak, but still high-traffic time periods. In South Florida, where smaller, private aircraft are capable of making short-haul international flights and require Customs clearance, the limited hours of service at such airports, including Fort Lauderdale Executive Airport (FXE) constricts the capacity of such facilities to serve as relievers to the big international airports (in FXE's case, Ft. Lauderdale-Hollywood International (FLL) Airport), often requiring airplanes to land, clear customs, then take another short flight over congested, residential areas to return to their home airport. How can Customs re-arrange this system and provide the

necessary service to ease the anxieties of the safety-conscious public and to mitigate the environmental hazard of additional noisy, costly take-offs and landings?

In September 2000, Customs representatives from the South Florida CMC worked with Congressman Alcee Hastings to discuss the possibility of extended hours at "reliever airports". A study was conducted of aircraft arrivals at the Fort Lauderdale Executive Airport (FXE) between January 12, 1997 and February 25, 1998, expanding the hours of operation from 5:00 p.m. to 7:00 p.m. During this time, activity between the hours of 9:00 a.m. to 11:00 a.m. averaged 3.71 flights per day. During the period of 5:00 p.m. to 7:00 p.m., 2.96 flights were averaged per day. As a result of the test, regular hours of operation (9:00 a.m. to 5:00 p.m.) were reinstated with the concurrence of FXE officials.

An update of the study of arrivals at FXE through June 30, 2001 was conducted. Arrivals from October 1, 2000 to June 30, 2001, increased by only 3.25% over the same time period compared to the previous fiscal year. The average number of arrivals remained the same as the previous test, 3.71 per day between 9:00 a.m. and 11:00 a.m. and 2.96 per day between 5:00 p.m. and 7:00 p.m.

The Port Director presented the results of the survey to a representative from the FXE Airport Association, stating that the 11:00 am to 7:00 p.m. hours could be considered, if the airport wished them. The representative from the FXE Airport Association stated to the Port Director that the hours should remain 9:00 a.m. to 5:00 p.m., since the corporate aircraft prefer those hours.

Customs is continuing to monitor the activity at FXE and keep congressional interests aware of the status and test findings

6. I was surprised to discover that the Customs Modernization process leaves south Florida not obtaining upgraded technology until several years down the road, even though collectively these ports and airports are among the fastest growing gateways to/from all parts of the world. I understand than land borders will be the first testing ground of the systems, followed by our Nation's largest ports of entry. I would like to know if such timetables account for only current and past traffic patterns or if they also take into account the projected growth expected over the coming decade, spurred by new trade agreements with partners in the Caribbean, Latin America, and worldwide?

In 1997, Customs developed a Five-year Non-Intrusive Inspection Technology Plan. In FY 1999, the Five-year Plan received $134 million appropriated and emergency supplemental funds. Because of the high risk of narcotics smuggling on the southern tier of the United States, Customs effort in the deployment of NII technology focused initially on the Southern tier of the United States, including south Florida. Deployment and evaluation were simultaneous. There were no mobile NII systems acceptable for use at seaports in existence until deployment and testing.

3 of the 15 seaport NII systems are installed in south Florida, including a Mobile Truck Gamma Ray and a Sea Container X-ray to Miami and a Vehicle & Cargo Inspection System, or VACIS to Port Everglades. 3 additional Mobile Truck Gamma Ray systems (2 in Miami and 1 in Port Everglades) and 1 additional Sea Container X-ray system (Port Everglades) are scheduled for deployment to south Florida by the end of FY 2002.

Review of the Five-year Non-Intrusive Inspection Technology Plan is scheduled during the FY 2003 budget cycle.

7. As Social Security Subcommittee chairman, I am also concerned about privacy in the use of Social Security Numbers. Could you please describe how individual SSNs are used for tracking packages though Customs, how you protect SSNs from being misused, and any other potential privacy issues stemming from the information you gather on individual shippers?

Customs requires entries to include a unique, official identifier for each importer or ultimate consignee. Most importers meet this requirement by supplying their IRS Employer Identification Number (EIN). Those importers without an EIN meet this requirement by supplying their SSN. The SSN is used by Customs to track the importer or ultimate consignee within the Automated Commercial System (ACS).

The Trade Secrets Act and the Privacy Act require Customs to protect all of the sensitive data in its systems, including the SSN used for tracking entries. Customs Systems Security Policy and Procedures Handbook (CIS HB 1400–05A), updated this year, provides direction for implementing the protections required by these laws. These protections include:

No Customs employees are given access to any system, including ACS, until they have successfully completed a full-field background investigation.

All system users must complete a mandatory training course that covers protecting systems information from unauthorized disclosure.

Access to Customs systems requires a unique sign-on and matching password. System access is controlled by "profiles" that limit individuals to only that information which is needed to perform their job. If an individual tries to access information outside their authority, they are suspended from the system.

Per Department of the Treasury security policy, trade information that is transmitted to or from the Customs Data Center from filers via the new trade interface is encrypted to ensure confidentiality.

Finally, the Customs Computer Security Incident Response Center (CSIRC) monitors all external network connections for possible outside attacks to Customs systems or networks.

In addition, all information that contains data that are subject to the protections of the Privacy Act is held within systems of records that have been developed in full compliance with the provisions of that Act.

Question from Congressman Neal

1. The Coalition for New England Companies has been complaining vociferously now for a period of time about staffing problems in Boston. They believe trade is beginning to slow on the basis of staffing levels in Boston. Tell me what the analysis of staffing levels has done in Boston. What is happening with the staffing levels at the Port of Boston?

Overall staffing in the Port of Boston has declined marginally from 178 to 170 in the 5-year period from FY 1996 to FY 2001 (as of July 14th). The number of Inspectors, Import Specialists, Customs Aids, and Entry/Liquidation Specialists has declined by only 1, from 151 to 150, during the same time frame. Four additional Inspectors are expected to be added in the next several months.

Customs has used its Staffing Analysis Tool (a "zero sum" analysis) to compare the Port of Boston to other ports similar in size and environment, such as Seattle and Houston. This analytical tool compares 18 performance measures, weighted to account for local variations in the major types of activity, across ports to show relative performance given their staffing levels. This analysis shows that the Port of Boston, like a number of other ports across the country, is modestly understaffed relative to current staffing at other ports.

Customs Resource Allocation Model (RAM) shows that the Port of Boston, along with virtually all of Customs ports, could benefit from additional staffing. However, Customs is developing risk management strategies that will help to manage the increased workload and threat in the absence of increased staffing levels. Risk management is a proactive management technique that identifies processes for controlling risks in Customs activities and will help to enhance our performance while resources remain relatively static on the northern border and elsewhere.

Yours Truly,

CHARLES W. WINWOOD
Acting Commissioner

Chairman CRANE. And with that, let us then call our final panel, Ronald Schoof, customs and export regulation administrator for Caterpillar; Frederico Zuniga, vice president, National Customs Brokers and Forwarders Association; Michael Laden, chairman, American Association of Exporters and Importers; Colleen Kelley, national president, National Treasury Employees Union; and Julia Hughes, vice president for international trade and government relations, United States Association of Importers of Textiles and Apparel.

All right, if it is not a problem for anyone, can Mr. Laden go first?

Mr. LADEN. Second.

Chairman CRANE. Second? Oh, OK.

Mr. LADEN. Yes, following Mr. Schoof.

Chairman CRANE. Oh, following Mr. Schoof.

Does anyone have a problem with that?

All right, Mr. Schoof, you kick off. And as I have indicated before, please try and keep your oral testimony to 5 minutes or less. All written testimony will be made a part of the permanent record.

STATEMENT OF RONALD SCHOOF, CUSTOMS AND EXPORT REGULATION ADMINISTRATOR, CATERPILLAR INC., PEORIA, ILLINOIS, AND CHAIRMAN, JOINT INDUSTRY GROUP

Mr. SCHOOF. Thank you, Mr. Chairman and distinguished Members of the House Ways and Means Subcommittee on Trade. My name is Ronald Schoof, and I am responsible for the import-export and compliance operations at Caterpillar in Peoria, Illinois. And I am also chairman of the Joint Industry Group (JIG), which is a coalition of more than 160 Fortune 500 companies, brokers, trade associations, and law firms actively involved in international trade.

I have been asked today to relate to you the position of JIG regarding the President's fiscal year 2002 Treasury budget and the needed funding for automated systems.

Customs' current system, Automated Commercial System (ACS), is operating at or near 95-percent capacity. And with projections of rapidly increasing trade, it will be unable to handle the workload without continuing costly life support. This will eventually cost more to the U.S. taxpayer than building a modern, efficient system.

We were encouraged when President Bush included $257 million for Customs modernization and earmarked $130 million for ACE in his fiscal year 2002 budget proposal. However, at this funding level, it would take over 10 years to fund the $1.3 billion Customs estimates that will be needed to build ACE.

Last week, the House Appropriations Subcommittee increased this amount to $300 million. We applaud chairman Istook and his Subcommittee for these additional funds.

Since the passage of the Mod Act, the trade community has been ready to start developing this system. However, we are, 8 years later, still fighting for funds.

We ask this Subcommittee to authorize the President's budget proposal and the additional funds the House Appropriations Subcommittee is prepared to appropriate to return ACE to its original 4-year timeframe.

Enforcement. With increase in volume of trade, travel, and globalization of our economy, the responsibility of U.S. Customs to protect American borders from dangerous threats has grown dramatically.

The ACE system will represent the nation's most effective and cost-efficient tool for achieving one of the government's highest priorities, protecting national sovereignty at our borders. It will add two important weapons to the arsenal of our national law enforcement agencies: technology and intelligence.

Trade facilitation. We need to understand the new ACE is more than a revamped ACS. ACE will allow Customs and the private sector to interact in an account-based environment, provide efficiency, predictability, and transparency to this critical link in the supply chain.

Customs and industry have already spent the past several months working together to redesign the import entry process. Today's ACE system operates the way Customs processed imports for

the past 200 years. Customs recognized the deficiency as well and is committed to work with industry through the trade support network to design a new entry process based on principles agreed to by both Customs and industry.

As we work out the specific details, we know there will be a need for legislative changes to allow the entry process to work as it was provided for under the Customs Mod Act. We will come back to this Subcommittee with these requests. And I think some later panels will have issues on that.

Merchandise processing fee (MPF). Although the MPF should not be a topic of this hearing, recent legislative action in the Senate has forced this issue to the forefront. The MPF money, over $1 billion collected by Customs, however, does not directly fund Customs operation but instead is placed in the general fund.

Last month, the Senate passed Senator John McCain's bipartisan patient protection act, which extended the MPF expiration from 2003 to 2011. We urge this Subcommittee to do all within its authority and jurisdiction to prevent MPF extension language from inclusion in any form of bipartisan patient protection act or other legislation.

If the Customs Service is to continue collecting MPF, it must directly fund improvements to Customs' processes, specifically for ACE and other initiatives that are greatly needed to improve the trade process. Only by earmarking MPF funds in this manner will the potential for a WTO dispute be eliminated.

In conclusion, the Joint Industry Group supports the President's fiscal year 2002 request for funds to develop ACE and chairman Istook's effort to increase the needed funding level to allow a 4-year ACE development cycle. We ask this Subcommittee to authorize these funds.

Finally, we urge you and all Members of the House of Representatives to prevent an extension of the merchandise processing fee from inclusion in any legislation to reform health care in the United States.

Thank you for your time, and I would be available to answer questions.

[The prepared statement of Mr. Schoof follows:]

Statement of Ronald Schoof, Customs and Export Regulation Administrator, Caterpillar Inc., Peoria, Illinois, and Chairman, Joint Industry Group

INTRODUCTION

Mr. Chairman and distinguished Members of the House Ways & Means Subcommittee on Trade, my name is Ronald Schoof and I am responsible for customs and export regulation administration with Caterpillar Inc., in Peoria, Illinois. I am also Chairman of the Joint Industry Group (JIG), a coalition of more than one hundred and sixty members representing Fortune 500 companies, brokers, importers, exporters, trade associations, and law firms actively involved in international trade. The Joint Industry Group enjoys a close and cooperative relationship with the US Customs Service and frequently engages Customs on trade-related issues that affect the growth and strength of American imports and exports.

It is my honor to appear again before this Subcommittee to express to you the position of the Joint Industry Group and its membership regarding President Bush's proposed Fiscal Year 2002 budget for the Customs Service, particularly as it impacts the design and implementation of the Automated Commercial Environment (ACE). I will also discuss Customs' efforts to modernize and simplify the process used to handle the trillions of dollars of trade that enters the United States every year.

FY2002 BUDGET AUTHORIZATION

For several years we have worked with the previous Administration and Congress to emphasize the importance of the US Customs Service and its efforts to modernize its systems.

We were encouraged when President Bush included $257 million for Customs modernization, and $130 million was specifically earmarked for ACE, in his FY2002 budget proposal. Although $130 million is a start, at this funding level it will take over 14 years to fund the $1.3 billion Customs estimates will be needed to build a fully operational and efficient system. Last week, the House Appropriations Subcommittee on Treasury, Postal Service, and General Government, increased this amount to nearly $428 million. This increase of $170 million over the president's request **MUST** be specifically appropriated for ACE development. This level of funding now puts ACE development back on its original four-year development plan. The trade community has been ready since passage of the Customs Modernization Act in 1993 to begin developing this system. Here we are eight years later still fighting for funds to develop a system that Congress told the Customs Service to develop.

With the current system, the Automated Commercial System (ACS), operating at 95 percent capacity and with projections of rapidly increasing trade flows, ACS will be unable to handle the workload without costly life support. Continued life support efforts will eventually cost more to US taxpayers than will building a modern and efficient system that not only facilitates trade, but also strengthens the government's ability to secure our nation's borders.

We applaud Chairman Istook and his Subcommittee for understanding that ACE facilitates US exports and imports, while enhancing Customs ability to protect America's borders from illicit narcotics flows and terrorist activities. We urge the Subcommittee on Trade to authorize the additional funds the House Appropriations Subcommittee is already prepared to appropriate to return ACE to its original 4-year timeframe.

AUTOMATED COMMERCIAL ENVIRONMENT: ENFORCEMENT

An expanding economy, globalization, and an information technology revolution are increasing the burden and pressure on the borders and enforcement resources of the United States. With this increase in volume of trade and travel, the responsibilities of US Customs to protect America's borders from dangerous threats have grown exponentially.

