

U.S. CUSTOMS SERVICE AUTHORIZATION

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

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SEPTEMBER 3, 1998
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U.S. CUSTOMS SERVICE AUTHORIZATION

THURSDAY, SEPTEMBER 3, 1998

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:59 a.m., in room SD-215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, D'Amato, Gramm, Moynihan, Rockefeller, Graham, and Moseley-Braun.

The Chairman. The committee will please be in order. I understand that Senator Gramm has another committee session which he must attend, and for that reason we will start out with any opening remarks he may care to make.

OPENING STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM TEXAS

Senator GRAMM. Mr. Chairman, thank you very much for allowing me to make a statement.

First of all, I want to commend Commissioner Kelly for a proposal, which I understand Customs now supports and will testify on behalf of, which is aimed at doing something about the increasing bottleneck that is occurring at every border entry point coming into America.

As every member of this committee is aware, with NAFTA we have had an explosion of trade between the United States and Mexico. What it has produced is literally hours of waiting at border crossing points, making it virtually impossible for people who live in sister cities to carry on any kind of normal commerce or relationship.

We have been successful in Congress in moving toward doubling the size of the border patrol. It has been a totally bipartisan effort. We have not had a corresponding increase in resources going to Customs. Customs has put together a proposal that is aimed at trying to reduce the waiting time to an average of 20 minutes. That would be a dramatic improvement at virtually every border entry point. I am strongly in support of this proposal.

As the Chairman knows, the House has acted on a bill. That bill is very similar to one that I had introduced in the Senate. I am very supportive of it. It is my understanding that Senator Bob Graham from Florida and Senator Grassley have an addition to deal with the air entry and sea entry problem. I am supportive of that as well.

I want to thank you, Mr. Chairman, for giving me an opportunity to make this statement.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. Five years have passed since the passage of the Customs Modernization Act. In those 5 years, the volume of international trade crossing our borders and the challenges facing the Customs Service have grown significantly.

But with the implementation of the NAFTA and the Uruguay Round Agreement and the prolonged expansion of the U.S. economy, traffic, both inbound and outbound, at our ports and particularly along our northern and southern land borders has grown tremendously.

The last 5 years has also seen an increase in the smuggling of illicit drugs and other contraband, despite the efforts of the Customs Service. It is important—critically important—that the Customs Service, with its many responsibilities, has the resources it needs to carry out its stewardship. At the same time, it is incumbent upon this committee to assure that such resources are used in the most efficient, effective manner possible.

As a Nation, we cannot afford to allow the Customs Service to suffer a breakdown, either in enforcement or in its commercial operations. Such a breakdown would have a profound impact on the flow of legitimate commerce, impacting our businesses as well as the consumer. Already, the long lines of northern and southwestern border checkpoints suggest that a breakdown is under way.

Left unattended, the festering problem will have serious consequences for our economy and our trade policy. If the lack of resources slow the flow of goods in and out of this country, we as a Nation will be unable to reap the benefits of international trade in the trade agreements we have reached. In an economy that depends on just-in-time inventory, delays at the border means slowdowns on the production line, higher cost, and lost sales.

More fundamentally, we cannot expect the American public to support a policy of liberalized trade if we cannot offer the assurance that our borders are secure. By that, I mean not only secure against the scourge of narcotics and other contraband, but secure in the enforcement of other U.S. laws, such as food, safety, intellectual property rights, and environmental protections.

Serious questions have been raised about how well Customs has made use of the resources available to it. We have heard regular complaints from industry regarding the lack of progress on automation and delays in issuing guidance in the form of rulings on basic issues such as classification, drawback. The GAO has reported the misallocation of inspectors, and the Service has no real means in place of assessing performance and inspection needs.

While I am a staunch advocate of the war on drugs and want to ensure that our Customs Service facilitates, rather than impedes, legitimate trade, I also believe it is incumbent, both on Customs and on the committee, to justify how the American public tax dollars are being spent currently before authorizing more.

I will not read my full statement, but I would ask that it be included as if read.

Senator MOYNIHAN. I so move.

[The prepared statement of Senator Roth appears in the appendix.]

The CHAIRMAN. I would then call upon my good friend, Senator Moynihan.

**OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN,
A U.S. SENATOR FROM NEW YORK**

Senator MOYNIHAN. Thank you for holding this hearing to review the budget and operations of the Customs Service. The agency has not had the benefit of the oversight that we are responsible for, anything to measure the importance of the Customs. We are here to help, not to investigate. But we need to know how to help, and Commissioner Kelly will tell us.

It has been a strange history. Not strange, but somewhat forgotten. One of the great constitutional questions of our republic, which was how to raise money for the Federal Government, was resolved in Hamilton's terms.

Under the Articles of Confederation, each State was levied a certain amount of tax based on its wealth and population, which no one knew how to measure. Hamilton came along with the idea, if the Federal Government were given the power to collect tariffs, why, taxes would be voluntary. If you did not want to import it, you did not have to pay the tariff.

As late as 1903, half of the revenue of the Federal Government came from tariffs, from the Customs Service. That is why that great building, the Customs House on Bolling Green, is there. It was our Treasury.

Customs still collects about \$19 billion a year, a very considerable sum, and you do it very well. You do other things extraordinarily well, such as the 40 countries cracking down on an international child pornography ring. It is a little hard to conceive, but obviously you have done it.

You are welcome. We are here to hear what you think we should do for you, and look forward to it.

The CHAIRMAN. Thank you, Senator Moynihan.

Next, Senator Grassley.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
SENATOR FROM IOWA**

Senator GRASSLEY. Yes. I am going to take the opportunity I have to express a position on an amendment I am going to bring up, and then I will have some questions when it comes time for questioning.

But I believe that we have to have a well thought out plan that will help facilitate trade across our borders, but not at the expense of aiding and abetting narcotic traffickers.

I support the legislation that we are discussing today, and I feel that a substitute amendment that Senator Graham and I are proposing is going to bolster H.R. 3809. It not only facilitates trade, but it addresses a problem that we face of an increase in drugs

across the border and end up in our children's schools and on our streets.

It is a simple fact that narcotics smuggling organizations will react to any enforcement strategy. We saw this when we increased the pressure on the Colombian drug cartels responsible for smuggling cocaine into South Florida in the late 1980's and early 1990's. They simply turned to the Mexican smuggling organizations to move cocaine across the southwest border.

As a result, the focus of the drug interdiction effort has shifted and there has been an increase in our law enforcement presence on the southwest border under the auspices of Customs' Operation Hardline. That is fine, and it is very, very necessary.

My concern, however, is that our strategies do more than shift the locale of smuggling. Our strategy has to stop it. We need better, we need more, and we need a comprehensive approach.

That is why I continue to stress better coordination of our interdiction strategy and the need to develop a southern-tier concept that focuses resources in a more comprehensive way.

In the past, both Congress and the administration have addressed the threat of drug smuggling by fixing the problem piecemeal. I describe this problem as kind of the "balloon effect." When you squeeze a balloon in one place, it pops out another. Then you squeeze it there, and it will pop out another.

So, it seems to me the strategy should be flexible at sea, in the air, and at our borders. I think it is time for the Congress and the administration to commit to a strategy that includes a funding and staffing approach that does not seek to close the doors to traffickers in one area only to open the window for them somewhere else.

The U.S. Customs Service, of course, is our front-line agency responsible for the interdiction of narcotics crossing our borders and are responsible for facilitating trade. Given their workforce and the increase in growth of trade crossing our borders, Customs is falling behind in their ability to handle the work load that results from legitimate trade.

Also, with the increase in volume of traffic crossing the border, they face the difficulty of preventing illicit drugs from entering our country. So we need to beef up the Customs Service by increasing the number of law enforcement personnel, and having the necessary technology to protect our borders, and at the same time facilitate trade.

So I believe that Senator Graham's and my legislation provides a comprehensive approach in beginning this goal, and I will wait and ask questions when we do that. Is that the way you want to do it, Mr. Chairman?

The CHAIRMAN. That is correct.

Senator GRASSLEY. Yes. Thank you.

The CHAIRMAN. Senator Chafee?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. I would like to welcome Under Secretary Johnson and Commissioner Kelly here. You were just confirmed on July 31, so this is your first official appearance before this committee. So, we are glad to see you.

You have got a very, very tough job. First, I want to congratulate both of you on the child pornography ring uncovering that took place that was reported in today's paper. It sounded like a massive undertaking, with some 14 countries involved, according to the material we have here and the newspaper, from the Customs Service. I want to congratulate you.

Your problems are more and more difficult. Just to quote from the article, "The Digital Age has made it easier to commit crimes like child pornography, money laundering, and intellectual property theft, while erasing traditional borders between nations."

So, I hope in your budgetary request, you will ask for enough money to be able to accomplish the task that we levy on you and the American people expect us to and expect you to comply with.

So we have got a responsibility here and in the Congress, it seems to me, and, as Senator Moynihan said, we want to do all we can to be helpful to you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Chafee.

It is, indeed, a pleasure to welcome you, Mr. Secretary Johnson, as well as Commissioner Kelly. It seems like yesterday you were here. It is good to have you back.

With that, I would call upon you, Mr. Secretary, to make any opening remarks.

STATEMENT OF HON. JAMES JOHNSON, UNDER SECRETARY OF THE TREASURY FOR ENFORCEMENT, WASHINGTON, DC

Secretary JOHNSON. Thank you, Mr. Chairman. Good morning, Senator Moynihan and members of the committee.

I am pleased to appear before you today to testify and discuss the role of the U.S. Customs Service, the protection of our borders, and the facilitation of trade.

Treasury welcomes the opportunity to highlight our support of Customs as a critical component of our department's enforcement mission.

We would also take this opportunity to thank the committee for its many efforts to support Customs and to discuss issues relevant to the fulfillment of Customs' organizational mission.

Mr. Chairman, I will make a short statement and ask that my full statement be admitted as part of the record of these proceedings.

The CHAIRMAN. Without objection.

[The prepared statement of Secretary Johnson appears in the appendix.]

Secretary JOHNSON. This is an important moment in Customs' long and distinguished history as it continues to advance its mission under the able leadership of newly-appointed Commissioner Raymond W. Kelly.

While we should not underestimate the challenges that Senator Chafee just highlighted that face the Customs Service, I think we face them with renewed confidence with Commissioner Kelly at the helm. His knowledge of law enforcement issues, his record of effectively managing public institutions, and his personal commitment to Customs' broad mission commands, in our view, the highest respect.

I will defer to Commissioner Kelly for a more detailed discussion of the current state of affairs at Customs and focus the balance of my remarks more broadly on the vital importance of Customs' activities in anti-narcotics enforcement and trade facilitation.

Customs' mission continues to reflect the range of activities and vision when the first U.S. Congress enacted statutes provided for levying and collecting duties. But the mission has grown over the years to include many, many additional responsibilities.

Today, Customs collects over \$19 billion in revenue each year. Its statutory obligations also include protection of our citizens from dangerous drugs that harm our cities, and really even our rural areas all around the Nation that are harmed by narcotics.

It protects us against intellectual property right violators, and those pose a danger to our economy. It protects us against hazardous materials that would harm our environment, and unsafe products that would harm our children. Clearly, we are acting aggressively to protect our children against the ravages of child pornography.

One of Customs' most critical duties is to prevent illegal drugs from entering the U.S. Both Treasury and the U.S. Customs Service are vigorously committing ourselves to battling narcotics traffickers. Indeed, Customs stands at the core of Treasury's comprehensive efforts to combat the multiple threats posed by narco-traffickers. Customs stops narcotics at the borders.

Together, Customs, the Internal Revenue Service Criminal Investigative Division, and the Financial Crimes Enforcement Network work to take the profit out of narcotics trafficking by preventing, detecting, and investigating money laundering.

The Office of Foreign Assets Control blocks the assets of narco-traffickers. The Bureau of Alcohol, Tobacco & Firearms, along with Customs, makes it more difficult for narco-traffickers and their allies to obtain weapons that could be used against our citizens and against our law enforcement personnel.

Customs has consistently seized more drugs than any other agency. While it continues to seize drugs, Customs identifies, disrupts, and dismantles criminal organizations that launder the proceeds generated by the smuggling of illegal drugs. In fiscal year 1997, Customs seized nearly one million pounds of narcotics. Customs exceeded this amount during the first 9 months of fiscal year 1998.

An important element of Treasury Enforcement's attack on narcotics smugglers and on other criminals is our comprehensive anti-money laundering program. As Secretary Rubin has noted on many occasions, anti-money laundering strategies not only protect our financial systems from the taint of illicit proceeds, but also allows us to unravel complex criminal enterprises. To this end, Customs alone conducted nearly 4,500 money laundering investigations in the last year.

Operations Eldorado and Casablanca serve as examples of Customs' determined commitment to money laundering enforcement. I would like to describe Eldorado to you, briefly, and let Commissioner Kelly comment on Operation Casablanca.

In the Eldorado task force, Customs was joined by Treasury's Financial Crimes Enforcement Network, the IRS Criminal Investiga-

tive Division, the DEA, and State and local law enforcement agencies in New York, who, together, developed evidence that 12 money remitters in the New York City area had funneled approximately \$800 million a year to Colombia.