In recognition of these many dangers facing the nation, the US Customs Service has relied upon technology to keep pace with the volume of trade and the threats posed by transnational criminal organizations. Unfortunately, the systems and technology that form the backbone of Customs enforcement efforts have aged, compromising their ability to handle the enforcement challenges of the new century and compete with the technology of the criminal element.

This system is not a Customs' system alone but part of the nation's border enforcement system. It is the FBI's system, the State Department's system, the Food and Drug Administration's system, and the system of every agency of government that has a responsibility to protect our nation at its borders.

For example, traditional border enforcement responsibilities in the areas of narcotics control and revenue protection have been expanded to include a multitude of new concerns including:

- Terrorism and trafficking of weapons of mass destruction and chemical and biological substances;
- Threats to consumers and children from dangerous imported products, such as flammable pajamas;
- Threats to health and safety of imported foods and medicines;
- Child pornography;
- Money laundering;
- Trafficking in environmentally hazardous materials;
- Trade with prohibited countries such as Iraq, Iran, North Korea, and Cuba;
- Goods manufactured with child and prison labor;
- Trade of endangered species;
- Protection of intellectual property; and,
- Cargo theft which is estimated at $10 billion per year.

The new ACE system will represent the nation's most effective and cost efficient tool for achieving one of government's highest priorities, protecting national sovereignty at our borders. The selectivity of the ACE system will allow for more efficiency in specifically targeting and eliminating illicit and destructive transactions. The new ACE system will add two important weapons to the arsenal of our national law enforcement agencies: technology and intelligence.

AUTOMATED COMMERCIAL ENVIRONMENT: TRADE FACILITATION

ACE is the key component in allowing Customs to do business the way the private sector conducts business. ACE will allow Customs and the private sector to interact in an account-based environment, providing efficiency, predictability and transparency to this critical link in the supply chain.

The current ACE prototype known as the National Customs Automation Prototype or NCAP, being tested on the northern border, uses transponder-based technology that allows shipments to clear Customs in just 15 seconds. Fifteen seconds as opposed to an average three to four hours under the present ACS system. That means less time for trucks to sit with idle engines at the port. That means less time for manufacturers to wait for components vital to just-in-time delivery systems. It ensures that the supply chain moving goods from production to the consumer moves quickly and uninterrupted.

Customs and industry have already spent the past several months working together to redesign the import entry process. Today's ACS system operates, in many respects, the way Customs processed imports for the past 200 years. As technology and automation improved the trade's ability to move goods around the world, we are still faced with a cumbersome, out-dated import system. Customs recognized this deficiency as well and has committed to working with industry through their Trade Support Network (TSN) to design, develop, and implement a new entry process which can only be fully implemented within ACE.

We encourage Congress, and specifically the House Ways & Means Committee, to become more involved in the ACE development process. As we work out the specific details, we are sure there will arise a need for legislative changes to allow ACE to work the way it is designed and provided for under the Customs Modernization Act. The trade community will be sure to come back to this Committee with specific requests as needed.

MERCHANDISE PROCESSING FEE

Although the Merchandise Processing Fee (MPF) should not be a topic of this hearing, recent legislative action in the Senate has forced this issue to the forefront. MPF is a so-called "user-fee" paid by importers to cover the cost incurred by Customs to process imports. The MPF money collected by Customs, however, does not directly fund Customs operations. Instead it is placed in the general revenue fund where it is used for any number of government programs that may or may not be related to Customs operations.

Last month, the Senate passed Senator John McCain's Bipartisan Patient Protection Act (S. 1052), which extends the MPF expiration from 2003 to 2011. The House will probably begin considering its version of the Senate bill before the August recess. **We urge this committee to do all within its authority and jurisdiction to prevent MPF extension language from inclusion in any form of the Bipartisan Patient Protection Act or other legislation.**

Every year, Customs collects over $1 billion from companies, including JIG members, importing goods into the United States. Additionally, we are burdened by administrative costs associated with the fee, since Customs imposes complex reporting and accounting requirements in the course of collecting fee payments. All this is occurring at a time when tariffs on products are declining and approaching zero.

If the Customs Service is to continue collecting MPF, it **MUST** directly fund improvements to Customs processing, specifically for ACE and other initiatives that are greatly needed to improve the trade process. While Section 502 of S. 1052 does not earmark user fees for health care purposes, it does use the fee as de facto justification for the revenue neutrality of the bill. JIG is greatly concerned that this approach will prevent user fees from being applied to the commercial operations of the US Customs Service for which they are intended and needed.

Use of the fee to offset the revenue impact of S. 1052 could also increase potential for a WTO dispute. In the late 1980's, a GATT panel found that the user fee was GATT-illegal because it was being collected in amounts exceeding the cost of Customs processing. While the US addressed that problem by placing certain caps on the fee, it was clear from the panel finding that linkage of the fee to the cost of Customs commercial operations is of significant importance to the question of GATT legality. If our trading partners believe Customs user fees are being used to fund health-care related goals, another GATT challenge is virtually certain to surface in the WTO and JIG would have no choice but to support such a challenge.

CONCLUSION

Mr. Chairman and members of the Trade Subcommittee, the Joint Industry Group supports the President's FY2002 request for funds to develop the Automated Commercial Environment and Chairman Istook's efforts to increase the needed funding

levels to allow a four-year ACE development cycle. We ask this committee to authorize the necessary funds to allow ACE to be fully operational in a four-year timeframe. Again, ACE will allow the Customs Service to better fulfill its dual mission of protecting America's borders from foreign threats, while facilitating the flow of trade through our air, sea, and land ports.

Finally, we urge the Ways & Means Committee and all members of the House of Representatives to prevent an extension of the Merchandise Processing Fee from inclusion in any legislation to reform health care in the United States.

We thank you for your time and consideration of these issues.

Mr. HOUGHTON [presiding]. Thank you, Mr. Schoof, very much. Mr. Laden.

STATEMENT OF MICHAEL B. LADEN, PRESIDENT, TARGET CUSTOMS BROKERS, INC., TARGET CORP., MINNEAPOLIS, MINNESOTA, AND CHAIRMAN, BOARD OF DIRECTORS, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, NEW YORK, NEW YORK

Mr. LADEN. Mr. Chairman and Members of the Subcommittee, I am Michael Laden, president of Target Customs Brokers, Inc., a wholly owned subsidiary of Target Corporation. I am also the current chairman of the board of the American Association of Exporters and Importers (AAEI). Additionally, Target is a founding Member of the U.S. Business Alliance for Customs Modernization (BACM). And my comments here today are on behalf of that organization.

Let me thank you on behalf of the Members of AAEI and Member companies or BACM for giving us this opportunity to express our views.

Inefficient and redundant border-clearance processes employed by the U.S. Customs Service and other government agencies that regulate trade at the border impose a significantly greater cost on U.S. importers than do direct customs duties and other border taxes.

Last year, this Subcommittee moved legislation that called for a study by the Treasury Department of such inefficient and redundant border-clearance processes, with a report due to Congress later this year. We are very disappointed that there has been no funding to hire independent, expert third parties to conduct this study despite the law's direction to Treasury to do so.

Government and industry are attempting to complete the study. But without economic and ecometric assistance, it is difficult to develop an authoritative instruction or protocol for the collection, analysis, and extrapolation of data.

It is clear that the cost of inefficient and redundant processes at the border reduces the competitiveness of America companies and results in higher costs for all consumers. Moreover, by reducing the profitability of American companies and raising the cost of living for American families, these inefficient border procedures reduce tax revenues for all levels of the government.

There are several reasons for this current situation.

First, the Customs Service needs to adopt modern business processes. There has been no fundamental change to the U.S. system for collecting customs duties since it was first established more

than 200 years ago. Each release of an import shipment requires the filing of a complete tax return in the form of a customs entry summary.

Reform legislation enacted by Congress in the late seventies merely change the timetable for completing various steps of this process. More substantial reforms enacted by Congress in 1993 have never been fully implemented.

Leadership by the new Commissioner of Customs and strict oversight by this Subcommittee are needed to ensure that the reforms enacted by Congress, such as monthly summary filing of statistical and accounting data on imports, are implemented soon and with emphasis on reducing the cost and complexity of the import process.

Second, Congress should eliminate or modify obsolete customs laws that impose significant costs on importers and ultimately on American manufacturers and consumers.

For example, the country of origin marking law, originally enacted over a century ago, creates complexity and costs for importers without providing any significant benefit. Moreover, the multiplicity of different sets of rules of origin, each with different standards under various trade agreements and various government programs, unnecessarily adds to the complexity and cost to achieve compliance in this area.

Likewise, the drawback statute, complex and obscure when it was originally drafted, has become even more complex and obscure through its interpretation and application by Customs. At this point, both Customs and the trade community agree on the need for clarification, particularly with respect to substitution drawback.

Our tariff schedule has become so prolix that even the U.S. International Trade Commission could only provide an estimate when we asked them last week how many statistical items are now in the Harmonized Tariff Schedule of the United States. Their estimate is over 17,000.

By the year 2005, when tariff reductions and elimination of textile quotas agreed to the Uruguay Round are fully implemented, there will be a large number of tariff subheadings under which subordinate breakouts are no longer required to support duty differentials or administration of textile quotas.

Elimination of the superfluous breakouts under these subheadings would be one of the most useful acts that Congress could perform for the trade community.

Finally, Customs needs real help from the Administration and the Congress in replacing obsolete automated systems. The Customs automated commercial system, built in the early eighties and operating on obsolete programming language, locks the entire U.S. international trade community into the archaic entry system that I described earlier.

Reprogramming the Customs system to allow implementation of Customs reforms approved by Congress in 1993 as well as even more streamlined processes supported by the U.S. trade community requires investment in new operating applications system software.

Mr. Chairman, let me again thank you and the members of the Subcommittee for holding this important hearing, and I shall be glad to join my colleagues in answering questions you may have.

[The prepared statement of Mr. Laden follows:]

Statement of Michael B. Laden, President, Target Customs Brokers, Inc., Target Corporation, Minneapolis, Minnesota, and Chairman, Board of Directors, American Association of Exporters and Importers, New York, New York

Mr. Chairman and members of the subcommittee, I am Michael Laden, President of Target Customs Brokers, Inc., a wholly owned subsidiary of Target Corporation, and I am the current Chairman of the Board of Directors of the American Association of Exporters and Importers. Let me thank you on behalf of the members of the Association for giving us this opportunity to express our views on the important matters that you have under consideration.

It is clear from the Advisory you issued that the Subcommittee is interested in hearing trade community views on problems with the U.S. Customs Service's current automated commercial system and on how we may accelerate development of a replacement, and we shall be pleased to address that subject. However, our first concern is that we not make the mistake of automating obsolete business processes, and so I would like to address that first.

Mr. Chairman, as a result of trade agreements such as the NAFTA and the Uruguay Round, which this Subcommittee has been instrumental in developing, U.S. duty rates have been reduced to the point at which we now find that inefficient and redundant border clearance processes employed by U.S. Customs and other government agencies that regulate trade at the border impose a significantly greater cost on U.S. companies than do direct customs duties and other border taxes. This cost reduces the competitiveness of American companies and results in higher costs for all consumers. Moreover, by reducing the profitability of American companies and raising the cost of living for American families, these inefficient border procedures reduce tax revenues for all levels of government.

The primary reason for this inefficiency is well known. There has been no fundamental change to the U.S. system for collecting customs duties since it was first established over two hundred years ago. Each release of an import shipment requires the filing of a complete tax return in the form of a customs entry summary. "Reform" legislation enacted by Congress in the late 1970s merely changed the timetable for completing various steps of the process. More substantial reforms enacted by Congress in 1993, in the Customs Modernization title of the NAFTA implementing act, have never been fully implemented. As Congress oversees the development of a new automated system at Customs, it must ensure that Customs' business processes are streamlined to the extent possible. Otherwise, we shall find that we have simply automated an obsolete system, with minimal gains in efficiency. This is the outcome that information technology experts refer to as "paving the cow path".

Several fundamental changes are needed. First, the amount of information that must be provided to obtain release of goods at the border should be reduced to the absolute minimum consistent with protection of public health and safety, and Customs' need to assure that full accounting and statistical data are filed and duties paid. The reason for this is simple. The procedure for release of goods at the border is the moment of greatest vulnerability for importers. This is true for all importers, all of whom want to manage their supply chains as efficiently as possible, but it is especially true for manufacturers who are using "just-in-time" inventory management practices.

Much importing activity is redundant, that is, goods of the same kind are entered repetitively by the same importer, from the same exporter, often using the same carrier. For this situation, which is common, Customs should create a release procedure that allows importers to submit the non-variable information in advance, so that only variable information has to be produced at the critical point of release. Such a procedure would reduce the risk of delays and it would greatly reduce importers' costs of transmitting data to the government and the government's cost of processing and storing it.

After shipments are released, importers should be able to file the required statistical and accounting information on a summary basis, rather than for each individual release as been required for the last two hundred years. If the tax laws required doctors to file a tax return and make a tax payment after they saw each patient the AMA would be camped on the Mall like Coxey's Army. But that is exactly the situation that importers face. Every individual import shipment requires the filing of a separate tax return. The Customs Modernization Act of 1993 provided for filing an Import Activity Summary Statement that would consolidate the filing of statistical and accounting information for imports released during a month. We un-

derstand that it would be difficult to implement that procedure in the current automated system, but we would be dismayed to see a new automated system developed at Customs without some assurance that a satisfactory implementation of the summary filing procedure will be an early component.

Corresponding changes are needed to procedures for paying duties and other fees imposed on imports. Although the current transaction-by-transaction payment system should be retained for small and occasional importers, an account-based system would reduce the cost of processing payments for larger importers and the Customs Service. The proposal we have made to Customs is that large importers should be allowed to make semi-monthly estimated payments of duties, with adjustments after the end of the month. The semi-monthly payments will allow Customs' to maintain its current cash flow position, so that no interest calculation will be involved unless importers fail to make payments according to the schedule or significantly understate the estimated semi-monthly payments. Periodic payment systems similar to the one we have proposed are already in use in Canada and Great Britain. We believe that U.S. Customs should adopt such a system.

In addition to these changes, all of which related to reform of Customs' entry process, there are other desirable changes to the customs laws that we would like to call to the attention of the Subcommittee.

The current drawback law, the law authorizing refunds of duties paid on imports under certain circumstances, was complex and obscure when it was originally drafted and it has become even more complex and obscure through its interpretation and application by Customs. The thorniest problem relates to what is called "substitution drawback". Sections of the drawback statute allow duty refunds in connection with the export of goods that are "commercially interchangeable" with, or of "the same kind and quality" as, imported goods on which duty was paid. Over the years, Customs' well-intentioned efforts to define these two concepts, which are highly subjective, have resulted in their becoming increasingly murky. At this point both importers and the Customs Service agree on the need for a more objective and workable definition of exported goods eligible for substitution drawback. We hope to be coming to the Subcommittee shortly with proposed legislation to address this problem.

Another aspect of the customs laws that is showing signs of age is the country of origin marking statute. The statute requires that every article of foreign origin, with some exceptions, be marked "as legibly, indelibly, and permanently as the nature of the article will permit" to indicate the foreign country of origin to the ultimate consumer. Failure to mark articles with their foreign origin subjects importers to an additional ten percent duty.

The marking requirement creates several problems for importers. One is that foreign manufacturers may produce goods for export to several markets, not only the United States. They are unlikely to mark the origin of their products because the laws of the other countries to which they sell don't require marking. Consequently, the U.S. importer has to pay a substantial premium to have goods produced for the U.S. marked with their origin, or arrange to apply the marking subsequent to manufacture. This causes delays and significant additional costs for importers. A second problem is in knowing what method of marking will be accepted by Customs as legible, indelible, and permanent. Frequently, Customs and importers disagree over whether a method of marking that Customs deems acceptable can be applied without damaging an article. Determining the origin of an article to decide whether and how it should be marked is yet another problem. Goods are often processed abroad in more than one country, or are imported into the United States for further processing before they are sold to an ultimate consumer. The processing in multiple foreign countries or in the U.S. may or may not cause the foreign origin to change, and it is difficult for an importer to know this without obtaining a legal opinion from an attorney or a ruling from the Customs Service.

The country of origin marking requirement may have served a useful purpose when it was first enacted over a century ago, at a time when the commerce of the United States was more insular and consumer encounters with foreign-made goods were much more infrequent. In a modern global economy, where consumers understand that many of the goods they consume are produced abroad, and when consumers rely on brand names rather than country of origin as indicators of quality, the marking requirement is less meaningful. We believe that it is timely for Congress to review the marking requirement, and to consider either eliminating it altogether or making required marking the exception rather than the rule.

Another problem with the customs laws that we recommend for Congressional consideration relates to tariff simplification. The Harmonized Tariff Schedules of the United States are enormously prolix. Given the dynamic nature of modern commerce, with frequent changes in the design and functionality of products and parts,

it has become extremely difficult to classify imported goods correctly in the over 17,000 statistical breakouts that exist in the current tariff. Congress will soon have a unique opportunity to address this problem. In the next few years, as a result of tariff concessions and elimination of textile quotas agreed to in the Uruguay Round, there will be a substantial number of tariff subheadings under which subordinate breakouts are no longer required to support duty differentials or administration of textile quotas. Elimination of the superfluous breakouts under these subheadings would be one of the most useful acts that the Congress could perform for the U.S. trade community.

The reforms that I have mentioned—clarification of the drawback statute, elimination or modification of the country of origin marking requirements, and simplification of the tariff—are not dependent on Customs having a new automated system. Moreover, although we are keenly interested in Customs' effort to obtain funding for modernizing its automated system, and appreciative of this Subcommittee's support, we recognize that the chief responsibility rests with other committees of Congress.

However, the reforms I mentioned fall squarely within the traditional jurisdiction of this Subcommittee, and are as important as improved automation to increasing the efficiency and reducing the cost of importing.

Let me now address briefly the automation question. The U.S. Customs automated commercial system, built in the early 1980s and operating on obsolete programming language, locks the entire U.S. international trade community into the archaic transaction-by-transaction entry system that I described earlier. Re-programming the existing customs automated commercial system to allow implementation of customs reforms approved by Congress in 1993 as well as even more streamlined processes supported by the U.S. trade community (and already being adopted by some of the United States' major trading partners) requires investment in new operating and application systems software. Notwithstanding the obvious harmful consequences for the U.S. economy of neglecting this problem, there has not been aggressive leadership from the Executive Branch to secure the funding required to implement necessary software upgrades to the Customs system.

Although a modern automated system that allows efficient processing of imports and exports is obviously a national asset, it suffers from the same disadvantage that afflicts projects such as building a new national air traffic control system or the TSN project at the IRS: the benefits at a national level are great but they are too diffuse to attract the support of particular members of Congress. As long as these three systems can be kept from breaking down entirely, and each of them has come close, it is difficult to build an effective consensus for replacing them, notwithstanding that a replacement system would be more efficient and have much greater functionality.

This is an unfortunate phenomenon of our system of government, but it is a reality with which we have to deal. The American Association of Exporters and Importers will continue to urge the Executive Branch and Congress to provide funding to complete development of a new automated system in not more than five years. However, we are extremely reluctant to consider new user fees to fund this project. Importers still pay a significant amount of customs duties, pay the merchandise processing user fee (none of which goes to improve the services provided to importers), and the so-called "COBRA" user fee as well as various other excise taxes, on much of what we import. We acknowledge that no taxpayer wants to pay more taxes but we believe we can make with particular validity the argument that we are already paying our fair share.

Mr. Chairman, let me again thank you and the members of the Subcommittee for holding this important hearing and for giving us an opportunity to express our views. I shall be glad to join my colleagues on this panel in answering any question you may have of us.

Mr. HOUGHTON. Well, thank you very much.

I think, Mr. Zuniga, you are next, however, what I would like to do is to call on Ms. Kelley. I don't think we can have three men and then two women. [Laughter.]

So, Ms. Kelley, would you like to go?

And then we will get right to you.

STATEMENT OF COLLEEN KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Ms. KELLEY. Thank you very much, Mr. Houghton and Ranking Member Levin, members of the Subcommittee, my name is Colleen Kelley, and I am the national president of the National Treasury Employees Union (NTEU). And on behalf of the 150,000 Federal employees we represent, including 13,000 Customs employees, I thank you very much for holding this Committee hearing today and for giving us the opportunity to testify, particularly on behalf of the issue that involves a change in legislation around Customs inspectors' night differential pay.

The Customs Officer Pay Reform Act, which is known as COPRA, was enacted in 1994, and it governs how the Customs inspectional staff receives premium pay for overtime hours and night shift work.

A Treasury Department inspector general's report from September 1996 has been cited as evidence of the need for changes. However, at the request of Congressman Charles Rangel, the Treasury Department responded to additional questions surrounding that report. And a closer review of the report has shown that it contains some inaccuracies and misleading information.

NTEU believes that the original enactment of COPRA met the intent of Congress, and the original enactment of COPRA has not caused solely by itself a significant increase in the night differential. The need for the amendments that are proposed to night pay provisions are not necessary.

The overhaul of the prior Customs inspectional overtime law, which was known as the 1911 Act, occurred in 1993. Its intent was to ensure that hours paid to Customs inspectors for overtime work bore a more direct relationship to hours worked by the inspectors. This intent has clearly been met.

Before the enactment of COPRA, the 1911 Act system allowed an inspector to work only a few hours of overtime and to receive several days pay. That has been fixed and that is not the case today.

The second intent of Congress in enacting COPRA was to ensure that Customs inspectors' schedules met customer demand. That has also happened.

For example, 8 years ago, most inspectors worked an 8 a.m. to 5 p.m. shift and then routinely worked overtime in the evenings. Today, those officers are probably divided between an 8 a.m. to 5 p.m. shift and a 1 p.m. to 9 p.m. shift or some other similar configuration.

This reduces overtime but it increases night differential. Clearly, the Inspector General report was wrong to attribute increases in night differential payments solely to COPRA.

The report did not factor in increases in overall Federal pay rates, the doubling in commercial workloads with commensurate increases in staffing coverage that was needed, as well as increases in locations and hours of service that were requested by the trade community and by Congress and have been provided.

The recent GAO report that was requested by Senator Grassley for the Senate Caucus on International Narcotics Control focused on the impact of the proposed changes to the night pay provisions. And this report clearly shows the devastating impact that would be

had if these provisions were enacted on Customs inspectors and if they had become law.

Of the five major ports that were profiled in the GAO report—JFK airport, LAX airport, Miami International airport, Baltimore-Washington airport and seaport, as well as the San Ysidro land border crossing—97 percent of these inspectors would have lost night pay, ranging from between $500 to $5,000 a year. And the report shows that the impact of H.R. 1833 would have been nationwide, not just as these five ports.

The night pay changes in the bill are pay cuts, plain and simple. Inspectors would perform the same work within the same timeframes and receive less money for that work. Nothing in last year's bill, H.R. 1833, would provide a benefit to inspectors to offset this pay cut.

Each year the Customs Service inspectional ranks have been asked to do more with inadequate personnel and resources. Trade and travel have increased at outstanding rates, yet Customs' inspectional ranks have not grown at the same rates.

The Customs Service relies on overtime to cover regional shift work during regional hours of operation. The ever-increasing hours of work assigned to inspectors every week is taking a toll on the health and the morale of the officers. They are faced with few days off, 16-hour days for several days in a row, and no end in sight to these grueling schedules.

Telling Customs officers that in addition to their increased workload and expanding work schedules, they will receive a pay cut for the non-overtime night shift work they perform will have a devastating and a senseless impact.

NTEU agrees with the Members of the Committee that the compensation system for Customs is not perfect. For example, we strongly believe that Customs inspectors and chief executive officers should have law enforcement status.

So rather than enacting provisions that will definitely reduce current take-home pay for Customs employees, it would make much more sense to do a comprehensive review of the entire compensation package to see if there are changes that would make the system fairer and actually benefit Customs as well as the hard-working men and women of the Customs Service.

Thank you very much, again, for the opportunity to be here today.

[The prepared statement of Ms. Kelley follows:]

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

Chairman Crane, Ranking Member Levin and Members of the Subcommittee, my name is Colleen Kelley, and I am the National President of the National Treasury Employees Union (NTEU). On behalf of more than 150,000 federal employees represented by NTEU, almost 13,000 of whom work for the United States Customs Service, I would like to thank you for this opportunity to present our Union's views on an authorization bill for the Customs Service, especially as it relates to any legislation which would affect Customs Inspectors night differential pay.

The Customs Service is a front line enforcement agency. Its mission is to ensure the public's compliance with hundreds of import laws and regulations while stemming the flow of illegal drugs and contraband into the United States. It has been nearly a decade since Congress has passed a Customs authorization bill. Over the last ten years, legitimate U.S. imports have grown at double digit rates, illegal narcotics smugglers have begun to exploit new and sophisticated methods of moving

drugs into the country, and Customs employees have been tasked with combating international money-laundering and arms smuggling.

In addition, Customs is the first line of defense against the illegal importation of merchandise manufactured with forced child labor as well as weapons of mass destruction used in terrorist threats. The Agency is also tasked with combating crimes in cyberspace. This type of crime most certainly was not envisioned back in 1789 when the Customs Service began as the collector of imports and duties on products entering the United States. Yet the Agency must keep pace with the criminal element that will stop at nothing to exploit children, launder money and violate intellectual property rights over the Internet. For Customs, the technology and expertise needed to combat cybercrime is as essential as the high tech equipment needed for processing legitimate cargo and passengers at the hundreds of ports of entry around the United States.

In FY 2001, Customs estimates it will process over 500 million land, sea and air passengers. Over 150 million carriers will enter our ports in 2001 and over $1.3 trillion worth of merchandise will be processed at the borders. Notwithstanding the Customs Service's relatively static workforce and increasing workload over the past five years, this Agency continues to seize more narcotics than all other federal agencies combined. While we expect to keep the drug seizures high throughout 2001 and into the new century, additional resources, personnel and technology are necessary for this effort. The goal is to win the war on drugs without placing an undue burden on trade.

FY 2002 Budget

The Administration has requested a funding level of $1.96 billion, and 17,849 FTEs for fiscal year 2002. While this figure is $98 million more than the budget for Fiscal Year 2001 it only includes the bare minimum or nothing for long term commitments such as the Automated Commercial Environment, new more aggressive enforcement efforts or the reauthorization of COBRA. Many think that Customs' funding for FY 2002 is in jeopardy of falling far short of its needs.

While NTEU supports increased authorization of funds for the Customs Service, no increase in funds will actually be available to Customs without increased appropriations. The discretionary spending caps in the House and Senate Budget Resolutions, which have recently passed, will make increased appropriations extremely difficult, if not impossible, to achieve.

Inspection Personnel

Customs Inspectors and Canine Enforcement Officers (CEOs) at land, sea and air ports present the first line of defense to the illegal importation of drugs and contraband across our borders. They are literally on the front lines. They work in career ladder positions that begin at the GS–5 level—approximately $20,000 per year. Only after two years will an Inspector reach the journeyman level of his or her career from which there is no guaranteed promotion. This journeyman level (GS–9) begins at $30,000 annually and is the highest grade level most Customs Inspectors and CEOs will attain. This level means that at the very height of an Inspector's career, and even after twenty-five years of dedication to the Customs Service, he or she will make a maximum base salary of about $40,000 per year.

Shifts and Irregular Hours

Not many people recognize the concessions Inspectors and Canine Enforcement Officers make for the Customs Service. Their lives are controlled by their jobs. First, they rarely work regular 9 a.m. to 5 p.m. schedules and, unlike hundreds of thousands of their fellow federal government employees, Customs inspection personnel have little control over the schedules they work in any given two week period.

Cargo shipments and passengers cross our borders at all times of the day and night, and Customs Inspectors must be there to process them. It has been noted over and over again that drug smugglers rarely work from 9–5. Well, neither do the hard-working men and women of the Customs Service. Most Customs Inspectors and CEOs around the country are expected to work at a minimum, three different shift schedules. A shift one week may be as ordinary as 8 a.m. to 4 p.m., but the next week it may be as disruptive to the body clock and family life as 5:15 a.m. to 1:15 p.m. or even 3 a.m. to 11:00 a.m.