Based on information obtained through Eldorado, then Under Secretary Kelly—we are very capable in having a switch-hitter with us—signed a geographic targeting order, or GTO, under FinCEN regulations in August of 1996, requiring the 12 money remitters and their agents to obtain information on all cash remittances of \$750 or more to Colombia.

The use of GTOs forced narco-traffickers to turn to less convenient means to move their money and made them more vulnerable to interdiction. As a result, Customs' currency seizures at east coast ports of entry increased approximately 400 percent.

This success, as well as that of Operation Casablanca, highlights the value of a coordinated, multi-faceted approach to money laundering enforcement. Because of our multiple bureaus and offices with both investigative and regulatory responsibilities, Treasury has been able to develop, plan, and execute such coordinated approaches and we expect that to continue in the future.

Customs, and I am sure you will hear more about this in later testimony, has also experienced tremendous success with Operation Brass Ring, which was launched on February 1, 1998 and was completed July 31, 1998. That resulted in increased seizures along the southwest border.

Of course, Customs' continued success on narcotics and money laundering enforcement depends on ensuring that its workforce is as productive and professional as possible. The opportunity to erect effective barriers to narcotics and protect our frontiers begins with our employees.

Treasury Enforcement believes that, to accomplish its mission, Customs employees must consistently demonstrate the highest levels of integrity and professionalism. We believe that the vast majority of Customs employees meet this standard.

To ensure, however, that all personnel at headquarters and the over 300 ports of entry adhere to appropriate standards of integrity, Treasury Enforcement's Office of Professional Responsibility will be working closely with Commissioner Kelly and his staff as he brings to Customs his demonstrated high standards of professional integrity and high ethical performance.

Our employees on the front line must work in close collaboration with other Federal, State, and local law enforcement agencies in order to accomplish their mission. To this end, Customs, in cooperation with the Immigration and Naturalization Service, has developed a port management model in San Ysidro, California.

We believe that this model will increase coordination at the ports, strengthen our anti-smuggling efforts and facilitate legitimate commerce, as it has done so in San Ysidro. Treasury and Customs are working with INS and Justice to expand this model to other ports.

As currently envisioned, the plan would implement the successful port management model at all southwest border ports, creating coordinated leadership at the port level for enforcement and traffic management.

Moreover, the plan would expand joint intelligence collection, adopt a unified investigative approach for southwest border seizures, provide for coordinated technology deployment, research, and development, and harmonize resource decisions. This process is already well under way and it is a process that we anticipate continuing.

We are working with our sister agencies to finalize this plan and draw on its results to further increase our success in both combatting drug trafficking and facilitating legitimate trade.

Let me take one moment to emphasize that our anti-narcotics efforts do not come at the expense of our trade processing programs. Both Treasury and Customs recognize that, for every drug smuggler or other criminal threat to our border, there are many more legitimate crossings and conveyances. Customs, therefore, continues to pursue policies that fulfill its anti-narcotics mission as effectively as possible, while still facilitating legitimate commerce.

One of the ways in which Customs performs its dual mission is through partnership with private sector trade interests, fostered by mechanisms such as the Treasury Advisory Committee on Commercial Operations. Such partnerships, for example, have given rise to the Carrier Initiative Program and the Business Anti-Smuggling Program.

Far from presenting a false choice between anti-smuggling and trade facilitation, these programs actually enhance both missions. They do so mainly by enlisting legitimate businesses in thorough pre-screening and background checks that allow Customs to target its limited anti-narcotics resources to other, more high-risk, carriers. The result is both stronger anti-narcotics efforts and more productive trade facilitation.

The efforts of both Customs and the public it serves will be further enhanced through improved automation. In this regard, few issues are more important than finalizing the Automated Commercial Environment, or ACE, which will drastically reduce unnecessary paperwork, improve ready access to relevant data, enhance enforcement, and expedite trade. I believe Commissioner Kelly will speak at greater length on this process.

In conclusion, Mr. Chairman, I would note again that safeguarding our Nation's borders is one of the Federal Government's most basic responsibilities. It is also one of our biggest challenges.

Even as the responsibilities and duties of Customs have increased in a time of tight budgets, we do not anticipate any decline soon in the necessary work of narcotics interdiction or trade facilitation.

We, therefore, support the objectives of the Drug-Free Borders Act of 1998. We look forward to having the committee's continued support for the U.S. Customs Service as it pursues its mission.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Secretary Johnson.
Commissioner Kelly?

**STATEMENT OF HON. RAYMOND KELLY, COMMISSIONER OF
CUSTOMS, WASHINGTON, DC**

Commissioner KELLY. Thank you, Mr. Chairman, Senator Moy-nihan, members of the committee. Thank you for this opportunity

to testify today. It is, indeed, an honor to return here for the first time as Customs Commissioner.

The Customs Service is a big, complex organization with an important historic mission. We have been doing a good job since the founding of the republic. However, we can do it better.

We are living in a global economy in which international trade is the lifeblood of the wealth of nations. At the same time, America's appetite for narcotics and the drug cartels' efforts to exploit it any cost has been, and remains, one of the great threats to the national well-being.

The Customs Service must live in both realities, and I intend that we tackle the problems and opportunities they both pose with equal vigor. The same technology that defeats smugglers helps legitimate trade move freely across our borders.

Advanced technology is essential to fulfilling the mission of the Customs Service. It is absolutely essential in accommodating the explosion of trade and in how the Customs Service processes imports.

Our current system of tracking and processing imports is outdated and expensive to maintain. It was designed for trade levels a decade ago. The volume of trade since then has increased dramatically.

The first chart illustrates what I am talking about. In the last 4 years alone, the number of import entries that the Customs Service processed increased from \$11.3 million in 1994 to \$16.3 million now, an increase of 44 percent. It is projected to increase to over \$30 million by the year 2005.

The value of those imports climbed by 45 percent, from \$658 billion in 1994 to almost \$1 trillion today, while in the same period the number of full-time equivalent employees of the Customs Service declined by 2.4 percent.

To keep pace, we must vastly improve and expand the automation of our import processing. Our answer is ACE, the Automated Commercial Environment.

Senator CHAFEE. What? I missed that. Our answer is what?

Commissioner KELLY. ACE. It is an acronym for the Automated Commercial Environment.

This massive project is still in its infancy, with very promising test sites up and running in Michigan and Texas. The complete conversion and full implementation will take 10 years and cost \$1.48 billion. But let me stress that it would cost even more, and with far less benefit, to try to keep the old system going.

Customs interdicts more narcotics by far than any other law enforcement agency, about one million pounds annually for the last 2 years, another million pounds for the first 9 months of this fiscal year.

We had been concerned about the decline last year in seizures, so early this year we asked inspectors, agents and their supervisors to come up with new and port-specific ways of attacking the smuggling problem. Their combined efforts were dubbed Operation Brass Ring, as Mr. Johnson mentioned.

The results, as this chart shows, were impressive. Cocaine seizures through July this year were up 32 percent compared to the same period the year before; heroin seizures increased by 13 per-

cent; marijuana seizures by 47 percent; currency seizures by 45 percent.

Senator CHAFEE. Is the red 1 year and the blue another year?

Commissioner KELLY. The red is the first six-month period in which Brass Ring was implemented for 1998. The blue is the previous year, same period of time, six months.

Controlled deliveries increased by 100 percent. Now, this success story was devised and implemented by the rank and file, the front-line people of the Customs Service, with the support of their union leadership, the National Treasury Employees Union.

The CHAIRMAN. Could I ask a question there?

Commissioner KELLY. Yes, sir.

The CHAIRMAN. You are talking about increased seizures on our part. It is impressive, what you stated. At the same time, do we have any estimate as to whether or not drugs are increasing as to what enters this country?

Commissioner KELLY. It is difficult to measure that, Senator. ONDCP has done some work on it. Of course, their statistics show that there has been a decrease in the last 10 years in usage. But I cannot say with any certainty that there has been a decrease as far as the importation of drugs is concerned.

I think what is significant here, is the fact that, in a very short period of time, empowering people on the front lines to devise ways of attacking the problem, that they increase the number significantly.

The CHAIRMAN. Please proceed.

Commissioner KELLY. The crackdown on smuggling was accomplished while keeping trade flowing as freely as possible. It is a demanding environment, when you consider that, in the last fiscal year, 118 million automobiles were driven across our borders, as were 9.3 million trucks, over 320 rail cars, and 4.5 million sea containers.

Of course, we cannot stop and thoroughly inspect every one of them for contraband, but through better intelligence and wider use of advanced x-ray and other technologies, we can selectively make it harder and riskier for smugglers to cross our borders or enter our air space or sea lanes.

We also have to remain as flexible as possible, shifting resources as the cartels and others respond to the pressure we apply.

Whether it is along the southwest border or the Caribbean Basin, there are three ways to smuggle drugs and other contraband into the United States: land, sea, and air.

The Customs Service can provide effective deterrents in all areas, providing we maintain and modernize our best assets, including our marine and aviation programs.

We also deter narcotics smuggling through strong partnerships with legitimate industry. These partnerships work. Last year, for example, 43 percent of all of our cocaine seizures stemmed from prior intelligence provided by the trade community.

Of course, prior intelligence is supported by hands-on inspections, and we are doing a better job of that by using advanced technology such as x-ray equipment designed expressly for inspecting trucks. We hope, soon, to be using that technology to inspect rail cars.

This is the key to the future, the investment in advanced technology as a way of inspecting goods, and even suspected smugglers, as quickly and as unobtrusively as possible. We want to be able to stop the drug smuggler or the terrorist selectively without subjecting the law-abiding traveling public to inconvenience, embarrassment, or delay. We are also getting better at seizing the profits of the drug cartels as they try to smuggle their ill-gotten gains out of the United States.

Our budget request for fiscal year 1999 reflects these concerns, and others, including money for non-intrusive inspection technology, automated targeting systems, including license plate readers, and additional funds to fully implement our child labor enforcement plan.

We are also protecting children by combatting child pornography, and yesterday, working with a dozen other countries, brought down the largest known child pornography network in the world.

We greatly appreciate the efforts of the members of this committee, particularly Senator Gramm and Senator Grassley, and, of course, Senator Graham from Florida, to give Customs the support it needs for the future.

I am confident that, together, we are on the path of making the Customs Service better than ever, a path of making the Customs Service legitimate trade's best friend, and the drug cartels' worst nightmare.

I would be happy to answer any questions. Thank you, Mr. Chairman.

[The prepared statement of Commissioner Kelly appears in the appendix.]

The CHAIRMAN. Thank you, Commissioner Kelly.

Mr. Secretary, one of my concerns is, you mentioned how there have been a number of operations involving different agencies working together. But I wonder if that makes for efficiency.

It concerns me that you have to get so many different groups together. Who calls the shots? How do you coordinate? Who decides who does what? It seems to me you have some very difficult administrative problems inherent in that approach.

Secretary JOHNSON. If there were not communication, there would be very difficult problems inherent in the approach. But what we have tried to do, starting with then Under Secretary Kelly's leadership in the Treasury Office of Enforcement over the last couple of years, working closely with the Justice Department, to increase our levels of communication and cooperation so you do not have redundancy.

One of the issues, whenever we talk about redundancy, is it is often couched in terms of many different agencies going after the same particular defendants or the same crime. What you have across the Treasury bureaus are a variety of different tools that can be used to counteract narco-traffickers and money launderers.

For instance, we have within the Treasury Office of Enforcement the Office of Foreign Assets Control, which can use its sanctions authority to block assets of narco-traffickers. Those are authorities that are unique to the Office of Foreign Assets Control.

Customs is at the border, and part of the problem of money laundering is it involves large cash transfers, actually physically, over

the border. So, necessarily, Customs needs to be involved in transporter investigations of money laundering.

As was noted, I believe, earlier in a discussion of the recent child pornography case, because of changes in technology, criminal investigations have to be trans-border, so necessarily Customs has to be part of a money laundering investigation, or at least a coordinated and comprehensive money laundering approach.

That would apply as well to the IRS, which has the IRS Criminal Investigative Division, that also has a different set of skills and tools to bring to the table. If there were nothing but multiple voices or multiple actors in this particular play without a common script, there would be difficulty.

But we have developed the rough draft of a common script, we are refining that. I think you have seen the results clearly in Customs' efforts in Operation Casablanca. We have seen tremendous results out of that effort.

With the GTO, where you did have a wide variety of people bringing their tools to the table, again, there was coordination and again we have had tremendous results.

So I recognize the danger, but I think, with coordination and with our efforts from the Office of Enforcement, then in tandem with the Justice Department to make sure that the right tools are used for each particular job, there is less of a danger of unnecessary duplication.

Senator MOYNIHAN. Mr. Chairman, you will not mind my just saying, in agreement with you, that what exactly what the Bureau of Alcohol, Tobacco & Firearms does is a mystery to me, and apparently a mystery to them because they can never explain.

The CHAIRMAN. I think there are some very serious questions here. It does concern me that, when you have so many different agencies, there is duplication. Who is actually calling the shots, how is it functioning, who is held accountable?

Let me just ask you, within your own agency, the Treasury, how do you set the priorities among Treasury's various enforcement activities to ensure each, but particularly Customs, has what it needs to do the job?

Secretary JOHNSON. The touch stone of our setting priorities has to be the strategic plans, the strategic plans that have been developed for the department, and in conjunction with the efforts of the bureaus.