According to many Customs Inspectors around the country, the changing times and workdays leave little time for family life. It is a luxury to be at home at the same time as your children and spouse. Often it takes hours at home to unwind from an intense and exhausting day working on the border or at a port. Inspectors regularly sacrifice attendance at school events and teacher conferences, and they rarely have an opportunity to oversee daily or nightly activities at home. Inspectors combat the extreme cold in winter and intense heat in the summer, while they bat-

tle sleep problems from working one week on the midnight shift and the next on the early morning shift. Many people can handle a few weeks of this shift work, but could never survive a career of this lifestyle.

In addition to rotating shifts, Inspectors and CEOs have rotating weekends. They basically work a seven-day workweek, and their two days off can fall anywhere within those seven days. The majority of inspection personnel work both days of the weekend as their regular shift. Each individual will learn about his or her shift schedule and days off about ten days in advance of working the schedule. Most official holidays will fall within their regular workweeks. There is never a guarantee that a holiday or weekend will be spent with family or friends.

Overtime

In addition to the unpredictability of their work schedules, Inspectors and Canine Enforcement Officers are usually at the call of Customs management for orders to work overtime. The staffing levels at most ports are not adequate to meet the needs of the port, so situations occur daily that require Inspectors to come in to work on their days off and to stay beyond their shift for overtime assignments. Frequently, they must scramble to find a replacement or struggle to arrange childcare and juggle family commitments. Most Customs Inspectors and CEOs work at least 16 hours of overtime each week. That can mean a seven-day work week or sixteen hour days. This is not an odd occurrence; this is a way of life. There are grave consequences for refusing to come in for overtime, including termination.

COBRA

The COBRA user fee account funds all inspectors and canine enforcement officers' overtime pay as well as approximately 1400 Customs positions across the country. This account is funded with user fees collected from Air/Sea Passengers except from the Caribbean and Mexico, Commercial Vehicles, Commercial Vessels/Barges and Rail Cars. Customs anticipates collecting $299 million in COBRA fees during FY2001, well below the $305 million they now project in COBRA obligations during FY2001. In fact, in the beginning of FY 2001, Customs had originally anticipated spending approximately $350 million but because of the projected shortfall in the COBRA funding account, Customs has cut back on overtime and held off filling hundreds of vacant positions.

This decrease in COBRA spending has decreased services to all taxpayers and exacerbated the long delays at many border crossings across the country. In fact, as recently as two weeks ago, Customs was prepared to close one of the busiest border bridges in El Paso, Texas on Saturday's because of the lack of COBRA funding for inspectors. Only after congressional and local intervention did Customs reverse its decision. This one example is just a preview of what will happen in the near future unless Congress responds by reauthorizing COBRA, which is set to expire in September 2003.

COPRA

In 1911, recognizing that the type of work performed by Customs inspection personnel was different from that of the typical federal employee, Congress passed an Act that paid Customs Inspectors for minimum periods of overtime rather than for hours of overtime that they actually worked. This law was referred to as the "1911 Act". In 1993, determining that the 1911 Act left too much room for mismanagement and abuse of overtime, this Committee was instrumental in replacing the Act with the Customs Officer Pay Reform Act (COPRA). COPRA was drafted to ensure that hours paid to Inspectors bore a more direct relationship to hours worked. Since 1994, COPRA has been the exclusive pay system for Customs officers performing inspection duties. While eliminating the rare instance when a Customs officer could earn 32 hours of pay for 2 hours of overtime work, provisions of COPRA continued to recognize that Customs officers deserved pay incentives and enhanced compensation for their arduous shift work and irregular hours.

The pay system for Customs inspection personnel is not unique in the federal government. Most federal employees who perform law enforcement duties are paid under pay systems tailored to specifically compensate them for their work. This is the case for inspection personnel and criminal investigators of the INS, DEA, FBI, Border Patrol, and National Park Service. INS Inspectors are paid for minimum periods of time regardless of their actual hours worked. The FBI, DEA and other federal law enforcement agencies pay employees premium pay on an annual basis to compensate them for working irregular, unscheduled overtime duty. Sometimes this can amount to an additional 25% increase in their rate of pay although the officer may not work even one hour of overtime or at night during any given week. Other federal criminal investigators and Customs pilots receive a 25% pay differential annually. This pay incentive is known as availability pay and compensates these em-

ployees for being available to work outside their regular shifts. Like in the Customs Service, these pay systems are necessary to attract and retain a high quality and professional workforce.

Under COPRA, a Customs Inspector is paid overtime only when he or she works overtime hours as scheduled. The rare instance that an Inspector might receive a paycheck for overtime without having worked the hours occurs only when there is an administrative or judicial proceeding in which Customs is ordered to pay back pay for an overtime assignment unlawfully denied to an employee. This situation is not governed by COPRA. Rather the remedy complies with the Back Pay Act (5 U.S.C. 5596) that governs situations for all federal employees who are the subjects of improper personnel actions. This specific remedy of back pay has been determined by many judges and arbitrators to be the adequate remedy for such violations of law by managers throughout the federal government. According to arbitrators and judges, without a back pay remedy, employers do not have incentive to comply with the applicable law, regulations or collective bargaining agreements that they enter into. Other remedies would be inconsistent with the remedies available to every other federal employee.

Customs recently implemented a new data system called the Customs Overtime Scheduling System (COSS). COSS provides overtime earning information for individual Inspectors and CEOs. The system tracks schedules and assignment data, maintains projected and actual costs, pay cap, equalization, staffing, budgeting, time and attendance and billing information. The system better enables management to monitor the current $30,000 overtime earnings cap. Overtime disputes have dramatically decreased since COSS has been in place. Statutory changes are not needed to redress situations that the Agency can and is managing now.

Premium Pay

In addition to overtime, a second piece of this committee's reform of the "1911 Act" or COPRA governs premium pay for Customs inspection personnel. Premium pay is a higher rate of pay for working at night, on holidays or on Sundays. For night pay purposes, when a majority of regularly scheduled work hours occurs between 3 p.m. and 12 a.m., an officer receives an additional 15% of the basic pay rate added for the shift. When a majority of regularly scheduled work hours occurs between 11 p.m. and 8 a.m., an officer receives an additional 20% of the basic rate for the entire shift. When an officer's regularly scheduled work occurs between 7:30 p.m. and 3:30 a.m., he or she will receive 15% premium pay for the hours between 7:30 p.m. to 11:30 p.m. and 20% premium pay for hours between 11:30 p.m. and 3:30 a.m. However, if an Inspector works less than a majority of hours during the night, none of the evening hours are paid at the premium rate. For example, none of the hours in the shift 4 a.m. to noon are compensated as night pay.

The current Customs system for night pay is meant to compensate the inspection personnel for living with unpredictability and constant irregularity in their work schedules. For most Inspectors, daily shifts change every two weeks. That means, one week an Inspector may work the graveyard shift, and the next week he or she may be on from 5:15 a.m. to 1:15 p.m. The unpredictability of these changing work hours often wreaks havoc on family life. Incentive pay systems are not unique to the Customs Service and are in place for most law enforcement jobs where irregular hours and shifts exist.

NTEU believes that the original enactment of COPRA met the intent of Congress and has itself not caused a significant increase in night differential. The need for amendments to the night pay provisions enacted in 1994 are unnecessary.

Congressional intent has been satisfied by the implementation of COPRA. The new methodology provides overtime payments to inspectors for those hours that correspond to their overtime hours worked. In addition, the current schedules available at the ports of entry today, including many additional varied shifts and night shifts, correspond to customers' needs.

Recent Proposals to Change COPRA

As you know, legislation has been introduced in the House in the 105th and 106th Congresses that would change the night premium pay provisions of COPRA. A Treasury Department Inspector General's Report from September 1996 has been cited as evidence of the need for these changes. However, at the request of Congressman Charles Rangel, the Treasury Department responded to additional questions surrounding that report. (A copy of this response is attached to my testimony). A closer review of the report shows that it contained glaring inaccuracies and misleading information. According to Treasury, COPRA has successfully responded to the problems associated with the 1911 Act compensation method. For example, 8 years ago, most officers worked an 8 a.m. to 5 p.m. shift and then routinely worked

overtime in the evenings. Today, those officers are probably divided between an 8 a.m. and 5 p.m. shift and a 1 p.m. to 9 p.m. shift, or some similar configuration. This would reduce overtime, but increase night differential. Clearly the IG Report was wrong to attribute increases in night differential payments to the COPRA itself. It must be mentioned that the report states that, "there has been an intensified effort in recent years to align the staff in a port to the hours when most of the workload comes into a port. This has caused a significant change in the assignment and times of shifts in many ports." This point reinforces the fact that COPRA is satisfying congressional intent to coordinate Customs staff with customer needs.

In fact, the previous Commissioner of Customs has stated that, "while Customs is aware of concerns raised about increases in overtime and premium pay costs, there are many contributing factors, other than night differential pay. These factors include increases in overall Federal pay rates, the doubling in commercial workloads with commensurate increases in staff, as well as increases in locations and hours of service requested by the trade community and Congress." Any attempt to change this part of the compensation package without assessing the entire field of issues is misguided and wrong.

A recent GAO report (#01–304) (attached) requested by Senator Grassley for the Senate Caucus on International Narcotics Control focused on the impact of the night pay provisions included in the most recent Customs authorization bill, HR 1833. This report clearly shows the devastating impact HR 1833 would have had on Customs Inspectors had it become law.

The most significant amendment to COPRA in HR 1833, would have changed the night premium pay system from a shift based system to an hour based system. By making this change, HR 1833 would eliminate a basic incentive for inspectors choosing to work the difficult late night shifts for the increased night differential pay.

Proponents of HR 1833 have stated that the system proposed in their bill actually has three more late night shifts (enclosed), which would receive a night pay differential, than the current system. This is true, but what they fail to mention is that these shifts, on average, provide inspectors with an average of only $24 more a week or $4.80 more per day, hardly enough to adequately compensate inspectors for choosing this difficult shifts.

Of the five major ports profiled in the GAO report: JFK Airport in New York, LAX Airport in California, Miami International Airport in Florida, BWI Airport and Seaport in Maryland, and the San Ysidro Land Border Crossing in California 97% of these inspectors would have lost night pay ranging from $500 to over $5000 a year. The report also shows that the impact of HR 1833 would have been nationwide and the loss of night pay across the country would have been close to $5 million, impacting inspectors assigned to sea ports, air ports and land ports.

The night pay changes in the bill are *pay cuts—plain and simple*. Inspectors would perform the same work, within the same time frames, and receive less money for that work. Nothing in last year's bill, HR 1833, would provide a benefit to inspectors to offset this pay cut. In fact, the report stated that the Commissioner of Customs, along with supervisors and some Customs field managers generally opposed the section of HR 1833 which would have changed the current night pay system. Most felt that lowering night differential pay would lower morale and create problems in staffing night shifts at Customs ports.

Premium Pay While In Leave Status

Another amendment included in HR 1833 would have prohibited Customs officers from receiving night differential pay when they take annual, sick, or other leave from regularly scheduled night differential work. Customs officers are by no means unique in the federal government when it comes to night differential pay while in leave status. Federal criminal investigators and other federal employees receive their annual overtime pay rate while they are in a leave status. Plus, all federal employees, including Customs Inspectors, *are not* compensated at a premium rate when they take leave on a Sunday they would normally work. The small incentive derived from receiving night differential while on leave is a form of compensation for the irregular and unusual hours Customs officers work all year. Their sacrifices are far greater than the slightly higher remuneration they receive while on leave.

Law Enforcement Officer Status

In addition to special pay adjustments, federal employees with law enforcement officer status receive full retirement benefits after 20 years of government service in law enforcement. Even Members of Congress have this benefit, but currently Customs Inspectors and CEOs, who carry guns, make arrests and seize more illegal drugs than any other federal group are denied this benefit. As in past years, NTEU will continue its efforts to enact legislation (H.R. 1841) to give Customs Inspectors

and CEOs law enforcement officer status and end this disparity. But in the meantime, the current provisions of the Customs Officer Pay Reform Act must suffice as incentives for the sacrifices Customs Inspectors make to the Customs Service. NTEU believes that changes to this pay system are unnecessary.

Recruitment and Retention

Factors including the uncertainty of irregular hours and the requirement to work overtime have contributed to a high turnover rate among the Customs inspection ranks. These turnover rates lead to increased training costsfor the Agency. After being hired by Customs, many young Inspectors complete the training program, gain valuable on the job experience, and then move to positions with the Department of Justice, the Secret Service, the FBI or with state or local government, where they are guaranteed all the benefits of being a law enforcement officer.

Conclusion

Each year, the Customs Service inspectional ranks have been asked to do more work with fewer personnel and resources. Trade and travel has increased at astounding rates, yet Customs inspectional ranks have remained relatively static. More and more, the Customs Service relies on overtime pay to cover the costs of regular shift work during regular hours of operation. The ever increasing number of hours of work assigned to inspectors every week is taking a toll on the health and morale of the officers. They are faced with few days off, sixteen hour days for several days in a row and no end in sight to these grueling schedules. Telling Customs officers that in addition to their increased work load and expanding work schedules, they will receive a *pay cut* for the non-overtime night shift work they perform, will have a devastating impact on their sense of value to Custom's mission.

The more than 13,000 Customs employees represented by the NTEU are capable and committed to the Customs mission. They are proud of their part in keeping our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently.

I applaud this Subcommittee for recognizing the twenty-first century needs of the Customs Service. I urge each of you to visit the Customs ports in your home districts. Talk to the Inspectors and CEOs there to fully comprehend the jobs they do and what their regular work lives are like. Then you may understand why NTEU will support a Customs authorization bill, but will strongly oppose any legislation that would limit the pay or rights of rank and file Customs officers.

Thank you for the opportunity to be here today on behalf of the Customs Service employees to discuss these very important issues.

[The attachments are being retained in the Committee files.]

Mr. HOUGHTON. Thanks very much, Ms. Kelley. Mr. Zuniga.