That is where, as we are setting priorities and we are developing budget proposals, that has to be our touch stone. Now, it is not going to lead to a doctrinal or arithmetic formula which will lead us to cut up the pieces of the pie, but it does guide our initial choices.

The CHAIRMAN. Let me ask you, Mr. Kelly. At your confirmation hearing you did indicate that you intended for Customs to meet the challenges of stronger enforcement through technology. This would be a way of becoming more efficient. The question is, has your spending on technology been effective to date, and what leads you to believe that simply adding more will help meet the twin challenges you face?

Commissioner KELLY. Well, in the area of applied technology, say, x-ray equipment along the border, I think it has been very

helpful, but it has not been fully deployed along the border. I think we are not going to see full effectiveness, for sure, until smugglers are not able to port shop.

We now have major x-ray systems at some of the major ports, but there are 24 ports of entry and some smaller ports of entry that a determined smuggler is able to go around.

So, we have a 5-year plan for the deployment of some sophisticated x-ray and gamma ray equipment. Until that is fully deployed, I do not think we will see something that we can call a fully effective system. But, so far, it has been very encouraging, what we have in place to date.

The CHAIRMAN. Let me turn to a different part of the problem. What could be done to simplify and streamline the entry process? I mean, what changes can be made in the harmonized tariff schedule or the classification process to simplify the whole thing?

Commissioner KELLY. So many of the issues, as far as import process is concerned, have to be addressed through the Automated Commercial Environment. That is what we see as the hope of the future. It is, in my judgment, based on the briefings I have had, absolutely necessary to go forward with ACE.

We have an old, antiquated system that has been in place for 15 years. It is called the Automated Customs System, strangely enough. That system is on the brink of being overloaded. Simplification and harmonization will be one of the many byproducts of implementation in the Automated Commercial Environment.

The CHAIRMAN. Well, there is no question but what you have a tremendous responsibility. I was just noting that, in 1997, you processed 18 million import entries, 128 million vehicles and trucks, 706,000 commercial aircraft. So, that is a tremendous responsibility.

At the same time, tariffs are going down, purportedly, to zero so that collections, it would seem, could become simpler and easier to administer than when we had high tariffs. Do you see any real opportunity here to simplify this whole classification process?

Commissioner KELLY. I think there is an opportunity, Senator. I would need time to look at the process; I have only been in place for less than a month. But I am encouraged by what I hear from staff as to the possibilities, again, that the Automated Commercial Environment will bring about—you are right.

As tariffs go down, there is less money coming into the coffers, but the work still has to go on, the registration and the filing of many, many documents. This system will enable it to go to a paperless process, for instance, and do remote filing.

So, there are many advantages to the Automated Commercial Environment that I think will streamline virtually all of Customs' trade processes.

The CHAIRMAN. Well, it does seem to me that, as tariffs become less and less important, there ought to be a real opportunity to revise the whole process.

My time is up. Senator Moynihan?

Senator MOYNIHAN. Thank you, Mr. Chairman.

Let me just begin by saying something that will not be especially welcome, but which is meant to be helpful, which is that I do not think much is gained by turning the Customs Service into a police

force looking after criminal activities, the interdiction of drugs and money laundering by drug dealers, and so forth. It is an easily advocated approach, a popular approach, and it is a pointless approach.

In 1988, we passed large drug legislation here in the Congress that is now in place, the drug czar, all that business. I was co-chairman with Senator Nunn on a working group over here on the Senate side that put our part of the bill together.

We went out of our way to make two deputies for the principal officer, one for supply reduction and one for demand reduction. We made demand reduction, first. It was my role to say, quietly and resignedly, that you can do all you want to do about interdiction and you might slightly raise the price of drugs, but you will have no effect on the supply whatever. I mean, it just will not happen. You do not have to answer this, but I think you have had enough experience.

We are going to have a conference next month at Yale University on 100 years of heroin. Heroin is a trademarked product of the Bayer Company. They trademarked it a year before they trademarked aspirin. We have not been able to keep it. As long as there is demand, it will be met with a supply, no matter what anybody does.

So, I think what the Chairman was saying was, I hope you can keep your attention on the issue of facilitating trade. I mean, I think some of your numbers are absolutely astounding. The value of imports has climbed by 45 percent since 1994?

Commissioner KELLY. Yes, sir.

Senator MOYNIHAN. Well, you know why we are having economic good times. This is what you do. I suppose the more the imports come in as tariffs go down, the less the revenue will be. But that is your job, to facilitate trade.

I would hope this other matter—and you cannot say this publicly, I do not expect you, Mr. Secretary, or you, Mr. Commissioner, to say anything about it—would not too much distract you. The principal thing is to keep the doors of trade open.

Could we get from you a list of the value of imports over the last 20 years?

Commissioner KELLY. Yes, sir.

Senator MOYNIHAN. Could you do that when you have a moment?

Commissioner KELLY. Sure.

Senator MOYNIHAN. Because I think the success of our trade policy is just not understood. The better it is, the more likely we will be able to continue those policies.

Commissioner KELLY. Certainly.

Senator MOYNIHAN. What you need, is you are trying to get a paperless system. I suppose there is a certain amount of international cooperation, where you can get your data in Antwerp coming to Houston, or whatever, that kind of thing.

Commissioner KELLY. Yes, sir.

Senator MOYNIHAN. Do you do a lot of international cooperation?

Commissioner KELLY. Customs has a very vigorous program and contacts with countries throughout the world, certainly through the World Customs Organization, and other organizations. So there is

a lot of discussion and a lot of emphasis on harmonizing regulations.

Senator MOYNIHAN. So you would have the same words for the same thing.

Commissioner KELLY. Precisely.

The CHAIRMAN. Would the Senator yield?

Senator MOYNIHAN. Please.

The CHAIRMAN. Would it be worthwhile to have some kind of a conference on harmonizing and trying to simplify?

Commissioner KELLY. Well, I think there are a lot of conferences and discussions that have been conducted concerning harmonization. We have people who engage in that full-time. But it may very well be helpful. Perhaps I can submit a paper.

Senator MOYNIHAN. Well, if you think so, why do you not tell the Chairman? I mean, we would like to be helpful to you in this area.

The CHAIRMAN. That is right.

Commissioner KELLY. All right, sir.

Senator MOYNIHAN. Trade is what is driving the world's economy, or was until last week.

[Laughter.] Thank you very much, Mr. Secretary, and Commissioner.

Commissioner KELLY. Thank you, sir.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Gramm? I see you returned.

Senator GRAMM. Well, it was a short mark-up.

The CHAIRMAN. Tell me how you did it. But go ahead.

Senator GRAMM. Well, death often occurs instantaneously with little outside help.

[Laughter.]

Well, Mr. Chairman, thank you very much for holding the hearing. This is a very important issue to me. I have a State which is a major trading State. We generate a substantial portion of the income of our State through exports, about one-quarter of the income of our State.

Mexico is our largest trading partner. But I think, on a per capita basis, Texas certainly would rank in the top five States in the Union in trade.

Senator CHAFEE. I see that, of the 320,000 rail cars coming into the United States, half of them come through Laredo. Is that right?

Senator GRAMM. That is true.

Senator CHAFEE. Is that not astonishing?

Senator GRAMM. What has really happened in a city like Laredo, which I think, rather than going into detail, I will just paint a picture, is that we look at the border and we see something that looks like a very definite line drawn at the Rio Grande River.

But the plain truth is, people come back and forth across the border, in conducting their lives. They often have kinfolk on both sides of the border. They engage in trade, and commerce, and traffic.

What happens, is these border crossings become jammed so that you can look for 7, 10, or 20 miles and see trucks lined up. It makes it impossible to get back across the border, so it disrupts commerce. That is why, for my State, this is a critically important bill that we have before us today.

I would like to just ask a couple of questions. I would like to, number one, ask Commissioner Kelly to give us at least a brief description of this new technology that we're talking about and how it is going to work.

Commissioner KELLY. Well, we are talking about x-ray and gamma ray. As I understand it, gamma ray is just a more powerful x-ray-type of transmission. We have five fixed-site, large x-ray machines already deployed along the border. What we hope to do, is have a mix of those fixed machines and mobile x-rays deployed all the way across the border at the end of our 5-year plan.

Now, what it does, it enables us to examine a truck, for instance, in eight minutes, where a full search using inspectors to do it would take up to four hours.

Just last month, I was actually in Laredo. This new technology found 4,300 pounds of cocaine in a tanker truck that otherwise would not have been found by manual inspection, because you just do not drill a hole into a tanker truck. You do not know what is on the other side, so the general practice has been not to drill into tanker trucks.

So what we see, is an array of x-rays, ultimately, along the border that will eliminate port shopping, where people are going in places now where there are no x-ray equipment.

There are also other technologies we are talking about. For instance, an automated targeting system. Now, we have some automated targeting systems now. We have five of them deployed. In the 1999 budget, we are looking for another 12.

What that does, is refine the information that you are getting and enables you to target vehicles that you want to search.

Now, prior to the deployment of the automated targeting system in Laredo, there was one hit out of every 157 searches. After we deployed this automated targeting system, there has been one hit in 53 searches. So, you can see a major increase in productivity.

There are busters, as they call them. These are hand-held devices that can measure the density of tires on vehicles to see if there are drugs inside them. We need more of those.

So your bill, Senator, and Senator Grassley's modifications, have addressed all of these issues. It is a question of getting them on-line, getting them funded, of course, and getting them deployed.

Senator GRAMM. One final question. One of the constant complaints that I hear is that, as you know, we are constantly building bridges across the Rio Grande River to try to facilitate commerce, but yet we do not operate these bridges for truck inspection 24 hours a day.

So, we are in the process of building new bridges when we have got the existing bridges that are used far below what their physical capacity is, if we had the people and if we could run three shifts and operate 24 hours a day. I am hopeful that, with this new technology which does not get tired, does not take coffee breaks, does not vote, either, which I view as a negative—[Laughter]. It is not perfect.

But I am hoping that one of the things we could do, is to get some of these bridges working 24 hours a day so that, while people are sleeping, the trucks can come across the border at night and

then the congestion not be there during prime business hours when people want to go back and forth across the border.

Is there any possibility that we are moving toward that?

Commissioner KELLY. I certainly want to look into that, Senator. Certainly with your proposal, there is a much greater chance of doing that. I would like to get more information on that and strive to do it.

Senator GRAMM. Well, I want to remind you that, when we build a bridge, we have to build the Customs facilities, we have to build roads to the bridge, and then we have got to man the facility, if for no other reason than to protect it.

If we can use the facilities we have, we do not have to build a bridge, we do not have to build the Customs facilities, we do not have to build the roads, and we could easily double our capacity by going to a night shift on these bridges.

Commissioner KELLY. Yes, sir.

Senator GRAMM. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley?

Senator GRASSLEY. Yes. Director Kelly, you heard me describe the purpose behind the amendment that Senator Graham and I are going to put in, so I would like to ask some questions now, very general questions, about your thoughts regarding this piece of legislation on Customs authorization.

What would your views be on the need for a broader comprehensive strategy? Second, and last, I would like to know what plans you have to address the need for staffing models or formula for Customs.

Commissioner KELLY. Sir, I am certainly very supportive of your proposal because it is, indeed, just that, comprehensive. We all have seen the balloon theory in practice. That is exactly what happens. We put resources at a particular point, and then the threat shifts, and shifts quickly. So your proposals address the needs along the whole southern frontier and it makes common sense. We very much appreciate that.

Senator GRASSLEY. Well, then do you have in place staffing models and a formula that you could use to carry out not only what our amendment calls for, but the spirit of it as well?

Commissioner KELLY. We have engaged a major accounting firm to do a zero-based, clean-sheet-of-paper resource allocation model for the Customs Service. We are told that that will take a four-month period to accomplish that, but it will give us a staffing model for the agency and, at the very least, it will give us a sense of proportionality as to where we should have our current resources. So that is, in fact, under way and we hope to have that by the end of January.

Senator GRASSLEY. All right. Then is that model based upon a broader comprehensive strategy?

Commissioner KELLY. Yes, sir, it is. Of course, the consultant is going to engage with Customs employees throughout the country and they are going to look at technology, for instance, and also try to look down the road a little bit to see what is coming down the pike to give us a realistic allocation model, what are we going to need. And also to build some flexibility in there; as the threat

changes, are we able to shift some resources? So, I personally have high hopes for this resource allocation model.

Senator GRASSLEY. Yes. Well, unless you are able to shift those resources, we would never be able to stay ahead and we would have the same problems that we have had.

Commissioner KELLY. Yes, sir.

Senator GRASSLEY. All right. Could I ask Mr. Johnson one question, and then that will be the end of my questioning.

There was a recent article in The Washington Post about the black market peso. The black market exchange issue involves many areas, law enforcement, trade, economics, foreign relations. How is Treasury Enforcement coordinating these areas among the various Treasury agencies in order to ensure a systemic approach to the problem?

Secretary JOHNSON. This actually gets back to what I was discussing in response to the Chairman's question on coordination. Over the last, I would say, 12 months, within the Office of Enforcement we have been, first, as chaired by then Under Secretary Kelly, meeting with the constituent elements of Treasury Enforcement, with FinCEN, with OFAC, with IRS, with Customs, to discuss the ramifications of what has been reported to us about this black market peso exchange system.