STATEMENT OF FREDERICO C. ZUNIGA, F. ZUNIGA, INC., LAREDO, TEXAS, AND VICE PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA

Mr. ZUNIGA. Yes, Mr. Chairman, and other Members of the Subcommittee, I am Frederico Carlos Zuniga of Zuniga Inc., licensed U.S. customs broker on the southern border in Laredo, Texas, and vice president of the National Customs Brokers and Fowarders Association of America (NCBFAA).

NCBFAA is the nation's trade organization for America's customs brokers, professionals who serve as the interface between the importing public and the United States Customs Service.

Every element of our daily activity is interwoven with Customs, and we are uniquely suited to provide this Committee with a candid perspective on the performance of the agency.

For today's hearing we wish to underscore our role on behalf of the nation's small- and medium-sized importers. While many of our clients are comparable to the large companies represented here on

this panel, these smaller importers enter 70 percent of the transactions.

It is to these customers that we owe our special effort to ensure that the customs entry system is efficient, transparent, and serves them just as well as it serves large companies.

Customs brokers and small importers need a system that is reliable, efficient, and that processes transactions quickly. The demand of just-in-time inventory are just as great for the small company providing parts for a domestic manufacturer as they are for the giant manufacturer doing the same thing. And in some respects, the consequences of a failure in the system are more severe for the small and medium companies.

Customs must move forward with the development of ACE, and Congress must provide the funding for the system. Again, we thank you for your support of these efforts.

With regard to reforming the entry process, for the past 2 years, Customs Service has engaged the private sector in continuing discussions about how the customs entry process can be adapted to meet the demands of today's business environment.

Using the existing processing model, entries are filed under a transaction-based system. We firmly believe that the fundamental element of today's processing system is sound. It is, in fact, the foundation, the rock, upon which an effective system exists for most importers today.

As circumstances have demanded, with import by customs importers and brokers, this entry process has evolved over 20 years and has adapted well to the changes that have taken place in world commerce. We therefore observe that this must be the basis for Customs operations system under ACE.

Specific recommendations for Congress: There are issues still unresolved from our 2-year negotiation with Customs. These matters under dispute need involvement from the Congress, and we would like to address several matters here today.

The first matter is the right to protest. Protest is a procedure by which appeals can be made by an importer against a Customs decision which he or she disagrees with. Based on a decision at the Court of International Trade, Customs has taken the position that if no change is made by Customs to an importer's final declaration, then there were no possible protestable issues. This effectively removes an avenue of appeal that has traditionally belonged to an aggrieved importer.

Second, interest applied to periodic payments. Discussions have been ongoing about providing a separate avenue to pay duties and fees apart from the entry data filing process. Rather than burdening the entry process by requiring payment for each transaction, why not simply consolidate the money due and provide a monthly invoice, much like a credit card system?

However, unlike the credit card system, Customs wishes to impose interest on transaction even though payments would be forthcoming and timely at the end of the month. Importers and, notably, those small- and medium-sized importers, who are our clients, cannot afford this added cost of doing business.

Finally, with regard to corrections on entries, in the past, we have proposed that there be a period in which data that is trans-

mitted to Customs can be corrected in the interest of making the filing of entry data more accurate.

It has become clear to us that the downside to this proposal, which has been made in good faith, is the likelihood that Customs will consider errors not corrected within the timeframe as negligence on the part of the importer and, therefore, subject to penalty.

We have, therefore, opted to employ administrative procedures now in place, but they must be improved considerably.

We request the Committee's direct involvement here.

Mr. Chairman, this concludes my testimony. I would be pleased to respond to any of your questions.

[The prepared statement of Mr. Zuniga follows:]

Statement of Frederico C. Zuniga, F. Zuniga, Inc., Laredo, Texas, and Vice President, National Customs Brokers and Forwarders Association of America, Inc.

Mr. Chairman. I am Frederico C. Zuniga of F. Zuniga, Inc. of Laredo, Texas, and Vice President of the National Customs Brokers and Forwarders Association of America (NCBFAA).

NCBFAA is the national trade organization for America's customs brokers, professionals who serve as the interface between the importing public and the United States Customs Service. We represent small, medium and large importers, preparing their entries, collecting duties and other revenues, and ensuring that imported merchandise complies with US law. In many respects, we act as a logistics manager, on an outsourced basis, providing businesses with the capability to keep up with the high-volume, fast-paced demands on their supply chain. We serve as an essential resource to Customs in that we are responsible for the accuracy, reliability and integrity of data provided by 400,000 importers. Every element of our daily activity is inextricably interwoven with Customs' and we are uniquely suited to provide this committee with a candid and intimate perspective on the performance of the agency.

For today's hearing, we wish to underscore our role on behalf of the nation's small- and medium-sized importers. While many of our clients are comparable to the large companies represented here on this panel—and for whom we tailor many of the concepts that you have heard them articulate, American customs brokers have a particularly important relationship with those who interact with Customs less frequently, or in less volume, or with lower valued transactions. This 30% of the value of Customs' entries being filed represents a vastly greater number of businesses—in fact, it represents almost 70% of the transactions being filed. It is here that we bring order to the countless and disparate transactions that Customs must handle daily. And, it is to these customers that we owe our special efforts to ensure that the Customs entry system is efficient, transparent and serves them just as well as it serves large companies.

The Automated Commercial Environment (ACE)

The Automated Commercial Environment is an important step in modernizing the Customs Service. Designed to replace the aging and increasingly unreliable Automated Commercial System (ACS), a system designed in the 1980s and upgraded on an ad hoc basis, ACE represents an ability to modernize its technical automated features and provide versatility for new methods of doing business. The two previous iterations of the Customs Modernization Act in the 1990s envisioned profound changes in the entry system designed to help Customs manage the overwhelming increase in commercial transactions that is now taking place. Yet, without the automated tools to accomplish this, much remains undone.

For customs brokers and smaller importers, the requirements for an automated system are reasonably fundamental. We need a system that is reliable, efficient, and that processes transactions quickly. The demands of "just in time" inventory are just as great for a small company providing parts for a domestic manufacturer as they are for a giant manufacturer doing the same thing. And, in some respects, the consequences of a failure in the Customs automated system are more severe. While we are told that "brownouts" and "downtime" have diminished lately, Customs notices of times when the system will be turned off are too vivid and too recent to give us

much solace. Customs must move forward with development of ACE and Congress *must* provide the funding for the system.

The Administration's budget request for FY2002 mirrors the funding provided in FY2001. The budget asks for $130M to pay for a system that must be deployed in four to five years at a total cost in the range of $1.4 billion. Simple math shows that, at this rate, it will take 14 years to put ACE to work. Not to belabor what many others have observed about this funding timetable, let us simply observe that this is absurd. The commercial world will change many times over in this period. By then, the most important aspect of the entry process will be to ensure that goods comply with US standards, particularly health and safety, and the volume of merchandise will simply overrun Customs' ability to meet these responsibilities.

We are heartened by reports that appropriators have recently proposed funding ACE at the $300M level. Congressmen Ernest Istook(R–OK) and Steny Hoyer(D–OK), together with their subcommittee, have our full support. It will be of equal significance for the Ways and Means Committee to authorize funding at a level of $350M or more. And, we urge you to do so.

International Trade Data System (ITDS)

The International Trade Data System is an effort to provide other federal regulatory agencies with data much earlier in the entry processing cycle so that they can more efficiently clear merchandise for entry to the US. From an enforcement perspective, earlier and more complete data allows these agencies to screen incoming goods more effectively, providing the public with more assurance that the requirements of health, safety and other public laws are being met. And, from the perspective of brokers and importers, it establishes a single point of entry for data.

Over the course of time, ITDS has gravitated to becoming the "front end" of the new ACE system. In other words, data communicated to Customs at the outset of the entry process is then passed on immediately to the other federal agencies with jurisdiction. Ultimately, they too will have fully paperless, automated processes that will more efficiently process information and provide approvals for release of merchandise.

A pilot will soon get underway in Buffalo, NY, whereby ITDS will be tested and refined. From here, the pilot will move to other border locations and then towards universal implementation. Customs has very effectively managed the development of this pilot, overseen by an independent Board of Directors comprised of representatives of the other affected regulatory agencies. We believe that what we have witnessed thus far is a model for interagency cooperation and effectiveness. NCBFAA wants this process to remain in place.

ITDS however requires your Committee's support and active involvement. It has enormous ramifications for the future and can help contribute to seamless border operations that we all demand.

Reforming the Entry Process

For the past two years, the Customs Service has engaged the private sector in continuing discussions about the manner with which the customs entry process can be adapted to meet the demands of today's business environment. Our colleagues in industry, as represented on this panel, have observed that many of the reforms envisioned by the Customs Modernization Acts have not come to fruition because of archaic technology and processes that do not serve them well. Thus, as ACE begins to move forward in design, the time is now to plan for processes that will accommodate their vision for a more streamlined, less costly approach. NCBFAA supports them in achieving this goal.

Yet, at the same time, there are 400,000 other smaller businesses that require our attention. Under the existing processing model, they file customs entries under Tracks I, II and III. Much of the debate between Customs and the private sector evolves around a "Track IV"—one which incorporates consolidation of data, periodic filing, periodic payment and other innovative changes. As discussions continue in Customs' forum, the Trade Support Network (TSN), many of these proposals will be adapted for Tracks I–III; however, a majority of the change will be reserved for Track IV which will involve a relatively small number of companies. NCBFAA supports that result and believes that as many companies that wish to enter Track IV should be permitted to do so.

Having said this, we firmly believe that the fundamental elements of today's processing system within Tracks I, II and III are sound. It is in fact the foundation, the "rock" upon which an effective system exists for most importers today. As circumstances have demanded, with input by Customs, importers and brokers, this entry process has evolved over twenty years and has adapted well to the changes that have taken place in world commerce. We therefore observe that it is this that

must be the basis for Customs' operating system as it transitions to ACE. It is this processing system that must be moved intact to ACE, as Tracks I–III, *before* innovations are incorporated. We customs brokers and our importer customers want to be assured of stability, consistency and predictability first and foremost. Improvements can and must come, but risk must be prudent.

Specific Recommendations for Congressional Action

In an exchange of letters in April and May, our private sector coalition and the Customs Service agreed on a number of principles for the Entry Revision Process, leaving the more laborious task of filling in the details to the Trade Support Network. We are reassured now that the TSN can fulfill that mandate and work successfully in developing these new processes. To date, meetings have been constant, well-attended and productive. NCBFAA believes that Congress will be satisfied with the results of this activity.

Nonetheless, there were issues left unresolved from our two-year negotiation with Customs. This occurred when matters under dispute could not be resolved without support from the Congress. We would like to address several matters here today.

Right to Protest: "Protest" is a procedure by which appeal can be made by an importer against a customs decision with which he(she) disagrees. There have been recent decisions at the Court of International Trade raising the issue of whether liquidations by operation of law may be protested. Customs has taken the position that, if no change is made by Customs to an importer's final declaration, then there are no protestable issues. This effectively removes an avenue of appeal that has traditionally belonged to an aggrieved importer.

There are many situations in which entry information—classification, value, quantity, duty, fees, etc.—filed by an importer is discovered after liquidation to be incorrect, and adverse to the importer. There is no good reason why such an entry should not be subject to protest so that the importer may recover an overpayment of duties

Interest Applied to Periodic Payment: Discussions have been ongoing about providing a separate avenue to paying duties and fees, apart from the entry data filing process. As data is filed with Customs to provide for the release of imported goods into the commerce of the US, the importer may incur a financial liability. Rather than burden the entry process by requiring payment for each transaction, why not simply consolidate the money due and provide a monthly invoice, much like the credit card system? However, unlike the credit card system, Customs wishes to impose interest on transactions, even though payment would be forthcoming and timely at the end of the month.

Importers, and notably those small- and medium-sized importers who are our clients, cannot afford this added cost of doing business. But beyond this, there is no justification for interest to be exacted when the benefits to the importer and to the government are mutual. The cost to the government of collecting funds with each transaction and the savings that can be accomplished by consolidating that activity need to be understood.

Corrections: In the past, we have proposed that there be a period in which data that is transmitted to Customs can be corrected in the interest of making the filing of entry data more accurate. It has become clear to us that the downside to this proposal—which has been made in good faith—is the likelihood that Customs will consider errors not corrected within that timeframe as negligence on the part of the importer and therefore subject to penalty. At the same time, Customs has other administrative mechanisms in place, such as reconciliation, that essentially permit an ongoing ability for an importer to make corrections as required. We have therefore opted to employ these procedures for correction purposes, asking that they be improved considerably.

We think that an ongoing, online ability to improve the reliability of data is advantageous to all parties and we resist the inclination at Customs to make this an occasion for punitive action. We ask the Committee's direct involvement here to help us improve the systems now in place.

Mr. Chairman, this concludes my testimony. I will be pleased to respond to your questions. NCBFAA is grateful for the opportunity to share its expertise and experience on customs matters with the Committee.

Mr. HOUGHTON. Find. Thanks very much. Ms. Hughes.

STATEMENT OF JULIA K. HUGHES, VICE PRESIDENT, INTERNATIONAL TRADE & GOVERNMENT RELATIONS, UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

Ms. HUGHES. Thanks for the opportunity to appear today. What I want to talk about is a little bit different, about the delays and problems with the implementation of the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act (CBTPA).

It has been 14 months since the Trade and Development Act of 2000 was signed into law. Progress toward implementation is limited, with many questions unanswered.

The Customs Service issued interim regulations last October, after the law went into effect, but has yet to finalize those regulations.

Rulings on even simple implementation questions have not yet been issued. At the rate we are going, it is looking extremely unlikely that there will be final regulations by October, the 1-year anniversary of laws that only have an 8-year term.

In the absence of certainty as to whether their investments will qualify for duty-free, quota-free treatment, U.S. importers cannot make substantial commitments to shift business from Asia to sub-Saharan Africa or to the CBI countries.

Total apparel shipments from sub-Saharan Africa are increasing substantially, but only a small amount of these apparel imports actually qualify for the new AGOA benefits. The most recent statistics show that only $11.7 million worth of apparel imports qualified for the AGOA benefits.

Similarly, for CBTPA beneficiary countries, a small percentage of their apparel imports qualify, only $1.4 billion. And even worse, we have seen their actual trade and market shares slow down since the passage of this legislation with some countries for the first time having negative growth.