What we are doing as we continue to meet and discuss and develop a strategy in response to that, is focus on the need to not only develop particular cases, but also to combat the overall system.

In recent weeks, we have convened, and we will be convening, a financial crimes steering group within Treasury, within all of the Treasury Enforcement bureaus that have an interest in financial crime. One of the top agenda items for this group will be the development of a comprehensive strategy to the black market peso exchange system that was described in the article.

Senator GRASSLEY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. Coming from the heartland, as I do, we have some concerns on both sides of the equation of this issue with Customs, both the law enforcement as well as the trade facilitation concern.

I think that part of the problem that has been expressed, or is really at the core of a lot of this conversation this morning, is the fact that they are, in some regards, almost competing goals. To the extent that the law enforcement overwhelms the trade facilitation aspects, you wind up having industry paying the costs, and indirect costs, for the war on drugs, and private citizens as well, which will get to the second part of my question.

So, I guess my question, on the industry side, has to do with the Customs Modernization Act and the fact that the Service has been criticized for not meeting its Mod Act, or Customs Modernization Act, milestones, particularly not meeting its automation goals under the Mod Act.

Yet, there is a proposal of a \$48 million hike in the merchandise process fee that will be charged to industry. I suppose one of the threshold questions is, with this proposed hike of the rate for the merchandise process fee, to what extent will those dollars go to just

get the automation up to speed, as was envisioned by the Modernization Act when it was passed?

Commissioner KELLY. Right. We talked before about the Automated Commercial Environment, and that really is at the core of the Modernization Act. We need to put a new system in place in order to process trade. The money that you are talking about, I believe is the \$50 million that we want to use to devote towards the Automated Commercial Environment, and take it out of the merchandise processing fee. Not increase the fee, but we are looking for a \$50 million authorization to do that in FY 1999.

Now, there is an administration proposal to fund the entire ACE program through the merchandise processing fee. That certainly has met with some resistance by the trade industry, we are aware of that.

But this is an over \$1 billion, 10-year project that, in my judgment, has to be done and has to be funded one way or the other. Maybe the merchandise processing fee is not the way to go. Maybe it is appropriated funds. I mean, that debate is obviously ongoing.

But the system has to be revamped. The spirit of the Modernization Act was to do just this, to modernize, to put a system in place that is consistent with what business does, so Customs can talk to business electronically. We are not able to do that now with the system that is currently operating and it is about to be overwhelmed. So we want to go forward with the spirit of the Modernization Act, but ACE is a critical part of that.

Senator MOSELEY-BRAUN. Again, I guess my question is, in terms of meeting the milestones or the goals of the Modernization Act, you are behind. Do you have a report as to what extent you have met the goals as set out?

Commissioner KELLY. Yes, there is a report and I would be glad to share that with you, Senator.

Senator MOSELEY-BRAUN. I would appreciate that.

The second thing is, and this gets, again, to the issue of the extent to which the law enforcement issues are challenging the mission of the Customs Service, as you know, I would raise with you the issue of the strip searches at the airports, particularly at O'Hare Airport. What we have found, is that women are being targeted for the drug strip searches.

We were going to have testimony on this today, Mr. Chairman, but I gather there was some back and forth in terms of witnesses and you are going to do another hearing on that issue, specifically. That is my understanding, that there is going to be a hearing just on the issue of the strip searches.

The CHAIRMAN. We have nothing scheduled yet.

Senator MOSELEY-BRAUN. You have nothing scheduled. Well, then maybe I should go and ask my questions, then, today. I do not want to miss the opportunity.

But it really is a real problem, because we have discovered that women are singled out for the strip searches and that, of the women singled out for strip searches, black women and minority women, women of color, are two times more likely to be singled out than not. This is a real problem.

And we understand that it is not just at O'Hare Airport, but at others in the country, and we are getting more and more informa-

tion from women coming forward with stories—horror stories, really—of how they are being strip searched for drugs, and, frankly, with very little return, which is the other, kind of, tragedy of it all.

I wanted to kind of get a report from you, because I know you are familiar with this issue, it has been raised with you, as to where you are in terms of getting the information that we can make some cogent decisions or analysis of this problem.

Commissioner KELLY. Senator, I am very much concerned about this issue. We did have discussions on this. When I was the Under Secretary, Treasury directed a study to be done, or examination, by the Office of Professional Responsibility in Treasury of the processes that were used by Customs to search passengers. GAO is doing a study as well, and we are fully cooperating with that study.

We are in the process of bringing on board a consultant to look at how we communicate, if we can better communicate to people coming into the country just what Customs' mission is. Perhaps we need additional personnel, or personnel trained differently to be involved in that process.

We have our own internal group looking at it and we are experimenting with perhaps moving x-rays to a different part of the process, maybe use an x-ray earlier on, or at least give an individual the option to use an x-ray.

This is an unpleasant, distasteful task for inspectors, and certainly for people who are being searched. We understand that. But it is something that, unfortunately, has to remain, at the end of this track, a possibility that it would happen. We do not target individuals. There is certainly no ethnic criteria.

What Customs does look at is certain high-risk flights and high-risk countries. People on those planes, yes, may, in fact, be subjected to more scrutiny. But, again, we are very much concerned about it. We are looking at any way we can to make the whole process less distasteful for all concerned.

Senator MOSELEY-BRAUN. Well, I hope that you will keep us apprised of the developments and, when you get this consultant on board, let us know who that is so we can stay with you on the development of this issue. While we certainly recognize and appreciate the law enforcement requirements—I come out of a law enforcement family, so I do understand all of that—at the same time, the war on drugs should not be a war on women and women should not be singled out.

Of the people coming back from those destinations, as you point out, again, it is women that are being targeted for this, of all colors. That is what obviously makes this such a matter of immediate concern. Again, if you would just continue to provide current information to my office, I would very much appreciate that.

Commissioner KELLY. Yes, Senator.

Senator MOSELEY-BRAUN. Thank you.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Commissioner, under current law, all imported goods must be marked in a reasonable manner to show the current country of origin. I am concerned about the jewelry industry, which is very important to my State. Marking of imported jewelry is an extremely serious issue as far as we are concerned.

How marking is designed is a little fuzzy. Indeed, Customs has determined it can be any reasonable method. For jewelry, such as rings, earrings, and so forth, it can be tags or gummed labels. The trouble is, however, that these fall off.

This is not a new problem. Indeed, I have had a long back and forth with your predecessors at Customs on this subject. Ten years ago, Customs determined that there should be indelible marking on imported jewelry that purports to be similar to Native American jewelry, bolo ties and so forth. But no such requirements were made for other imported jewelry. As I say, this is a problem that I have been interested in for going back into the last decade. My colleague from Rhode Island, Senator Reed, likewise is interested. What I am interested in is seeing if we cannot get a solution to this problem. Perhaps we need a requirement of indelible marking on all jewelry, not just Native American-style jewelry. Therefore, I would appreciate it if you could have somebody on your staff get in touch with me in connection with what we can do to address this. Do we need legislation to require indelible marking? I do not know. Your thoughts on this would be appreciated.

Commissioner KELLY. Yes, sir.

Senator CHAFEE. It is an important matter.

I was surprised, in your presentation, that you said you are working with 2 percent fewer people than a year ago, is that correct?

Commissioner KELLY. Than 1994.

Senator CHAFEE. Yes. There was a chart on this point. It was, it was 2 percent less than some time.

Commissioner KELLY. Yes, sir.

Senator CHAFEE. That seems odd. I do not know why your staffing is down. I hope that you are being bold enough in asking for what you need. I share the view that your duties are to expedite trade as much as possible, but, like it or not, you have gotten into the anti-drug business. And I think that is right. Tell us if you need more or better equipment for air interdiction, for example. I am willing to wager that the aircraft you are operating with, let's see, in your testimony I think you had more than 70 aircraft?

Commissioner KELLY. There is 114 aircraft in Customs.

Senator CHAFEE. Yes. Well, as I say, I am willing to wager that they are not of the caliber, speed, and capabilities of the type of aircraft you are encountering now. In any event, my urging to you is that you should be bold in your request to us. That does not mean we are going to give you everything you want, but you are really right on the ramparts there. The work you do in connection with drug interdiction and speeding up the flow of trade is extremely important for our Nation.

Commissioner KELLY. Thank you very much.

Senator CHAFEE. So, I want to urge you on. That would apply to you, Secretary Johnson, likewise, in your requests to us.

Secretary JOHNSON. Thank you, sir.

Senator CHAFEE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman. Thank you for holding this hearing.

I would like to respond to the comment that was just made by Senator Chafee. I chaired a hearing recently in Miami of the increased return of the Caribbean as a principal source of drugs coming into the United States. What we found, among other things, was that there was a mismatch between our resources to combat and the resources of those who wanted to complete their illegal transactions.

Therefore, Senator Grassley and I have proposed, within a comprehensive framework, a series of measures which would have the effect of increasing the capability of the Customs and of other border protection agencies, such as the Coast Guard, to give us greater strength against those illegal activities. I would like to use my time to ask some questions about that legislation.

You mentioned, Mr. Kelly, that you currently have under way a 4-month evaluation of the use of your resources. Do you anticipate that that evaluation will be complete in time to be utilized in your fiscal year 2000 budget submission?

Commissioner KELLY. Yes, sir, it should be. Obviously, the 2000 process has started already. But, hopefully, we can still have an impact with that report, which we anticipate being out the end of January.

Senator GRAHAM. I would encourage you to do whatever is necessary in order to get that report completed so that it can influence the fiscal year 2000 budget. To do otherwise, is to put off almost 24 months from now the opportunity to have the benefit of that analysis in terms of adequate and adequately deployed resources.

Commissioner KELLY. Yes, sir.

Senator GRAHAM. Second, as you have indicated in the previous questions, a significant amount of the Customs' resources are coming from user fees for a variety of purposes. Are you satisfied that the user fees are being directed at the purposes for which the user fees are initially imposed?

As an example, in the cruise industry there has been a concern as to whether the user fees that it pays for Customs and other port enforcement measures are being used for those purposes, and increasingly the enhanced number of passengers that are utilizing their ships?

Commissioner KELLY. I have no reason now to think that it is not, but I will certainly look into that matter, Senator.

Senator GRAHAM. Is that going to be part of this study that you are undertaking?

Commissioner KELLY. It can be. We are still meeting with the contractor, so that can very well be. There is an issue of, as you know, attempting to get some COBRA fees to enhance some pre-clearance positions, and also to do enhanced clearance of cruise ships. There has been a proposal of an additional \$2 fee to be charged to allow that to happen. That is apparently being proposed for fiscal year 1999.

Senator GRAHAM. I personally believe there is an appropriate role for fees to be paid as part of supporting these activities, but a fee infers that it is being collected in order to conduct an activity which is relevant to those persons who are paying the fee. That is the basic distinction between a fee and a general-purpose tax.

So, it is important for Customs and other border enforcement agencies to be able to establish that, in fact, those funds are being utilized for the specific purpose for which the fee is being collected.

Commissioner KELLY. Yes, sir.

Senator GRAHAM. One of the targets of the legislation that Senator Grassley and I have developed relates to internal conspiracies at sea ports. There have been a series of newspaper articles and indictments by U.S. attorneys of persons at sea ports who have past criminal records and are engaged in drug trafficking.

Do you think that there should be some Federal control over who can be employed in sensitive areas at sea ports, areas that would put them in a position to possibly compromise our enforcement efforts?

Commissioner KELLY. Well, there is no question about it that internal conspiracy is a major problem, particularly in your State, sir. There may be a way of doing better background investigations, perhaps having Federal law enforcement involved in that.

It is something that I would like the opportunity to examine, but it is a problem, and it is an increasing problem. So, we have to do something about it, and we certainly appreciate your efforts in the proposed legislation to address it with additional personnel.

Senator GRAHAM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Rockefeller?

Senator ROCKEFELLER. Mr. Chairman, we are just completing panel one, we still have panel two to go, and I am very anxious to get to Sue Esserman. So I have a couple of written questions that I would like to submit for the record, one having to do with import data collection, the speed of that as compared to other countries, another on a duty drawback issue, which I would like to put to our witnesses. But I would like to do that in writing so as to save some time.

The CHAIRMAN. Thank you. The record will be kept open so that members of the committee can submit questions in writing. We would appreciate your response.

Senator MOYNIHAN. Mr. Chairman, may I have one brief question of the Commissioner?

The CHAIRMAN. Absolutely.

Senator MOYNIHAN. Commissioner, how do you like your new quarters in the Ronald Reagan and International Trade Building?

Commissioner KELLY. I love it. [Laughter.] Great building.

Senator MOYNIHAN. Thank you.

Commissioner KELLY. I do not know who had anything to do with it, but it is great. [Laughter.]

Senator MOYNIHAN. There you go.

Commissioner KELLY. Terrific. Thank you, Senator.

The CHAIRMAN. Commissioner Kelly, there is one final question or comment I would like to make. In a few minutes, we are going to hear from a number in the private sector. One of them talks about cooperation between the private sector with the Customs in working together to prevent the illegal importation of narcotics.

It is a very interesting example of what can be accomplished, apparently, by the private sector working with the Customs. It says, "From the late 1980's to the present, we have worked closely with

the many professionals of the U.S. Customs Service to define and redefine our procedures, techniques, and practices to ensure the integrity of our international cargo.”

It sounds to me that this is a very promising approach, and I would be interested in whatever comments you may, either now or later, care to make.

Commissioner KELLY. Sure. Customs is working very closely with the industry in this regard. There are two programs that Mr. Johnson mentioned, the Carrier Initiative Program and the Business Anti-Smuggling Coalition, which is focused pretty much on the border. They have been very productive, very helpful. They have been helpful to businesses as well because it has reduced their exposure for penalties and fines.

So, I certainly intend to keep moving in that direction. I mentioned in my prepared remarks that 43 percent of the cocaine that we seized was a result of information coming from the trade community. So, I think it is working. Let us see if it can work even better.

The CHAIRMAN. Well, I would urge your doing exactly that. I think it is important that we try to better utilize cooperation between the private sector, and I would be interested, from time to time, to see how this is developing.

Commissioner KELLY. Yes, sir.

The CHAIRMAN. If there are no further questions, again, thank you, gentlemen. It is always a pleasure to have both of you here. We look forward to working with you as the legislation proceeds.

Secretary JOHNSON. Thank you, Mr. Chairman.

The CHAIRMAN. Our next panel consists of a former Commissioner of Customs, as well as three representatives of the export-import community.

Our first witness is Hon. George Weise, a former Commissioner of the Customs Service, who is currently a principal with Washington Counsel. He will be followed by Mr. Jerry Cook, the vice president for International Trade for Sara Lee Knit Products. Our third witness, is Mr. James Phillips, the executive director of the Canadian-American Border Trade Alliance. Our final witness, is Mr. Ron Schoof, the vice chairman of the Joint Industry Group, and administrator of Corporate Traffic for Caterpillar.

Gentlemen, it is a pleasure to welcome you. Commissioner Weise, we will start with you, please.

STATEMENT OF HON. GEORGE WEISE, FORMER COMMISSIONER OF CUSTOMS, WASHINGTON, DC

Mr. WEISE. Thank you very much, Mr. Chairman, Senator Moynihan, and the entire Senate Finance Committee. I am very honored to be here in my new capacity as a private citizen.

As I indicated in my full statement, which I would ask to be submitted in its entirety for the record, I am not here on behalf of any group, but I have spent much of my life in and around Customs and I appreciate the opportunity to speak to you from the heart, shall we say, about that organization that I spent so much time in and around.

I will start by saying that I am very pleased with the direction that Customs has been taking since my departure 1 year ago, just

about 1 year today, and I wish to commend Acting Commissioner Sam Banks for the outstanding job that he did over the interim period, and commend this committee and the President for putting in someone like Ray Kelly to carry on the tradition. I think he is an outstanding leader and he is the right person for that job.

Clearly, I have now been 1 year removed from my position as Commissioner, so I am not going to attempt to get into a lot of the detail of Customs' budget request. But I think I do have rather a unique perspective, because not only have I served as Commissioner of Customs, but for 9 years I served, as you know, on the Ways and Means Committee as the principal staff person that worked in overseeing Customs. I actually started my career as an import specialist in 1972 with Customs. So, much of my life has been devoted to Customs issues.

My feeling is that Customs is an outstanding agency with great leadership and outstanding people. But what Customs needs is more help, more assistance, and more support from the Finance Committee and from the Ways and Means Committee to actively engage with Customs on these issues.

Senator Moynihan made reference to the fact that this drug enforcement is perhaps being given a lot of the play now as Customs' primary mission. As many of you know, during my 4-year tenure as Commissioner we worked very hard. My background was primarily commercial.

People characterize you when you assume the position of Commissioner, before you even take the seat, that this is going to be a facilitative Commissioner as opposed to an enforcement Commissioner. They have already made the judgment with Mr. Kelly. He comes from a law enforcement background. He is going to be the enforcement Commissioner.

But I will tell you that I strived very hard in my 4 years as Commissioner to be a balanced Commissioner. In the actual amount of time that I spent on the job, I would say that more than 60 percent of my time was dealing with enforcement issues rather than commercial issues because that was not what I knew. I had a lot more to learn in that area and I had to devote to it an awful lot of time and attention.

I made probably almost 30 visits to the southwest border. I can very much relate to Senator Gramm of Texas' remarks about the very stresses that we are having there, and Senator Bob Graham, in the problems that we are having with internal conspiracies. I did everything I could to kind of get out into the field and get a sense and a feel for these real issues.

I think it is a mistake for people to characterize Customs as either a facilitative organization or an enforcement organization. One of the things that troubled me the most, is that I was heavily criticized publicly, a number of newspaper articles and others, saying that I was working too closely with the business community and shirking my responsibilities in the drug enforcement area.

I think that was an unfair characterization, because I think it is logical, and it makes sense, and I think the results actually demonstrated, that the more you work with the legitimate business community through a spirit of partnership and initiatives like the

Business Anti-Smuggling Coalition, the Super Carrier Initiative, you actually work to improve the commercial compliance.

What we were able to do in the 4 years that I was Commissioner is begin to measure the performance results and we saw an increase in commercial compliance because we worked more closely with the business community.

What that allows you to do, is to take these tight resources—and the resources got tighter, and tighter, and tighter during my 4-year tenure—and as you get that working relationship with the legitimate business community, you can really go after—there are people out there, and we all know it, that have no intention of complying with the law, from the drug smugglers to the commercial fraud.

There are people out there in businesses that do not want to comply with the law. In order to really focus on that, you have to make sure that you are working in close consultation with the legitimate business community that does intend to comply with the law. That is what we attempted to do.

I guess now that I am a private citizen we could perhaps get into some discussions about this budget process. Clearly, I was frustrated that I preached to my folks that, we have very tight budgets. Government is shrinking.

The organizations that are going to get ahead in this kind of a budget environment are the organizations that can demonstrate, through measurable performance results, that they are acting more efficiently and more effectively.

We undertook a complete restructuring and reorganization of the Customs Service. We eliminated two intermediate layers, regions and district offices. We shrank the size of headquarters. We did everything we could to reinvest more resources in the front lines, in the field.

Unfortunately, throughout that period of time our budget started shrinking in real terms, although they would stay the same in actual terms. But in real terms, they shrank by about \$100 million over the course of my 4-year period, which meant that a lot of our intended reinvestments through the savings of reducing the regions, districts, and headquarters that we intended to reinvest into the front lines, they were absorbed in inflationary factors and we did not have the resources to reinvest.

You are going to be hearing from other witnesses about the stress and strain on the northern border. We talk an awful lot about the southern border. The northern border has not been increased in resources since 1980.

The volume of trade. Commissioner Kelly has already talked about that. From 1970 to 1990, the volume of trade doubled. It is expected to double again by 2010, and we already saw the 45 percent increase since 1994. Customs' resources are shrinking.

This is particularly frustrating. We won 28 Hammer Awards from the Vice President's National Performance Review in terms of management efficiency and effectiveness. I preached to our folks in the field, if we act more efficiently, more effectively, if we perform, we will be rewarded in the budget process. We were not.

An organization that works side by side with us, the Immigration and Naturalization Service—and I am not going to say anything negative about their performance—their budget was virtually the

same as the Customs Service budget in 1993 when I took office. When I left, their budget was virtually double that of the U.S. Customs Service.

As the border patrol, rightfully so, got more and more resources devoted to them, as strength came between the ports of entry, what we saw is an increase in pressure at the ports of entry. We saw a quadrupling of instances of what we call violent port running, where vehicles would drive up to the port of entry on the southwest border, and when an inspector said, would you please open your trunk, instead of doing so they hit the accelerator, go through the port at very high speeds with weapons in hand. We saw people hurt. That was happening because we were not getting a consummate increase in Customs resources at the time the resources were strengthening between the ports of entry.

In conclusion, Mr. Chairman, I know I have reached over my time. I would be glad to get into discussion in terms of questions and answers.

I think this committee really needs to engage, because I get frustrated when I read in many, many newspaper articles that the Customs Service is currently under siege by "the Congress" because they have devoted too many of their resources to the commercial side and not enough to the enforcement side.

I think your voices are not being heard, largely because I think the business community voice is not very loud right now because we have worked very hard to try to form those partnerships.

I think it is a positive direction that needs to continue. I think the Finance Committee and the House Ways and Means Committee needs to be very much engaged to give this Customs Service the resources they need.

A lot has been talked about in terms of the Automated Commercial Environment. That is absolutely essential for the Custom Service's future, not only for them, not only for their viability both in the commercial sense, but also in the enforcement sense, but to the business community that interfaces with Customs. If we do not act sooner than later, that system is going to collapse and it is going to cost an awful lot more to try to fix it in the future.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Weise appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Weise.

Mr. Cook?

STATEMENT OF JERRY COOK, VICE PRESIDENT FOR INTERNATIONAL TRADE, SARA LEE KNIT PRODUCTS, WINSTON-SALEM, NC

Mr. COOK. Good morning, Mr. Chairman and distinguished members of the Senate Finance Committee. I am the vice president of International Trade for Sara Lee Knit Products, a division of Sara Lee Corporation, and serve on the U.S. Treasury Department's Advisory Committee on the Commercial Operations for the U.S. Customs Service.

I appreciate this invitation, and I hope the Chairman would accept my entire written statement for the record, and I will summarize my statement.

The CHAIRMAN. All of your statements will be included in their entirety.

[The prepared statement of Mr. Cook appears in the appendix.]

Mr. COOK. We are the largest branded apparel company in the United States, with brands known as Hanes Her Way, Hanes, Bali, Playtex, Wonder Bra, Champion, and Legg's. Sara Lee is also one of the largest consumers of U.S. cotton, U.S. fiber, and U.S. fabric. Our success is directly related to our ability to achieve customer satisfaction worldwide.

The interdependence on international trade is critical to both service and access for our customers on a timely basis. By far, the most important role of the U.S. Customs Service is the interdiction of illegal narcotics in the United States. I believe the private sector must, and should, play an important role in discouraging the illegal importation of narcotics into our country.

Our efforts extend beyond the U.S. border as a company and include an integrated partnership with our operations abroad, as well as our logistics partners. As a result, our carriers have increased their operational effectiveness and have taken concrete and preventative measures as a condition of our future use of their vessels, their services, their aircraft, and their trucks. We want to especially acknowledge the many dedicated professionals that have assisted us from Customs in improving our processes and procedures.

In addition to this Customs and private sector partnership, we also suggest, in a looking-forward approach, that Customs engage in the use of smart technology which can assist in the battle against illegal drugs, and yet facilitate trade along our borders.

I am encouraged in the continued use of selective enforcement and in focusing on the most likely targets based on the origin of the cargo, mode of transportation, likely ship points, and the carrier.

Finally, Customs must continue its efforts to automate its processes, as well as examine the minimum data elements associated with a shipment to be admitted into the United States. This is critical for not only enforcement, but for the commercial facilitation purposes. We support continued funding for the advancement of automation of the Customs process.

The MOD Act introduced significant change on how the private sector interacts with the Customs Service. If appropriate compliance is achieved, companies can benefit from increased efficiencies in the movement of goods. This is a similar process to us, as the IRS focuses on a single tax return as opposed to each individual transaction.

Central to the commercial enforcement, however, is the classification of goods under the U.S. Harmonized Tariff Schedule. Unfortunately, classification has become an art and not a science. With over 25,000 possible classifications, a reasonable person may, with informed compliance and reasonable care, still differ on the appropriate classification of a product.

Moreover, specifically in the apparel industry, proper classification is not only a matter of paying the right amount of duties, but also governs the sheer admissibility of our merchandise under the many bilateral and quota arrangements with foreign countries.

Given the complexity of tariff classifications and with so much riding on the proper choice, importers are increasingly seeking timely advice and guidance from the Customs Service.

In order to respond to this, we have a couple of suggestions. One, the U.S. should take a leading role to simplify the Harmonized Tariff Schedule through the WTO, as well as the World Customs Organization. In addition, we support the dedication of additional resources by the Customs Service to facilitate proper classification of merchandise.

Another area that is critical for the business community is the full implementation of the reconciliation process. Today, this reconciliation process is still in transition and we would encourage the devotion of appropriate resources to fully implement reconciliation and a national entry processing.

In closing, I want to emphasize that the role of U.S. Customs to enforce and facilitate commerce operations are not mutually exclusive. The growth of the international trade, production sharing, increased consumer service, along with rapid technological changes, have permanently altered the horizon for U.S. Customs.

Finally, I would like to take a special note, Mr. Chairman, to your leadership in the Senate Finance Committee's favorable action on the much needed Caribbean Basin trade enhancement legislation, and we are hoping to see a successful passage this session.

I appreciate the opportunity to present my views to the committee and welcome your questions.

The CHAIRMAN. Thank you, Mr. Cook.

Mr. Phillips?

STATEMENT OF JAMES PHILLIPS, EXECUTIVE DIRECTOR, CANADIAN-AMERICAN BORDER TRADE ALLIANCE, LEWISTON, NY

Mr. PHILLIPS. Good morning, Mr. Chairman, Senator Moynihan, and the committee. I have also submitted full testimony with charts and graphs and assume it will be a matter of the record.