We think these statistics just highlight the fact that there are problems with implementation, and we want to just summarize the major concerns for U.S. companies.

First, maybe most importantly, is the question of whether knit-to-shape garments are entitled to preferential treatment under AGOA. Regrettably, the specific language in the statute references fabrics but fails to specifically mention components that are formed through a knit-to-shape process.

We believe strongly that the inclusion of knit-to-shape garments was the intent of Congress because all apparel is covered. And indeed, Members of the full Committee made this clear with your letter on March 6 to Treasury Secretary O'Neill.

The opportunity to expand production of knit-to-shape sweaters in Africa is the single greatest opportunity we have to develop new business, and yet there is a stalemate that will soon lead to the cancellation of millions of dollars of orders.

Second, there is the issue created by Senator Helms, whether dying and printing of U.S. formed greige goods should be required in the U.S. in order for apparel to receive those benefits.

There is no ambiguity in the Customs regulations on this point. The law is clear, and the law was established under the Uruguay

Round Agreements Act and the Breaux-Cardin rules of origin. That law, even as amended by the Trade and Development Act of 2000, says that fabric formation is either weaving or knitting and that such operations alone are origin conferring.

So long as this issue is under public review, however, investments in finishing operations, especially in the CBI countries, are at risk. And even more important for our long-term partnerships is the fact that U.S. companies cannot take the risk of shifting new orders when the rules may change overnight or even retroactively.

This is the most important benefit for the CBI region to attract new business.

Third, the Customs Service created unnecessary burdensome and complicated paperwork requirements. They have done nothing to ensure compliance with the law, but do greatly increase the likelihood of inadvertent and meaningless errors.

And fourth, the Customs Service has indicated to Sub-Saharan Africa countries that it is not sufficient for yarn and fabric and other inputs to originate in the region; instead they are requiring that all regional inputs must be produced in countries that also have in place formal visa system. However, since only five sub-Saharan Africa countries are so far recognized as having approved visa systems, that limits the opportunities for trade in the region.

Of course, we don't place all of the blame for the lack of progress on Customs. Efforts to overturn or rewrite the will of Congress through the regulatory process are also undermining the success of the law.

One additional problem that we want to mention is that while the law authorized funds to Customs to implement, Congress never actually appropriated these monies. Getting the necessary funding to Customs would help the beneficiary Caribbean and African countries understand and implement the law correctly. And that would give U.S. importers a greater comfort level in making new investments in these regions.

Thank you for the opportunity to appear today, and we urge the Subcommittee to take action for Customs to finalize the rules quickly. Thank you.

[The prepared statement of Ms. Hughes follows:]

Statement of Julia K. Hughes, Vice President, International Trade & Government Relations, United States Association of Importers of Textiles and Apparel

The United States Association of Importers of Textiles and Apparel (USA–ITA), an association founded in 1989 with more than 200 members involved in the textile and apparel business, is pleased to have this opportunity to address the Subcommittee on progress to date in the implementation of the Trade and Development Act of 2000. Regrettably, there are many problems and delays to report with respect to the implementation of the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act, and these problems and delays are hindering the accomplishments of this extremely important legislation.

As this subcommittee well knows, USA–ITA was a strong supporter of AGOA and CBTPA, with our members recognizing the significant opportunities presented by duty-free, quota-free access to the U.S. market for apparel produced in these two regions. USA–ITA members now know first-hand the difficulties of doing business under the complex provisions of this new law. USA–ITA, as an association, sponsored seminars in South Africa, Mauritius and Kenya to help manufacturers and the governments better understand the requirements of the law and expectations of U.S. importers. Association members and representatives also participated in seminars in several CBTPA beneficiary countries.

While it has been 14 months since the Trade and Development Act was signed into law in May of 2000, progress toward implementation is limited, with many essential questions unanswered. The U.S. Customs Service issued some interim regulations last October, after the law actually went into effect, but has yet to finalize those regulations.

In addition, regulations governing the treatment of brassieres under the CBTPA still have not been issued even in interim form. Instead, late last month, the Customs Service posted a draft version of such regulations on its website, promising to issue interim regulations soon. At the rate we are going, it is looking extremely unlikely that there will be final regulations governing the specifics of new law by this coming October, the one-year anniversary of laws that only have an eight year term.

As a consequence, U.S. importers are hesitant to make substantial commitments to shift business from Asia to Sub-Saharan Africa or to the CBI countries in the absence of certainty as to whether their investments will qualify for duty-free, quota-free treatment.

Total apparel shipments from Sub-Saharan Africa are up by 33.8% since one year ago—but only a small amount of the apparel imports from SSA countries actually qualify for AGOA benefits. The most recent U.S. government statistics are for imports through April 2001—and they show that while the total value of SSA apparel shipments is $814.4 million dollars, only $11.7 million of imports received AGOA duty-free benefits. In other words, less than 1.5% of the apparel imports from the region are entering under AGOA.

The trade statistics for CBTPA beneficiaries highlight a more troubling problem—growth from the region has slipped to only 1.8 percent from double-digit growth during 2000. Of the total value of CBI apparel imports—$9.7 billion—only $1.4 billion was under the CBTPA benefits enhancements. So less than fifteen percent of the apparel imports qualify for the new benefits.

The surprisingly low import growth for AGOA and CBTPA apparel shipments highlights the fact that there are numerous problems and questions with respect to implementation. Allow me to review some of these questions.

First, there is the question of whether knit-to-shape garments are entitled to preferential treatment under AGOA. Regrettably, the specific language of statute references fabrics but fails to specifically include within its specific terminology components that are formed through a knit-to-shape process. USA–ITA believes strongly that the inclusion of knit-to-shape garments under AGOA was the intent of Congress because all apparel is covered. The Members of the full Committee have made this clear, as evidenced by the letter of March 6, 2001 to Treasury Secretary O'Neill.

In any event, many knit-to-shape components are analogous to panels of fabric. The opportunity to expand the production of knit-to-shape sweaters in SSA is the single greatest opportunity we have to develop new business—and yet there is a stalemate that will likely lead to the cancellation of millions of dollars of orders. We have been urging the Customs Service to ensure that its regulations comport with this interpretation, but thus far there is no assurance that this will be reflected in the final regulations.

Second, there is the issue created by Senator Helms—whether printing and dyeing of greige U.S. formed fabrics should be required in the U.S. in order for apparel made from those fabrics to qualify for benefits under CBTPA and AGOA. There is no ambiguity in the Customs regulations on this point. The law is clear and it is the law established under the Uruguay Round Agreements Act, and more specifically, the Breaux-Cardin rules of origin. That law, even as amended by the Trade and Development Act of 2000, says that fabric formation is either weaving or knitting and that such operations alone are origin-conferring. Finishing operations such as printing or dyeing are irrelevant.

Yet, so long as this issue is under public review, important investments in finishing operations that have been made in the Caribbean and Central American countries are at risk. And even more important for the long-term partnerships is the fact that U.S. companies cannot take the risk of shifting new orders to beneficiary countries when the rules may change overnight, possibly even retroactively.

Third, the Customs Service has put forward unnecessarily burdensome and complicated paperwork requirements under AGOA and CBTPA. These requirements, including a multi-part certificate of origin that includes incredible detail, add greatly to the cost of doing business, undermining the economic incentive Congress intended to create. They add nothing to ensure compliance with the law but do greatly increase the likelihood of inadvertent and meaningless errors.

Fourth, the Customs Service has indicated to Sub-Saharan countries that it is not sufficient that the yarn and fabric and other inputs originate in the region. Instead, the agency is apparently interpreting the law to require that all inputs be produced in countries that also have in place formal visa systems. The result is that with only

five Sub-Saharan countries recognized as having approved visa systems, there are a limited number of sources for regional inputs. USA–ITA believes strongly that it was Congress' intent that the visa requirement should apply only to the country in which the finished garment is manufactured.

Fifth, in the Caribbean, a question has arisen with respect to garments that are composed of both regional components and U.S. formed components. These so-called hybrid type garments surely should qualify for benefits, but so long as Customs fails to issue final clarifying regulations, there are no benefits being provided.

Sixth, the Customs Service has yet to provide guidance on the circumstances under which the limitation on foreign findings and trimmings applies. For those Sub-Saharan countries eligible to use third-country fabrics, it makes little sense to require that the findings and trimmings are produced in the region or the U.S., yet we have been unable to obtain clarification from the Customs Service on this point.

Obviously the issuance of implementing regulations is Customs' responsibility. But we do not place all of the blame for the lack of progress in implementation on Customs. Efforts to effectively overturn or re-write the will of the Congress through the regulatory process are also undermining the success of the law. Another problem is that while the law authorized funds to Customs to implement the new law, Congress never actually appropriated these monies. Getting the necessary funding to Customs could greatly increase the ability of the agency to ensure that the Caribbean and African countries entitled to benefits actually understand and implement the law correctly. And that would give U.S. importers a greater comfort level in making new investments in these regions.

USA–ITA urges the Subcommittee to take action to ensure that the Customs Service finalizes its regulations promptly and in accord with Congressional intent. Thank you.

Mr. HOUGHTON. Thanks very much, Ms. Hughes.

What I would like to do is turn the questioning over to Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman.

I just have one comment or maybe two comments.

We, as you know, Ms. Hughes, somewhat discussed these issues earlier.

Ms. HUGHES. Yes.

Mr. LEVIN. And the Subcommittee and the full Committee membership have pressed these issues with Customs and otherwise. So maybe we will just leave it at that.

There may be two sides to some of these stories, but maybe not. And if there are, we ought to get them on the table. And I hope that will be done quickly.

Ms. HUGHES. Thank you.

Mr. LEVIN. I just want to close by saying a word about our discussion over the years about pay for Customs inspectors. I want us to be sure that Federal law is followed and also keep in mind what we are paying people.

Now, in your testimony, Ms. Kelley, you say, under inspection personnel, on page 2, this level means that at the very height of an inspector's career and even after 25 years of dedication to the Customs Service, he or she will make a maximum base salary of about $40,000 per year.

Ms. KELLEY. That is right, Mr. Levin.

Mr. LEVIN. Now, this would include or not typical overtime pay?

Ms. KELLEY. That would not include overtime.

Mr. LEVIN. And what would that be, the typical overtime pay, just more or less?

Ms. KELLEY. I hesitate to give you a number because the different locations have different hours of operation and——

Mr. LEVIN. It increased, do you think, on the average, 50 percent?

Ms. KELLEY. I think that would be a bit high, but I can get that for you.

Mr. LEVIN. But anyway, so we might be talking about people, after 25 years doing this kind of work of importance and of some danger, receiving maybe, with everything included, before taxes, maybe $60,000?

Ms. KELLEY. Maybe.

Mr. LEVIN. Well, maybe we do need to have a comprehensive look at pay.

And I just think it is easy to lose the forest for the trees here. And I would be glad to join anyone in participating in a discussion of appropriate pay levels for the people who are doing this work. Well, enough said.

Ms. KELLEY. Thank you, Mr. Levin. NTEU would be pleased to join you in that effort also. We would be pleased to work with you.

Chairman CRANE [presiding]. Mr. Houghton?

Mr. HOUGHTON. Thank you. I just have one question. I have a lot of questions, but I won't take your time because it is late.

I am very interested in the African Growth and Opportunity Act. So the question I have is, what should the Customs Service do in order to help the African nations? And also the Caribbean Basin Initiative?

Ms. HUGHES. Our recommendation is that they finalize the regulations and issue them as soon as possible. We think that they should follow the specific letter that they have received from Committee Members about the intent on the knit-to-shape issue, which is the major outstanding issue holding back the AGOA countries from implementing.

And also, they should continue their training efforts. As acting commissioner Winwood said earlier, they have traveled to Africa and they have made efforts at training.

But training people to take advantage of regulations that aren't yet finalized really doesn't help us to move things forward. They need to finalize the regulations now, without changing the dying and finishing, taking knit-to-shape as I think Congress certainly intended. And let's move forward with implementing the legislation before we hit the 1-year anniversary.

Mr. HOUGHTON. Right. OK. Thank you very much.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me first say to those of you who have worked on this issue of the merchandise processing fee, thank you so much. We finally got the administration off the dime in not calling for a new fee to try to move forward on ACE. And we have so far—keep your fingers crossed—a pretty good appropriations of some $300 million to move forward on ACE.

So I want to thank you all of you who have been clanging the bell for quite some time, saying that there is a processing fee that you have been paying for some time, for some 15 years, and it

should be used to help how Customs processes the paperwork that you all need to have done.

And if we continue forward, maybe in the next few years, we will see some success with ACE, and let's say a few prayers to make sure ACE works a little bit better than ACS does.

We are going to be coming up on reauthorization of that fee fairly soon. And I know that it is on your radar screens. I would urge you to continue to talk to Members of Congress about the possibility of dedicating some of that fee toward to the payment of ACE.

I know that has been discussed in the past, and I know there are a number of us who would be very willing to work with you to make sure that that happens. So I hope that you all will continue to make the rounds up here in Washington, DC, because there are too many folks that don't recognize it.

And quite honestly, there are probably too many folks who recognize it. There is a pot of money that goes into the general fund that has nothing to do with just general revenues. It has to do with the moneys that come out of people that you know and businesses that you are associated with.

So if we work together, maybe we will have some success in getting ACE taken care of by dedicating some of that processing fee.

Ms. Kelley, I wanted to ask you a question with regard to this whole issue of wages and the work hours. How common is it to have a Customs officer's scheduled work hours changed to an irregular or off-hour shift?

Ms. KELLEY. That can happen frequently, Mr. Becerra, depending on the location.

There are some inspectors who work the same shift on regular basis, but there are many others who have rotating shifts and whose entire personal life and family life, of course, is flipped on its head, so to speak, because it is dependent upon whatever that shift is that is needed to process the trade as well as the passengers at their ports of entry.

Mr. BECERRA. And let me make sure: We are not talking about, say, just a 9 to 5 shift and perhaps and 12 p.m. to 8 p.m. shift. We are talking about shifts that could take you throughout the night; part night, part wee hours of the night; part night, part morning.

So it can be a shift that can be very irregular, and irregular is a good word to define it?

Ms. KELLEY. Irregular is a very good word to define them.

Mr. BECERRA. Is it common to have someone who has more than just a couple of years—in other words, is low on the totem pole—is it common to have someone who has some seniority to have to go through this irregular work shift?