The Canadian-American Border Trade Alliance is a trans-continental binational organization. Participants represent 60,000 companies and organizations.

A key basic fact: the number of U.S. Customs primary inspectors on the 3,000 plus mile northern border in 1998, less than 900 men and women, is the same number as in 1980. West Point is known as the long gray line. With their blue uniforms, U.S. Customs on the northern border is the strained and stretched long blue line.

U.S. Customs workload indicators, very quickly. U.S.-Canada trade, largest in the world, doubled since 1989 to \$387 billion; \$40 billion in trade crosses the northern border every hour to all 48 States. I have included some two-way trade from each State represented on the committee in my testimony to give you an example.

Truck volume. Crossing is growing at 11 percent a year nationally. Sixty-two percent of all trucks cross the northern border. Eighty-five percent of all trains cross the northern border.

Total entry summary is growing at 11 percent a year. From 1980 to 1997, on the northern border, entries increased sixfold, with the same staff. Forty million passenger vehicles crossed the northern border, one-third of the U.S. total. One hundred and 12 million

passengers and pedestrians, 25 percent of the U.S. total, has doubled since 1989.

Nationally, narcotics seizures are growing at 16 percent a year, with most on the southern border. However, several factors indicate increasing threat on the northern border, and I have described those in my testimony.

Since 1990, when Michigan and New York bridge and tunnel infrastructure plazas servicing 70 percent plus of the U.S.-Canada trade and traffic were constrained, operators have spent \$750 million for additions and improvements. May I add, no tax money or public funds were used.

They are in place. The Rainbow Bridge is a prime example in Niagara Falls, New York. They have doubled the primary lanes in the U.S. to eliminate choke points and service new casino gambling traffic increases. No new Customs inspectors were provided, so essentially today the new capacity is unused and congestion and traffic delays continue to mount.

At northern motor crossings in Washington, Montana, North Dakota, Minnesota, Michigan, New York, Vermont and Maine, one-half of the existing lanes, in total, are not operating due to lack of specific Customs inspections.

I crossed the Detroit-Canada tunnel last Wednesday both ways. Eighty percent of the lanes into Canada were operating, 40 percent of the lanes into the U.S. were operating, and cars were backed up on our side.

The northern border embodies 40 percent of the total ports and crossings, has 14 percent of the currently deployed inspectors who perform 33 percent of the national Customs workload. We have talked earlier about the much improved inter-government agency cooperation that has occurred. We have more to do.

Quantum leaps have been made in technology. I would just caution you that the funds needed to deploy these technology developments have heretofore not been available. Customs has dual missions, the enforcement interdiction and facilitation. We should not compromise either/or.

Customs is continuing. I do not have to sit here and give you a message of what one wants to hear, I guess, or I do not intend to. There are lose-lose choices being made every day on the facilitation side of Customs. They do not have enough inspectors in place.

They do a wonderful job with what they have to work with. They have done yeoman duty, I cannot describe, but they do not have enough to work with. Every day, truck lane versus passenger car lanes. We close both kinds of lanes when I have a seizure and I have got to put people on the line.

Annually, Customs collects approximately just under \$20 billion. I just might note, their total budget is eight cents on the dollar, and it is too bad that duty cannot be applied to collection costs.

As far as recommendations, I have interacted with Senator Gramm's staff on his excellent initiative, S. 1787, to increase appropriations for U.S. Customs. I have worked closely with Senator Abraham on S. 1360, and Congressman LaFalce on the companion bill, H.R. 295.

The proposed 1,705 new Customs positions on the northern and southern border, and equipment in these bills, are legitimate, cost

effective, and required, and the Canadian-American Border Trade Alliance strongly supports them. The \$48 million of equipment dollars in S. 1787 are specified for the southern border, while S. 1360 states "land borders."

The southern border needs the specified equipment. However, there is also an acute need for funds for equipment on the northern border. I suggest increasing the proposed funding level to meet both of the borders' needs.

If asked, I am sure Customs can quickly quantify the minimum amount the northern border actually requires. I would venture it is about \$20 million, in addition to the \$48 million for the southern border.

The increase in funding in S. 1787 of \$200 million a year, or \$220 million for the first year for the northern border if equipment is added, is cost effective and will generate needed results. Every additional narcotics seizure is an avoided threat of our citizens, especially our children, and to interior law enforcement.

Cost-effective cargo processing and minimizing delay time for the trade community is an investment to increase legitimate trade activity and volume, directly improving the economy while ensuring identification and collection of property duty. I fully support the S. 1787 initiative.

Just one final point. While Section 110 of the 1996 IIRIRA legislation is not in itself a subject of this hearing, it is relevant to state that the proposed additional staffing required and provided for in Senator Gramm's bill, and INS staffing in Senator Abraham's bill, will far more effectively deter potential and real terrorist narcotic and illegal alien activities than Section 110 will ever do, while avoiding the logistic nightmare and border gridlock which Section 110 in its present form will call.

My point here is, both the southern and the northern border need the additional proposed staff. They are, frankly and truthfully, under-staffed as we sit here today. Thank you very much.

[The prepared statement of Mr. Phillips appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Phillips.

Mr. Schoof?

STATEMENT OF RON SCHOOF, VICE CHAIRMAN, JOINT INDUSTRY GROUP, ADMINISTRATOR OF CORPORATE TRAFFIC, CATERPILLAR, INC., PEORIA, IL

Mr. SCHOOF. Good morning, Mr. Chairman and distinguished members of the Senate Committee on Finance. My name is Ron Schoof. I am responsible for the Customs and export compliance at Caterpillar, Incorporated in Peoria, Illinois, and I am also vice chairman of the Joint Industry Group.

We are a coalition of about 130 Fortune 500 companies, individuals, and other trade associations that are actively engaged in international trade. We also enjoy a good and close cooperative relationship with the U.S. Customs Service and engage them on many issues.

I would like to relate to you the position of the Joint Industry Group, or JIG, as we are known by, on several of the oversight and authorization issues before you today.

First, on the Operation Brass Ring, the Joint Industry Group actively supports Customs' dual mission of promoting cross-border trade facilitation, while at the same time preventing entrance of illegal individuals and goods.

Several of our member companies have commented that the cross-border shipments have not faced overly burdensome and costly delays at the border due to Operation Brass Ring.

We applaud the continued use of new and innovative technology to perform this responsibility and, on behalf of our group, request the committee to fully support funding for the use of this technology. By working in a partnership, Customs and the private sector can make a difference.

Next, the JIG also would like to express cautious optimism about the ACE reconciliation prototype interest rate calculation that is before you. Customs has presented draft language to the Finance Committee and the Ways and Means Committee which gives the Treasury Department authority to promulgate regulations for an interest accounting method based on aggregate date rather than entry-by-entry basis. The Joint Industry Group looks forward to supporting any reasonable approach Customs may develop.

Then a subject dear to our hearts, and that is automation and automation funding. The Joint Industry Group has been an ardent supporter of the Customs' automation efforts and a major force behind the drafting and Congressional approval of the Customs MOD Act in 1993, which ushered in a new era of shared responsibility between the government and business.

In return for industry to accept more responsibility in ensuring that imports and exports comply with Customs' regulations, Customs promised that trade facilitation and enforcement would be enhanced through the creation of an automated system.

While industry has kept its part, Customs has been slow in establishing an automated system that is compatible with the needs of industry. Now the administration wants industry to continue to fund its failure to conform to the MOD Act stipulations by increasing the merchandise processing fee. Customs estimates that it will take over \$1 billion over the next 5 years to develop and implement an automation system.

However, budget requests for this administration over the past 4 years of less than \$50 million to meet this demand indicate that the administration is not serious about meeting its MOD Act responsibilities. Even adding the estimated \$50 million that the increase in the MPF will generate, it would take over 20 years to fund this new system.

The current system is 15 years old, as we heard today. How many of us are using a 15-year-old system in our offices? It is out of date. The volumes are increasing faster. There is a serious concern in the industry today, if it breaks, we are unable to move freight through our ports. So, for all reports, the status quo is not an option.

I think, just in the discussions before this committee, the amount of time that is spent on drug versus this automation program points to the fact that the emphasis within Customs has been on the drugs and not on the automation.

Going on, the MPF. We have discussion in our submitted report as to whether it is a user fee or a tax, and I would refer you to that. But one of the things that I would like to say, is that most of the MPF goes into the general fund. It is not earmarked for automation or for the processing of entries.

Currently, the current structure of the MPF is against the MOD Act efforts because it is based on a transaction basis and not on an account basis. So, that needs to be looked at by the committee because it is, in fact, holding back the automation implementation that Customs is trying to do, especially in the foreign trade zones.

Our recommendation from the Joint Industry Group is that a portion of the existing fee be allocated to the automation enhancement. The amount for fiscal year 1999 should be at least \$50 million, with increases for each year for the following 4 years, to provide the \$1 billion needed.

Such funding should come with ropes or cables attached, not just strings. Congress must be fully satisfied that any Treasury/Customs architectural plan for the new electronic system will meet the needs of both government and industry for the 21st century.

In addition, the \$50 million currently budgeted for Customs automation should be appropriated as soon as possible to allow them to continue on with the automation program. Customs is beginning to ask the industry to participate in the development of programs, and we have submitted our letter, and apologize that it came over late, from the Automation Committee to Customs giving our support for that.

We have also included in our written testimony some milestones that the committee could use to judge Customs on their efforts to automate and move the program along. One thing. I think the original estimate or the original timeframe for the automation of the ACE program implementation was this year. Now, we are looking at three or four more years down the road.

So, in conclusion, we would like to say that we would continue supporting the drug interdiction efforts that are on the borders and we do not support the increase in the merchandise processing fee, but take a portion of it that is already there that is going into the general fund, apply it to the automation process, and require Customs to reevaluate the automation goals and steps required to achieve them, including funding.

Thank you for giving us the opportunity to be before you today. Thank you.

[The prepared statement of Mr. Schoof appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Schoof.

Both you and Mr. Cook, in your testimony, talked about cooperation between the Customs and the private sector. What could we do, as the Customs Service authorizing committee, to foster additional programs of this sort between Customs and the U.S. business? Mr. Cook?

Mr. COOK. Well, I certainly would recommend we look at the model that started under former Commissioner Weise, and that is to meet with the industry at the ports where you are coming through and openly discuss issues.

For the first time, Customs had a very lengthy conversation with the experiences we were having at our foreign ports and foreign op-

erations, leaving those countries and entering into the United States.

They have a series of knowledge and experience that we were devoid of, and found that the use of acquired technologies and the implementation of smart technologies, like the x-ray devices on the southwest border, being expanded to all ports would be a great facilitation.

I think the other piece is a true demonstration by the Customs Service that they are not in an out-to-get-you mode, but in a true partnership to work with you and to jointly stop the importation and shipments of drugs. As a company, we see it not just as a narcotics issue, but is a safety issue and a security issue of our overall cargo.

The other area that would be very helpful, is in the reducing of the access of information about our shipments, and keep it on a confidential basis between the company and the U.S. Customs Service, as well as restricting who has access to your cargo from the time it leaves its origin point to its destination.

The CHAIRMAN. Any further comment on this? Mr. Weise?

Mr. WEISE. The only thing I would add, is I think you do not have to do much persuading of the Customs Service to continue in this direction, but I think they need reinforcement that this is something that this committee approves of. As I said before, a lot of what appeared in the press was a tax on us getting too close to the business community. You were not hearing much in terms of opposition from the business community, so there was not the reinforcement that was continuing.

I think, as long as this committee finds a way to reinforce it, that is an expectation that you have of the Customs Service to continue to find ways to work in partnership with the business community, not just to be good friends, but to show improved performance results, both in the commercial arena as well as in the drug arena, and hold them accountable. I think that is an important message that needs to be reinforced.

Mr. SCHOOF. Mr. Chairman, let me offer just one brief comment on that. I would like to offer the Joint Industry Group. We have an automation committee that is chaired by Mr. Lane, a former member of Customs, that we could try to put together a coalition of industry that could work with Customs and provide information, guidance, and also feedback to this committee on how that process is going.

We have done this. Customs has done this with smaller types of programs, the drawback, and recently the ACE program where they have done some interest-based negotiating. I think we could do something like that. I would just put that out as an offer.

The CHAIRMAN. Well, I agree with you. I think this can be a very important initiative. I think we should increasingly rely on the private sector. We do on their paying taxes, why not tariffs?

Mr. SCHOOF. Right.

Mr. PHILLIPS. I come from the border facilitation side and, again, would echo Mr. Cook's comments, that the talking with people at the border, the operators, the transportation providers, the real world of both sides is done on open communications and is very

positive. We, again, would offer ourselves as a forum to do just that, and it is being done now at the border ports.

The CHAIRMAN. Let me ask this question. What can be done to simplify either the harmonized system or the ruling process at Customs to alleviate the problems U.S. importers face. Mr. Cook?

Mr. COOK. I would highly recommend that I think it really needs to start above the Customs Service. I would hope that the Senate Finance Committee would be the accelerator. The HTS continues to expand rapidly. Some people would argue that it is primarily for statistical collection, and I would question the value of the additional statistical information versus what the consumers ultimately are having to bear with our shipments, and companies, and Customs.

Often, and a good example is on tee shirts. A tee shirt can be in three different Customs categories and it creates a series of issues just to import a simple tee shirt into the United States.

So, overall, a compression of the HTS, then a dedicated Customs process that expedites the binding rulings and the preclassification process to under 15 to 20 days to help importers understand and have a good resource to draw from.

The CHAIRMAN. Any comment, Mr. Weise?

Mr. WEISE. Other than to say, there is an absolute need for this. Unfortunately, we are somewhat constrained in that we are a participant in the Harmonized Systems Code, which means that we have to negotiate with all of our trading partners. But there are many sections of the existing code that are virtually obsolete as far as U.S. interests are concerned.

One example, is in the watch section of the tariff. It goes on for pages, and pages, and pages making distinctions which are relating to movements of watches. There are virtually no watches with movements any more, they are almost all digital.

So, there is a clear need to reexamine the tariff structure and condense, consolidate, and simplify, but it would need to be an international effort.

The CHAIRMAN. Mr. Phillips, one question for you. Given the increased flow of illegal narcotics between Canada and the dramatic increases between legitimate trade between Canada and the United States, what help can we expect from Canadian Customs, both in terms of enforcement and commercial operations.

Mr. PHILLIPS. I think it is very important to note the Canada-United States shared border accord that was commenced in 1995. This is truly a paradigm shifting initiative and is essentially required. It allows for the full exchange, cooperation, shared equipment by one x-ray machine at the port, and let the Canadians use it one way and the Americans the other, and even joint facilities, as is going on in Coot-Sweetgrass right now. A very, very critical breakthrough. The cooperation between the Canadian and U.S. agencies is extremely high.

Again, I want to point out, George Weise and Doris Meiser did more for U.S. Customs-INS cooperation in the last 2 years of George's tenure than the 20 years before that.

So, things are going in the right direction, but there is lots to be done. Canadian cooperation is very high. We have the same inter-

ests. There is nothing conflicting, so it is very high and working very well.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Thank you, Mr. Chairman. That was good to hear, Mr. Phillips.

For what it is worth, on the first day of the consideration of the U.S.-Canadian Free Trade Agreement, at the end of the day we had three votes in favor of the agreement. The next day, on a tie vote of 10 to 10, the motion to reject it failed. That is how close we came to missing all of that wonderful activity that you described.

Mr. Chairman, I have two things. It is about time we had an oversight hearing. The Lewiston-Queenston Bridge. Senator Gramm spoke of the bridges across the Rio Grande that just are not working half the time for lack of Customs agents. I assume that is the point. We have the same thing on the Niagara River.

Mr. PHILLIPS. Yes. As you know, the Peace Bridge, just to mention another one which you and Senator D'Amato are very interested in, normally there, 65 to 70 percent of the booths are closed continuously. Frankly, we open 4 or 5 lanes when we have 20. Customs is under-staffed in the inspection categories at the southern border, and the northern border as well.

You have 500 inspectors at the JFK Airport in New York alone, required. Five hundred at JFK Airport today. We have 900 on the entire U.S.-Canadian border.

Senator MOYNIHAN. Wow!

Mr. PHILLIPS. Does that mean the airport is over-staffed? No, it does not. The U.S.-northern border is under-staffed, pure and simple.

Senator MOYNIHAN. That argues for attention.

Mr. PHILLIPS. The budget support, because of higher priority issues in some instances, has not allowed the Customs staff to have the required assets.

Senator MOYNIHAN. Mr. Commissioner?

Mr. WEISE. If I could make a point on this, Senator. One of the problems in that regard is the law as written. We had what is called a passenger user fee which, by law, is paid by passengers, but by law must be reinvested into resources in terms of inspectors at airports. So you will find that the Customs Service has ample resources at every airport in the country.

The problem is, we are not able, under the way the law is written, to take one inspector out of an airport and put them at a border crossing or in a cargo area, because it would be a violation of that law.

The problem you have, and it relates to Senator Gramm's point, we have a Customs "user fee" that relates to commercial operations. It does not go to Customs at all, it goes into the general treasury.

We have a passenger user fee at airports that really is a user fee that Customs can reinvest in the resources, and the people who are paying the fee get a benefit out of it. It does not work that way on the land borders or in the commercial cargo arena. That is why Customs is so strapped in those arenas and has ample resources at airports.

Senator MOYNIHAN. Well, Mr. Chairman, this commands our attention. I noticed that the MOD Act, Mr. Schoof, I believe that is the Customs Modernization and Informed Compliance Act.

Mr. SCHOOF. Right.

Senator MOYNIHAN. It is Title 6 of the North American Free Trade Agreement Implementation Act, which passed out of this committee in December of 1993. We are behind schedule. Is it because we are always behind schedule, or is it, again, resources?

Mr. SCHOOF. Well, I think in one area we are behind schedule, and that is Customs' automation implementation program.

Senator MOYNIHAN. Yes. Yes.

Mr. SCHOOF. I commend Customs for the compliance issues and rewriting the regulations that were in that act. Customs has done an admirable job in informing the industry of compliance. I think industry has responded. Commissioner Kelly said earlier that the compliance rate is up. The area that has been lacking is the automation program in Customs. I think we can look directly at the funding for that.

Senator MOYNIHAN. I think that has to be a matter of resources.

Mr. SCHOOF. Right. That is our comment. The merchandise processing fee does not go for processing merchandise, it goes in the general fund. We are saying, take that money that is there and put it towards automation.

Senator MOYNIHAN. Because it ends up with the economies that come with efficient border trade transfers.

Mr. SCHOOF. Right. Right. And just the small fee that is asked for the increase, we are saying no. But even just if that was the only part that was earmarked, it is years, and years, and years to even pay for it.

Senator MOYNIHAN. Well, sir, I think we have an agenda here. I thank you all very much. This is enlightening. I do want to thank Mr. Schoof, too, for saying that the primary mission of the Customs Service is to collect tariffs and facilitate trade.

Mr. SCHOOF. Correct.

Senator MOYNIHAN. And piling other, more newsworthy purposes can interfere with the primary mission.

Mr. SCHOOF. That is right.

Senator MOYNIHAN. But do not tell anybody I said so. [Laughter.]

Mr. SCHOOF. Not a word.

The CHAIRMAN. We will not quote you.

Senator MOYNIHAN. Thank you, gentlemen, very much.

The CHAIRMAN. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

I know in the last few years, the Customs has been aggressive, I think under Mr. Weise's administration, particularly in trying to do things external to the United States that would facilitate the customs flow once it crossed our border.

I am thinking of things like the safe harbor provisions for airlines and the advanced filing of information on what was going to be in the cargo hold of an aircraft coming into the United States.

Could you comment as to how effective you think those measures have been, and are there some other opportunities for external clearance that would facilitate the work at our U.S. ports of entry?

Mr. WEISE. Absolutely, Senator. In the air passenger arena, we have been very proud. We tried to reach a goal of having 95 percent of the passengers clear within 5 minutes' time of arrival, which is a very challenging goal, but to do so in a way that would enhance our effectiveness in terms of doing our enforcement mission as well.

We did accomplish that. Our seizures went up over the time period that our timeframes went down, and the only reason we were able to do that was by working cooperatively with the airlines and some of the foreign governments.

What happened is, before the airline passenger even got on the airplane, we had an awful lot of information relating to that passenger in terms of what his or her itinerary had been, what countries they had visited, whether they paid with cash or credit card, a whole host of factors that allowed us to take a look at the passenger list and decide that they were a smaller group of the total universe that we would like to have some additional time to spend with them.

In addition to that, then we put roving inspectors at the airport, many in plainclothes, and even had what we call passive canines, who would just mill around the passengers. The nice thing about these things, they were not aggressive dogs. If they smelled narcotics, they would just sit down right next to the spot where they smelled the narcotics.

All of those factors allowed us to meet that dual goal of facilitation and enforcement. Our enforcement results went up and our time of clearance went down. We need to reach out and do more.

The problem we have with that, is at this point—and I would need Customs to fill in the details—I would say only around 50 percent of our airline flights do we have that information on. We need to get it up to 100 percent so we can do an even more effective job, but we need to reach out and do similar programs like that.

Mr. COOK. Senator Graham, I would like to add one comment to that, in our working with Customs, in one of the countries in the Caribbean Basin that we were seeing a high level of drug insertion attempts.

The outcome of that in that main port was an agreement with the country's government that, when the vessels would arrive going back to the U.S and loading up our cargo, no other ships in the harbor would be allowed to be at port, to keep out any trawling vessel or fishing vessel nearby that sometimes loads drugs up on board, and were cleared out by that government.

In turn, the Customs Service helped us identify specific-type trailers to use, which included redoing the hinges and seals on trucks and sealing them with special paint and thin-skinned trailers so you could not insert drugs in the wall.

I think that led to a pretty successful implementation in the Port of Miami. That was followed up on the Customs' side in Miami by expediting the clearance and removal of the trailers off the ships so that people looking for the drugs on the ship level or on the dock's edge would not get access, because they greatly restricted anyone having access to the ship's area or to the cargo.

Senator GRAHAM. A final question. Mr. Weise, you referred to the difference in the way in which the user fees that are paid by air-

port passengers and those paid by general commercial cargo users were handled.

Is there any rationale, other than advantage to the Treasury, of having access to unrestricted funds, of treating airline passenger fees differently than the fees paid by commercial cargo users?

Mr. WEISE. Well, Senator, I was on the staff of the Ways and Means Trade Subcommittee at the time that both of those pieces of legislation were moving forward. In terms of the air passengers, it was obviously very controversial and airlines did not want to pay the fee. There was an awful lot of negotiation. They insisted that, if they were going to pay a fee, they wanted to see demonstrable improvement in service. So, they were able to sort of compromise and get the legislation through.

As far as the merchandise processing fee, there was similar discussion at one point, but then it became, since it was a much larger issue dealing with much larger revenue, frankly, it became very attractive as a source of revenue and there were some concerns that it was such a large component of Customs' overall budget that there were some concerns expressed by certain members of Congress that this is, in effect, circumventing the budget appropriation process and taking too much of Customs' operations off budget, so to speak, and worry about accountability. I think those were the issues that really related to that disparity that existed.

Senator GRAHAM. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Mr. Chairman, I think this has been incredibly important, and I think, particularly, the matters that Senator Moynihan has brought out about funding are pretty basic and kind of shocking and discouraging. I think his comments about the need for oversight are very, very correct.

I would like to make a special request of the Chairman. Five or 10 minutes ago, I was meant to start chairing a 2-hour hearing. I have an enormous interest in the success of the nomination of Sue Esserman. I am going to have to leave because I cannot abrogate this other responsibility, but I feel an equal responsibility to Sue Esserman, who I strongly support for many, many reasons, and from very much experience.

I have two questions that I would like to have asked her that I will not be able to, obviously, because I will have to go. I would request permission for Senator Graham, who has agreed, to ask those questions verbally.

I want to reiterate my thanks to the first and second panel, and also my very, very strong support of Sue Esserman. In fact, I was joking with the Senator from Florida that it has always been my practice to introduce Sue Esserman at the various government positions that she has held now for the last 5 years when she was up for nomination. But, unfortunately, she is from Florida, so I was preempted by my—

Senator GRAHAM. What was the word you used?

Senator ROCKEFELLER. I said, fortunately she is from Florida.

Senator GRAHAM. Fortunately. [Laughter.]

Senator ROCKEFELLER. Senator Graham has preempted what I consider my annual ritual right. So, if the Chairman would allow

that to happen, as well as allowing Senator Graham to ask whatever questions he might have, I would be very, very grateful.

The CHAIRMAN. We would be happy to do so, Senator Rockefeller.

Senator ROCKEFELLER. Thank you.

The CHAIRMAN. Now, Senator D'Amato.

Senator D'AMATO. Well, thank you very much, Mr. Chairman. I want to tell you, just briefly, the testimony I have heard seems to send a pretty clear signal that we have got to do a better job at the border crossings, with particular attention to the crossings on our northern border with our largest trading partner in the world, and the largest trade that exists, Canada.

So, I would like to ask both Mr. Weise and Mr. Phillips, if you might attempt to indicate, what can and should be done to facilitate the better flow of commerce, and what would it take, in your opinion, both of you being experts, both of you following this? How much in the way of resources would it take, and what, if anything, do you think the cost benefit factors would be?

Mr. PHILLIPS. I will take a quick shot, Senator. The positions proposed in the Gramm bill, S. 1787, are 375 inspectors for the northern border specified. That will open up the existing primary lanes at peak times. Of course, it also includes the 375 additional for INS. So, we need 750 inspectors on the northern border to open up the primary lanes. That will take care of the tourism and minimize the congestion of shipments.

Now, we also need to have cargo inspectors, which are included in the bill. So, I would say for the northern border, Senator, it is 375; probably about 500 inspectors in total, for cargo and primary inspection. The drug interdiction, the other 460, are an issue.

It also requires all of the support my colleagues here have talked about in computerization, ACS, cooperation. The physical cooperation and communication is excellent between Customs and the northern border operators. It needs the backup of the computerization, et cetera.

The 500 people, or at least the 375, are absolutely critical now to take care of the northern border. It is cost effective. The waiting times that are existing. The same is for the southern border. I am not opting the northern for the southern, both are needed, but focusing for you.