Ms. KELLEY. In many locations, it is. Depending on the size of the port, of course, and the number of staffing, with seniority in some locations probably comes more stability in others. But as the trade and the passenger traffic increases, the need to have more and more inspectors available for those shifts to provide for the entry is required, even with seniority.

Mr. BECERRA. So in my city of Los Angeles, where we are seeing trade just balloon, which is good for America and good for all of us, there is a good chance that a lot of the Customs officers, even

though they have been around for a long time and have a lot of seniority under their belt, are still being asked to work irregular work shifts.

Ms. KELLEY. Definitely.

Mr. BECERRA. And I know all of us try to set up routines for our families and our regular work life, and chances are, it makes it very difficult if you are constantly having to shift the times that you work.

And I don't believe that any of our employers, including Customs, makes accommodations to help you with babysitting or anything else that may occur as a result of making you all of a sudden shift your hours of work.

Ms. KELLEY. That is right. That is a part of having to balance your family life and make many sacrifices in order to meet the needs of the Customs Service and to provide the service that the inspectors want to provide.

Mr. BECERRA. And are you all still in discussion—and by that I mean NTEU—are you still in discussions with Customs on trying to make sure that whatever we do in terms of changes to work shifts and hours and pay, that at least you have been able to provide your input so that any changes that Customs makes are made with your input in place?

Ms. KELLEY. Yes. We have been working together on a number of issues in that area and have had that opportunity. And for the most part, on most issues, actually, have the same interests and are moving in the same direction. And hopefully, we will be successful.

But, yes, we have had that input. Thank you.

Mr. BECERRA. I encourage you to continue to do that. And I thank you for your testimony.

And I thank all of you who have come today for your testimony, and we apologize for the long delays that have occurred as a result of our voting, but we thank you very much for your testimony.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you. And I will keep it brief. I just have a couple of questions.

Ms. Kelley, if Congress is to make an exception for Customs inspectors and legislate that they be law enforcement officers, do they support abandoning the current tailor-made benefits package, which includes benefits that law enforcement officers don't receive?

Ms. KELLEY. Mr. Chairman, NTEU and the inspectors are willing to listen to and to look at any package that would be looking at a total compensation package, recognizing that there would be shifts. There would be pluses and minuses in any new system.

So, we are more than willing to be in that conversation and to consider anything that would be put together in a total package.

Chairman CRANE. Ms. Hughes, could you quantify the financial impact on local industry in Africa, CBI and U.S. industry such as retailers if the Helms legislation were to become law?

Ms. HUGHES. We tried to come up with a credible number. Part of the problem is that many of the orders that would be placed are prospective. So a conservative estimate I would imagine is probably around $50 million, which I think is probably rather low, but that

(3) Identify instances in which Customs inspectors receive more or less than law enforcement and base Federal employee pay and benefits. Use CRS report as an attachment, if appropriate.

A June 3, 1998, CRS memorandum entitled, "Overtime and Premium Pay for U.S. Customs Service Officers Compared with Immigration and Naturalization Service Officers," includes a "Summary Comparison of Overtime and Premium Pay." (See enclosed copy.) The table summary lists the major provisions governing overtime and premium pay for customs officers, immigration officers, and Federal employees covered by the Federal Employees Pay Act. The table shows different provisions for basic overtime, callback, night, Sunday, and holiday pay for each of the groups of employees. The provisions are not easy to compare because the terms are defined differently and the minimum time periods counted towards overtime pay vary. Nonetheless, it is clear that the pay system for customs officers is more generous than the pay systems for most other Federal employees.

For example, Customs officers receive a rate equal to two times their hourly rate of basic pay for overtime work not regularly scheduled. Most other Federal employees receive a rate equal to one and one-half times their hourly rate of basic pay. In addition, the Customs pay system authorizes "callback" compensation equal to two times the hourly rate of basic pay when employees are called back to work for unscheduled overtime. Customs officers also receive compensation for commuting time at three times their hourly rate of basic pay.

For regularly scheduled night work, Customs officers receive 1.15 or 1.2 times their hourly rate of basic pay, depending on the shift worked. Immigration officers and other Federal workers receive 1.1 times their hourly rate of basic pay. For regularly scheduled work on a Sunday, most Federal workers receive 1.25 times their basic hourly pay rate, while Customs officers receive 1.5 times their basic hourly pay rate.

(4) Are there any Federal, State, or local pay models that compare with Customs pay and benefits? Identify them and show comparison.

Our research on Federal law enforcement pay systems has indicated that there is no other pay system that is directly comparable to the pay system of Customs officers.

(5) Does OPM have any data to compare Customs inspectors pay and benefits with private sector?

We do not have this information.

(6) For comparable work, do Customs inspectors get more or less than private sector counterparts, comparing total pay and benefits?

We do not have this information.

(7) Specifically, does OPM have data on overtime, nighttime, holiday, callback, and Sunday pay situations from the privator sector?

OPM does not have specific data on premium pay in the private sector. However, information available from recent non-governmental sources indicate that only a minority of private sector employers provide time and one-half overtime pay to employees who are exempt from the Fair Labor Standards Act (FLSA). For example, a 1999 Watson Wyatt Data Services "Exhibit Book of Overtime Policies for Exempt Employees" shows that 17 private sector firms out of 104 surveyed provided time and one-half overtime pay. Five firms provided double time pay, but a majority—54 firms—provided straight time pay.

In addition, a 1996 compensation survey report of the Human Resource Association of the National Capital Area shows that 85 percent of the surveyed employers in the national capital area do not pay any overtime pay to their FLSA-exempt staff. Of those that do pay overtime, the overtime payments typically are made at the employees base rate of pay—not time and one-half.

Thank you for the opportunity to respond to your questions about the pay and benefits of Customs inspectors.

Sincerely,

Donald J. Winstead
Acting Associate Director
for Workforce Compensation
and Performance

[The attachments are being retained in the Committee files:]

Rather than witnessing increased trade and new investment in the region, the reverse has happened. Honduras has had eleven plants close over the last few months, leaving approximately 8,000 people unemployed. In the Dominican Republic, it is even worse. Approximately 18,000 jobs have been lost. U.S. companies that opened offices in the Dominican Republic, after the law was passed, have left. In Jamaica, loss of jobs and business has been gradual, but dramatic. This winter, the company responsible for approximately 40 percent of Jamaica's apparel sector exports, laid off almost half of its workers. In Jamaica, over the last four years, more than 20,000 workers have lost jobs in the textile and apparel industry.

An example is the effort to rewrite the CBTPA to prohibit dyeing and finishing in the region. This will undermine economic opportunities. It primarily benefits Asia and Mexico. It seriously undermines the future investments and ability of the CBTPA countries to add value in their countries as it eliminates the one open-ended, value-added, commercial opportunity provided for in CBTPA.

II. Impacts of CBTPA Implementation Problems on the U.S. Industry:

The negative impacts affect U.S. industries as well as the CBI countries. In the U.S. both the cotton and yarn industries, which expected significant new markets in the CBI countries, are experiencing a substantial 17–21 percent loss in business. The expected new markets for U.S. fabric, cotton, yarn and fiber just have not been allowed to develop primarily because the implementation problems have had a chilling effect on investment in plants, on sourcing decisions that could have resulted in increased purchases in the region, and in overall trade within the region.

When Congress passed CBTPA it created a U.S. trade policy that should have encouraged the textile and apparel industry, that had already moved to Asia, to move to the Americas. Not only would this alleviate poverty in the region, but also the negative impacts that result from poverty in the region, such as migration, drug trafficking, organized crime, and political instability. CBTPA was also expected to be an opportunity for U.S. cotton farmers, yarn spinners, fabric and fiber makers and others to open up additional markets in these countries. Properly implemented, CBTPA allows sectors of the U.S. industry to become competitive in the world economy as we approach 2005. None of this has happened. The situation must be changed.

III. Policy Foundations for Full CBTPA Implementation:

There are at least six reasons why U.S. trade policy should encourage textile and apparel production in the CBI countries. First, CBI countries use their textile and apparel dollars to buy U.S. exports while the Asians do not. The CBI trade balance for the United States is $2.5 billion positive, while it is negative with the Asian countries. Second, under CBTPA, apparel and textile producers are required to use U.S. cotton, yarn, fibers and fabrics, while almost none of the fabric, yarn, cotton or fiber used in Asia is from the United States. Third, if there are no good jobs in the CBTPA countries, people migrate to the United States to find work. There are millions of people in the United States in this category right now. Fourth, the countries of the Americas are jointly trying to control and eradicate the scourges of narcotics and organized crime. The development of employment opportunities in the region through trade is the foundation of that effort. Fifth, the poverty in the CBI countries and Africa must be alleviated if there is to be long-term political stability and consolidation of fragile democracies. Sixth, and lastly, U.S. consumers benefit by production in the region that produces competitively priced apparel.

IV. Conclusion:

CACTAC urges the Subcommittee to continue its efforts to implement the AGOA and CBTPA as pro-trade legislation in order to reach the goals that were set forth in May of 2000.

We attach as exhibits to this testimony the numerous letters and position statements which have been presented to the Administration by the Ministers and Ambassadors of our countries urging a pro-trade implementation of CBTPA.

[The attachments are being retained in the Committee files.]

Statement of the International Mass Retail Association, Arlington, Virginia

This statement is submitted on behalf of the International Mass Retail Association (IMRA), the world's leading alliance of retailers and their product and service suppliers. IMRA is committed to bringing price-competitive value to the world's consumers. IMRA improves its members' businesses by providing industry research and

education, government advocacy, and a unique forum for its members to establish relationships, solve problems, and work together for the benefit of the consumer and the mass retail industry. IMRA represents many of the best-known and most successful retailers in the world, who operate thousands of stores worldwide. IMRA equally values among its members hundreds of the world's top-tier product and service suppliers, working with their retailer partners to further the growth of the mass retail industry.

Most of IMRA's retail members import products into the United States or rely upon imported products to fill out their merchandise assortments. Several of IMRA's retail members and many of its supplier members also export products from the United States. For this reason, IMRA has a strong interest in seeing an efficient Customs service that reflects the needs of businesses in the 21st Century.

Unfortunately, the commercial operations of the U.S. Customs Service struggles under the weight of obsolete technology and a vision that IMRA strongly believes is obsolete as well. Two-hundred years ago, when Congress first created the Customs Service, the main goal of the agency was to collect revenue. Indeed, the Customs Service was the nation's principal revenue collector for more than a hundred years before the Internal Revenue Service.

Today, Customs collects only about $20 billion in tariff revenue each year, and if the current Administration's goals for expanding world trade bi-laterally and multi-laterally come to fruition, that revenue is likely to decline steadily.

More to the point, Customs' official standards were set when goods arrived on sailing ships and no one concerned themselves with slight quantity variances that don't affect revenue. Now, with the miracles of the electronic age, Customs has access to a level of detail never before available and sets standards that are unrealistic and capture immaterial variations. Importers often feel as if Customs' compliance efforts devolve into nit-picking for the sake of information that is of no particular consequence, even to the revenue.

IMRA would respectfully suggest that the Customs Service's role is far more complex. In commercial operations, Customs is on the front line in enforcing consumer protection and intellectual property laws as well as protecting our borders.

For these reasons, we are uncertain that the current body of U.S. Customs law and regulation is tailored to today's environment where duties average just three percent and where just-in-time delivery is critical.

Redefining the Mission

IMRA believes Congress should begin an immediate and serious review of the U.S. Customs Service and its commercial operations with a view toward developing a strategic plan that will carry the agency through the next ten to fifteen years. As part of this plan, Congress should seriously re-evaluate Customs' main missions and funding for those missions, accordingly. While we recognize that this hearing covers only the next few years of funding needs, we implore the Subcommittee to take a longer-term look at the agency and the enforcement mechanisms and penalties it brings to bear on various types of infractions. Duty collections should be enforced post-entry. Data collection and accuracy standards should be reevaluated. We believe this longer-term review of the Customs Service is related to several issues raised at this hearing.

ACE is Desperately Needed

IMRA has long supported and even led the industry efforts to fully fund the development of ACE over the shortest possible time frame. We urge the subcommittee to authorize whatever sums are necessary to keep this project on a four-year basis and to use its influence with House appropriators to fully fund ACE development. We support this step because the current Automated Commercial System (ACS) cannot move the Customs Service to an "account based" approach to managing import enforcement. Under ACS every transaction is a separate record. The system cannot aggregate these records. In order to move toward a new approach to revenue collection which places enforcement on the post-entry phase, we must have technology that will treat importers and exporters—such as IMRA's members—as single entities. Without this technology, we cannot hope to make progress on many other issues.

IMRA strongly encourages Congress to remain closely involved with the development of ACE. Indeed, it's critically important that Congress exercise ongoing oversight into the development of the system to ensure that it is scalable and is designed with a clear vision for where the agency is going in the next ten to fifteen years. For this reason, IMRA reiterates that a single authorization hearing is not sufficient to ensure that ACE is developed properly. On-going oversight is needed and a strategic plan for the future ought to be developed.

We Need More than a Revision of the Entry Process

To take the Customs Service into the 21st Century where tariffs will increasingly be irrelevant, we need more than a mere "revision" of the entry process. We need some bold thinking that will allow for the main enforcement of revenue issues to occur post-entry. We need a reevaluation of the data we collect at entry and that we maintain through the process that addresses both the data elements and the basic issues of accuracy. Finally, and most important, we need a thorough review of Customs' auditing abilities and approaches. With enforcement in the commercial arena moving to the post-entry phase, auditing is a critical issue. Too often, importers feel as if auditors are nit-picking on immaterial statistical issues. A thorough examination of the issue of data accuracy is needed. Guidelines must be set.

Congress Should Eliminate the MPF or Tie it to Customs Funding

It is also timely to note that, while not a subject specific to this hearing, the Merchandise Processing Fee (MPF) is slated to expire in 2003. Congress will shortly have to decide if this fee should be extended. IMRA strongly opposes its extension unless it is specifically tied to commercial operations funding.

Currently, the fee is supposed to offset the cost of commercial operations. However, Customs has not demonstrated this fact to the trade community, which pays approximately $1 billion each year in MPF fees. Indeed, over time the MPF could become as important as the actual duties. Unless these fees are tied to commercial operations they are potentially subject to WTO challenges. More important, it's a matter of fairness to companies like IMRA's members, who must pay a fee for the privilege of paying a tax.

In previous years, Congress has used the MPF extension as a pay-go offset for a variety of programs having nothing to do with Customs Commercial operations. Indeed, at this writing, the Senate has suggested using the MPF to offset costs associated with Patients' Bill of Rights legislation. IMRA strongly opposes these uses of the MPF and urges the Subcommittee to either end the fee or create a trust fund for Customs Commercial Operations using MPF fees.

Customs' Interpretation of the African Growth and Opportunity Act is Flawed

On a separate, but related issue, IMRA takes strong exception to Customs' interpretation of the statutory language contained in the African Growth and Opportunity Act with respect to knit-to-shape garments. In its rules on this new law, Customs has chosen to interpret the statute to mean that no knit-to-shape garments wholly made in the qualifying Sub-Saharan countries are eligible for special access to the United States. IMRA was deeply involved in the crafting of this legislation, as was the Customs Service, it was well known at the time of the law's enactment that Congress intended to provide special duty-free access to knit-to-shape garments made in the Sub-Saharan African region. We do not understand why Customs has chosen to take this contrary view, especially since we believe the agency is well aware of the legislative history. More important, there is no earthly reason to exclude these garments, which is why they were never subjected to the import cap.

We know that members of the Trade Subcommittee have expressed their views to the Customs Service, but we believe that only additional legislation will solve this problem. We urge the Subcommittee to quickly move such legislation, along with other technical corrections to the bill. We believe that such legislation would *not* expand the scope of AGOA, as it is clear that Congress intended to provide special access to these types of garments.

Statement of Jane O'Dell, U.S. Business Alliance for Customs Modernization

Chairman Crane, Ranking Member Levin and Members of the Committee—Thank you for allowing me the opportunity to file this written statement in lieu of a personal appearance before the Ways and Means Trade Subcommittee regarding trade agency budget authorizations and other customs issues.

My name is Jane O'Dell and I am the Vice President, International Trade & Custom Compliance for Limited Logistics Services, the supply chain subsidiary of The Limited, Inc. The Limited is a founding member of the U.S. Business Alliance for Customs Modernization (BACM), a coalition of 25 large U.S. companies heavily involved in importing and exporting. The other members of BACM are American Honda, Archer Daniels Midland, BP-Amoco, Caterpillar, Compaq, Daimler Chrysler, DuPont, Ford, General Electric, General Motors, Hewlett Packard, JC Penney,

Mattel, Microsoft, Nissan, Nortel Networks, Pillsbury, Sara Lee, Sears, Shell, Sony Electronics, The Limited, Toyota and WalMart. BACM is dedicated to modernization of U.S. customs laws, regulations and policies to reflect the 21st Century business environment and facilitate trade to the greatest extent possible consistent with effective compliance. The importance of this goal to our member companies cannot be understated—during the year 2000, BACM companies filed approximately 2 million customs entries valued at over $130 billion.

BACM as well as others in the trade community have been frustrated by the slow pace of the effort to modernize and streamline the customs entry process. U.S. business has invested heavily in reengineering its operations to achieve efficiencies. Modern business practices of just-in-time delivery, e-commerce, and the integrated management of the global supply chain are critical to U.S. competitiveness. I can tell you that my company has put tremendous resources into technology to shrink the time from order placement to delivery of product. This effort to remain competitive can be completely undercut by inefficient, redundant, and labor-intensive Customs requirements.

Unfulfilled Mod Act Commitments

I would like to remind us all that in 1993 we in the U.S. business community made a deal with the government in the form of the Customs Modernization Act. We took on the tasks of informed compliance, reasonable care, new recordkeeping requirements and penalties. In return we were promised a more transparent, efficient process for releasing goods and paying duties. We were told that the agency would move away from transaction-based processing to an account-based system, more responsive to the way business is organized. We believe we have kept up our end of the bargain. The investments in technology I have mentioned have included those to enable us to meet our Mod Act responsibilities. Many U.S. importers also have spent millions on infrastructure to manage these informed compliance obligations that we agreed to take on. Indeed, at The Limited my position did not even exist a few years ago.

But we have not seen the government deliver on its part of the deal. For example, one of the key programs for business in the Mod Act is the Importer Activity Summary Statement (IASS), a method by which the importer would be able to summarize and pay duties on its importing activity in an aggregate manner on a monthly basis. This would be consistent with the way many companies account for arriving inventories, and offer real economies to those who maintain transaction-by-transaction data only to satisfy the Customs accounting system (a hold-over from the days of sailing ships). Every time we have to gather and transmit data and duty payments, there is an additional cost for us. Customs incurs expense with every transmission it receives. Good government and sound fiscal management, as well as cost-effective business practices, were recognized by the Congress as benefits for IASS.

To date, IASS has not even been prototyped, never mind implemented. We are told that Census has concerns about its ability to meet its trade statistics collection and reporting obligations, and that Customs does not want to expend the resources to program IASS into the ACS system (which hopefully will be replaced with ACE). Whatever the merits of these excuses (and the legislation authorizing IASS is nearly 10 years old), the point is that the trade has not been able to realize even this relatively modest step toward an efficient entry process.[1]

"Reconciliation" is another Mod Act program that hasn't lived up to its billing. Reconciliation allows an importer to file updated or corrective information sometime after entry (up to 15 months later, depending on fiscal year), without the fear of fines or penalties. In concept, it is an attractive program, but in implementation it has proven to be cumbersome and of limited utility. One major limitation is that Customs only permits reconciliation to be used to correct a few issues, which represent only a fraction of the discrepancies or unavailable data for which the importer might need to adjust a declaration. Another problem is the requirement to "flag" entries for reconciliation at the original time of presentation—often the importer does not know at time of entry filing that the data will need to be reconciled. We are also learning that 15 months is not long enough for some businesses—it is really only 3 months after the close of the fiscal year, and a complex manufacturing situation may require additional time to be thorough and accurate. Our experience is that 9 months after the close of the fiscal year, thus 21 months from the beginning of the fiscal year, is much more realistic.

Entry Revision

In December of 1999, Customs launched its Entry Revision Project and engaged the trade community in a discussion of the design of the entry process under ACE.

After extensive discussion and debate, Customs and a broad trade coalition recently agreed on the general principles and concepts that should guide the entry process redesign. Some issues remain unresolved and will need to be addressed later; and naturally details need to be worked out. The developmental work has now shifted to the Trade Support Network (TSN), through which the trade community has the opportunity to provide input to the ACE design process.

One thing that has become perfectly clear in the ERP–TSN discussions is that wholesale entry reform from the current transaction-by-transaction system to a true account-based system is an evolutionary process. While some members of the trade community could move instantly to account-based reporting, others, and Customs itself, will probably need to progress in incremental stages. The fact is that the government as a whole is not prepared at this time to move to such a true account-based system without restrictive measures that would undermine its usefulness to business. The trade community has been concerned over the impact of Customs' proposals on its contingent liability if the finalization of an entry is extended by using an aggregate processing method.

The good news is that Customs tells us that a key design element of ACE will be its flexibility. Theoretically, then, members of the trade community should be able to participate in those programs consistent with its business processes, rather than distorting processes to satisfy an archaic system. Mover, we should be able to incorporate design changes as consensus is reached. BACM and the rest of the trade community are committed to supporting and advising Customs through this evolutionary process.

Treasury Data Study

Last year Congress passed the Miscellaneous Trade and Technical Corrections Act, section 1442 of which called for study by the Treasury Department of the data reporting requirements on goods entering the United States. The law calls for a report to Congress on "changes that should be made to reduce reporting and record retention requirements for commercial parties." Specifically, the law envisages (1) the de-linking of data reporting for release purposes from data reporting for revenue and statistical purposes; (2) the reduction to a minimum of data required for admissibility purposes; and (3) the elimination or more efficient collection of data that is unnecessary, overly burdensome, or redundant. BACM applauded this step, as it reflected the recognition of the Congress that inefficient Customs processes are non-competitive, and hold U.S. companies back from achieving their highest efficiency. The aim of the study was to determine how to make the process more effective by focusing on the information critical to the national interest (admissibility), and to statistics and revenue protection as a business processes, not border operations.

Since early this year, this Treasury study has been underway. Through the Commercial Operations Advisory Committee (COAC), the business community has cooperated in this study. In particular, COAC members have, working with Treasury, devised a survey which has been widely distributed to the importing community, the responses to which are being received, reviewed, and summarized by COAC. In short, the trade community is doing its best to provide meaningful input to the Treasury.

As the proponent of the legislation calling for the data study, BACM must, however, express its deep disappointment over the lack of funding for the study. Section 1442 expressly directed the Secretary to include "independent third parties selected by the Secretary for the purpose of conducting such review." This language was intended to enable the use of econometric experts in order to ensure a thorough, valid analysis. But no such experts were ever utilized, because we were told there were no funds available for that purpose. The lack of that expert resource has delayed the study, and made it much more difficult for industry to provide meaningful input.

BACM believes that this type of study is a critical foundation for building government processes consistent with a 21st century economy. It is a pity that funding problems have made it much more difficult to be able to provide to the Congress the factual analysis it needs in order to effectuate true entry reform.

Other Legislative Changes

Section 1442 of the Miscellaneous Trade Bill of 2000 was part of the original BACM bill to amend the laws in entry procedures, H.R. 4337. Certain other parts of H.R. 4337 did not make it into the miscellaneous bill, primarily because there was not enough time left in the session to reach agreement between the government and the trade on acceptable language. BACM believes it is time to revisit some of those key provisions left over from H.R. 4337. In addition, we have identified other legislative changes that will contribute to the broader entry reform and Customs

posals on its contingent liability if the finalization of an entry is extended by using an aggregate processing method.

The good news is that Customs tells us that a key design element of ACE will be its flexibility. Theoretically, then, members of the trade community should be able to participate in those programs consistent with its business processes, rather than distorting processes to satisfy an archaic system. Mover, we should be able to incorporate design changes as consensus is reached. BACM and the rest of the trade community are committed to supporting and advising Customs through this evolutionary process.

Treasury Data Study

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- Netting of Over-Declarations against Under Declarations: In audits, Customs should be given the authority to offset instances in which the importer has overpaid duty or overstated value or quantity against those instances of underpayment or understatement. Customs has expressed the willingness to do such nettings in the audit context, but insists that current law precluded it from doing so. The law should be changed to allow this common-sense approach.
- Restore Equilibrium Between Revenue-Loss and Non-Revenue Loss Penalties. When Section 592 of the Tariff Act was revised in 1978, there was an attempt to approximate the level of monetary penalties applicable in cases involving no duty loss to the government to those involving a duty loss. As a result of the gradual reduction in duty rates through multilateral negotiations, the equilibrium between the two types of cases has been upset, with non-revenue loss cases generally being subject to much higher penalty levels than those

cases where the government actually has been deprived of revenue. Particularly because non-revenue loss cases (e.g., incorrect statistical reporting at the last 2 digits of the tariff schedule) can often be less serious than revenue-loss cases, this anomaly should be eliminated by adjusting the statutory non-revenue loss penalties to be in line with the revenue-loss penalties.

• Clarify that "No Change" and "Deemed" Liquidations are Protestable. For decades, importers have had the right to file protests at the time of liquidation of an entry in all cases. A recent ruling by Customs Headquarters and public pronouncements by Customs have suggested that in many situations, importers may not be able to file protests. Customs theorizes that in most "no change" or "deemed" liquidations, which are the vast majority of liquidations, there is really no Customs "decision" to protest, because the entry liquidates in the same way the importer made entry. The statutory right to protest, Section 516 of the Tariff Act, should be clarified to remove any ambiguity and to confirm the right to protest any and all liquidations.

• Improve Reconciliation. For the reasons I have already stated, this program is in drastic need of improvement. Clarifying that all issues can be reconciled, making "flagging" easier, extending the time period to 21 months, and generally making the reconciliation process less cumbersome would make it much more attractive and useful to the majority of importers.

Simplification

Finally, I would like to address a growing problem that those of us on the "front lines" of trade encounter on a day-to-day basis—the ever-increasing complexity of the rules affecting trade. Of course, in the age of globalization where new markets and sources continuously become available to traders, there is bound to be a certain level of complexity that is a given. We in industry accept and can deal with that. But when additional layers of complexity are imposed by law or regulation, often needlessly or for questionable reasons, it poses a terrific, and I would argue undue, burden on those of us trying our best to do the right thing. Let me give you one or two examples of what I mean. The tariff schedule is the code under which all imports must be classified in order to determine their duty rates and whether other import requirements apply. Due to special interests, outdated terminology, "statistics creep," and other reasons, the tariff schedule has expanded in an unabated fashion to number about ten thousand line items in its present form. It is incredibly challenging to determine the most appropriate tariff line item in every case. Yet, the Mod Act concept of "reasonable care," as interpreted by Customs, means that we have to make the correct determination 100 percent of the time, at the risk of penalties if we do not. In an era in which many products are free of duty anyway, or the differences between duty rates are minor, the burden and cost to business of an overly-complex tariff schedule cannot be overemphasized.

Another area of concern is the proliferation of rules or origin. It seems that each new trade agreement, or government program, imposes a set of origin rules. They tend to be highly technical and cumbersome—but worst of all each set of rules differs from the others. For example, the country of origin marking rules for NAFTA are different than the general marking rules. The preferential rules of origin are different in each of the following programs: Generalized System of Preferences (GSP), NAFTA, and the U.S.-Israel Free Trade Agreement. Further, rules of origin for textiles are subject to special rules, again not always consistent under different trade agreements or programs. As the U.S. attempts to move forward with additional bilateral or regional trade agreements, there is a danger of yet other layers of origin rules. The multiplicity of these rules of origin makes it extremely difficult for anyone to fully understand and comprehend them all. In truth, their complexity makes it hard to even know what the rules are.

BACM believes that, in addition to automation and modernization, simplification of the importing process is overdue. The layers of complexity that I have described are unnecessary—removing them would in itself streamline the entry process for both business and government.

On behalf of BACM, I thank the Committee for the opportunity to present this written submission in lieu of a personal appearance.

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