Senator D'AMATO. I want to get it specifically on the northern border because I think it is probably the most neglected because it is something we kind of take for granted, is it not?

Mr. PHILLIPS. It is hidden.

Senator D'AMATO. Yes.

Mr. PHILLIPS. I might mention, the other support that is very highly needed is the support of the accord on our shared borders. That has the potential of doing a great deal.

The change in the Canadian legislation, and hopefully U.S. legislation, that will allow Canadian officials to work on U.S. soil, and U.S. officials to work on Canadian soil at border crossing areas, where the laws of both countries can be enforced within the crossing area simultaneously, would be a great help to the northern border.

Senator D'AMATO. Mr. Weise, do you have anything to add? Mr. Weise, I am going to ask you to not only amplify on that, but maybe give us a cost estimate.

Mr. WEISE. Yes. Unfortunately, I have been a year out of Customs now and I do not have the resources available to give you an exact cost estimate.

Senator D'AMATO. I understand that.

Mr. WEISE. What I would suggest is that, in addition to the manpower, which I think is very important, and there is no question that Customs is under-staffed in terms of personnel on the northern border, but the technology is really important as well. I would reinforce what Mr. Phillips has said. This is outstanding cooperation.

As a matter of fact, you may or may not have realized, but the head of Canadian Customs was in the room earlier this morning. He was in town. He is meeting with Commissioner Kelly. He sat in for Mr. Kelly's testimony. There is good, strong cooperation there.

Among the things that we are looking at in the technology arena, is allowing for technology to allow us to use a computer lane, for example, of having a pre-registration of people that we do criminal background checks on in advance, having license plate readers that basically know that this is the person, even a fingerprint reading, to allow the gate to go up if this, indeed, is the person that it says it is, with some random spot checking.

We have to look at technology, as well as people, to resolve this problem. I really do not have the capacity, but I am sure you could ask the Customs Service today and they could quantify for you what the cost of these would be. But it has to be a combination of people and technology.

We cannot continue to look at our mission the way we did for the last 20 years. We are not going to be able to keep up with manpower. We have got to find new, more improved and efficient ways to do our jobs. That is, I think, what Customs has been trying to do and they need to keep working on it.

Mr. PHILLIPS. George and I have worked very closely in the past together when he was the Commissioner. I would say that the technology is absolutely critical. The people I am talking about are just to take care of today. They do not take care of tomorrow. The technology is absolutely critical. The U.S. is behind the Canadian effort on this pre-cleared, pre-investigated crossing for low-risk travelers.

Senator, that would be another thing. INS has the feeling that, by mandate, it has to look at every vehicle. So even when we have pre-cleared crossings at the Peace Bridge, as you personally are aware, the INS inspector still stands in the booth and says, good morning, instead of asking you questions. That is a reality. We have to get past that and move the paradigm. That is what has to happen.

Senator D'AMATO. Well, Mr. Chairman, let me join Senator Moy-nihan in thanking you for this hearing. It certainly has given me a little bit of a jolt to find out just where we are at in this. Maybe we can get some of our colleagues to join with us in seeing if we cannot deal with this important problem. It is important to our Nation's economy, being able to move goods and services and have our

constituents have the kind of flow back and forth that is going to be good for everyone.

So, I want to thank the panels and thank the Chairman.

The CHAIRMAN. Thank you, Senator D'Amato.

Gentlemen, I want to thank you for your very insightful testimony. I regret even having to call it to an end at this time, because I think it has been very valuable.

Senator MOYNIHAN. I think it is a good beginning, Mr. Chairman. We have learned some things we did not know.

The CHAIRMAN. That is correct. Thank you very much.

[Whereupon, at 12:15 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF JERRY COOK

Good Morning. My name is Jerry Cook. I am Vice President of International Trade for Sara Lee Knit Products. I also serve on the US Treasury Department's Advisory Committee on Commercial Operations of the United States Customs Service. I am chair of the Sara Lee Customs Council. I want to thank the Committee for this opportunity to comment on the U.S. Customs Services' authorization legislation and on the dual responsibilities of the U.S. Customs Service: enforcement and commercial facilitation.

Sara Lee Corporation is one of the largest importer/exporters of apparel, textile and food products in the U.S. Some of our apparel brands are: Hanes, Playtex, Bali, Wonder Bra, Champion and Legg's. Sara Lee is also one of the largest consumers of US cotton, US fiber and US fabric. Our success is directly related to our ability to achieve customer satisfaction worldwide. The interdependence on International Trade, including such successes as NAFTA, Israeli FTA and CBI are critical components of our ability to service our customers. We pride ourselves on our efforts to comply with the reasonable care and informed compliance standards set forth in the Customs Modernization Act. Based on Custom's critical mission and in this testimony, I will present several comments and suggestions that may be helpful in enhancing the effectiveness of the operations of the U.S. Customs Service.

By far the most important role of the Customs Service is in the interdiction of illegal narcotics. I sincerely believe that the private sector must and should play an important supporting role in discouraging the illegal importation of narcotics into our country. We at Sara Lee have done so and it may be instructive to the Committee for us to review our cooperative efforts and partnership with the U.S. Customs Service.

First, we as a corporate policy place high importance on a drug free environment. This policy translates to a proactive approach in ensuring that illegal narcotics are not present in the shipment of our legitimate consumer goods to the United States. From the late 1980's to the present, we have worked closely with the many professionals of the U.S. Customs Service to define and redefine our procedures, techniques and practices to ensure the integrity of our international cargo. This partnership extends from Customs Service headquarters through import specialists to local inspectors at the ports of entry. We sincerely believe that in the drug enforcement arena, we must go beyond traditional expectations to a "no tolerance" level of prevention.

Our efforts extend beyond the U.S. border right back to our foreign factories where we utilize additional private security and canine resources to thwart those who would contaminate our commercial shipments. We also have built meaningful partnerships with our international carriers so that they realize the importance that Sara Lee attaches to effective drug enforcement. As a result, our carriers have increased their operational awareness and have taken concrete prevention measures as a condition of our future use of their vessels, aircraft and trucks.

Our efforts have been recognized by the U.S. Customs Service through their Business Against Smuggling Coalition and through various presentations to the Border Interdiction Council. We believe that to accomplish this mission requires not only policy pronouncements, but the commitment of resources and personnel. In making this commitment, we have entered into a successful partnership with U.S. Customs which has prevented the illegal importation of narcotics into the U.S.

We want to especially acknowledge the many dedicated professionals at Customs who have assisted us in improving our processes and procedures. We encourage

other good corporate citizens to structure similar partnerships with U.S. Customs on drug interdiction. We sincerely believe that it is not only the governments function to stop the flow of illegal narcotics but the corporate community's responsibility as well.

In addition to such a Customs/Private Sector partnership, we also suggest that resources be allocated to the U.S. Customs for "smart" technology which can assist in the battle against illegal narcotics. For example, the use of new x-ray devices currently present at a few ports on the southern border, should be expanded to all ports of entry adequate to handle the expected volume of imported cargo. In recognition of the sophistication of the illegal drug trade, the Customs Service needs advanced electronic and communication equipment which is "state of the art" to protect our borders. I encourage the Congress to provide funding for such equipment.

I also encourage the continued use of "enforcement selectivity" in focusing on the most likely targets in terms of origin of the cargo, mode of transportation and likely entry points into the U.S. Selective or "smart enforcement" is in the public's interest.

Finally, Customs must continue its efforts to automate its processes. This is critical for not only enforcement, but for commercial facilitation purposes. I support continued funding for the advancement of Customs automation.

On the commercial side of Customs, the Mod Act introduced significant change on how the private sector interacts with the Customs Service. The overall theme of the Mod Act is to encourage companies to create a process and environment of commercial compliance voluntarily. If an appropriate level of compliance, known as "informed compliance" or "reasonable care" is not achieved, companies are subject to increased Customs scrutiny.

If appropriate compliance is achieved, companies can benefit from increased efficiencies in the movement of goods through the various initiatives implemented by the Customs Modernization Act. As a consequence, the Mod Act necessarily focuses on the compliance level of a company as a whole, not on each individual transaction entered through our nations ports. This is similar to the IRS's focus upon one tax return encompassing the whole year's fiscal transactions for particular taxpayer.

This new focus requires a centralization of resources and personnel with requisite knowledge and experience not only to manage the Customs process, but, to demonstrate to the Customs Service that the Company's process is in compliance. To confirm compliance, Customs encourages companies to self audit their processes and transactions. This is complemented by periodic and "selective" audits, compliance assessments and samplings performed by the Customs Service. This program of selective enforcement and self-assessment has resulted in prior disclosures and deposits of additional duties of over 40 million dollars, thus proving the obvious benefits of this new system. While the evolution of this new relationship between Customs and the private sector will undoubtedly continue, there are several suggestions which we have to improve the process.

Central to commercial enforcement is the classification of goods under U.S. Harmonized Tariff Schedule. Under the Mod Act, Customs requires over 90% compliance in the choice of the appropriate duty rate or classification for incoming merchandise. Unfortunately, Customs classification is an art and not a science. With over 25,000 possible classifications reasonable persons may, with "informed compliance" and "reasonable care" still differ on the appropriate classification of product. Moreover, in the apparel business, proper classification is not only a matter of paying the right amount of duties, but also governs the admissibility of our merchandise under the many bilateral quota agreements with foreign countries.

Given the complexity of tariff classification, with so much riding on the proper choice, importers are increasingly seeking timely advice and guidance from the Customs Service on these important classification issues. Unfortunately, with current resources the government cannot quickly and adequately respond to this growing demand. To respond to this issue we suggest the following.

The classification of merchandise under the Harmonized Schedules is needlessly complicated since there are just too many headings, subheadings and annotations governing the classification of goods. The U.S. should be leading an effort to simplify the Harmonized Schedule through its leadership in the World Customs Organization and World Trade Organization. The finite measurement of every single different type of merchandise entering the U.S. clearly has a benefit but it also has a cost to the company and, its consumers. This cost may outweigh the benefits. Therefore, we strongly recommend that the U.S. promote, encourage and actively seek a reduction or simplification of the tariff schedules as an appropriate way to simplify trade and lower costs worldwide. In addition, we support the dedication of additional resources by the Customs Service to facilitate the proper classification of merchandise. Another area of reform that is crucial for the business community is

the full implementation of the reconciliation entry process. The Mod Act provides for a single reconciliation entry covering up to 15 months of individual transactions to be submitted to Customs on specific issues. Today, this reconciliation reform is still in transition. We believe that full implementation of the reconciliation entry process, along with National Entry Processing (NEP) and continued use of the current Automated Clearing House payments system (ACH) are all crucial to the modernization of the import process and efficient enforcement. Therefore, we encourage the devotion of appropriate resources to fully implement reconciliation and National Entry Processing.

In closing, I want to emphasize that the role of US Customs to enforce and facilitate commerce operations are not mutually exclusive. The role of Customs has evolved from a pure cargo inspection to a multi-discipline, multi-enforcement group assisting US Business growth. The growth of International Trade, production sharing and increased consumer service along with rapid technological changes have permanently altered the horizon for US Customs. The US Customs Service needs the resources to meet these changing and time-sensitive demands.

Finally, I want to take special notice of the Finance Committee's favorable action on the much needed Caribbean Basin Enhancement legislation. We hope it is enacted into law this session.

I appreciate the opportunity to present my views to the Committee and welcome your questions.

Thank you.

PREPARED STATEMENT OF HON. ALFONSE M. D'AMATO

I am pleased that we have this opportunity to closely examine the work performed by the U.S. Customs Service and the men and women who are charged with carrying out the Customs Service's multiple and diverse duties.

Since the Customs Service's creation in 1789, they have been responsible for our countries border. Since our country's bilateral trade exceeds \$2 trillion and drug traffickers proceeds are nearly \$500 billion, the Customs Service has their hands full. On top of that effort Customs announced the successful culmination of a massive international child pornography investigation that involves more than 100 suspects in 14 countries.

Customs responsibilities to halt the international drug trade at our borders is one of their most pressing priorities. The reasons should be clear, just last month an alarming report of teenage heroin use was released and it found that heroin use among U.S. teenagers almost doubled last year. We need to pay more attention to this unacceptable level of drug use among our children. A major component of the plan to end this blight on our society is the interdiction of narcotics and the dismantling of the trafficker organizations before the drugs reach our neighborhoods. The U.S. Customs Service has shown that they can meet this challenge.

In fact in 1998, under Operation Brass Ring, Customs seized over 600,000 pounds of narcotics, more than all other federal agencies combined. These are important achievements to the people of New York especially in light of the fact that almost 40% of all the heroin seized by Customs last year, was seized in the New York area. Those drugs were destined for our communities and our children. I would like to congratulate Commissioner Kelly, and the men and women of the Customs Service for the successful completion of Operation Brass Ring.

Operation Brass Ring also confirmed an alarming trend, narcotics entered in ports outside of New York are often intended for the streets of New York. By creating an "investigative bridge" Customs has linked the seizures at the port of entry with the traffickers responsible for the distribution of the drugs. These innovative investigations have dismantled trafficker organizations at their most vulnerable point, the transition from the border to the street.

The necessity for Customs to inspect international shipments is a concern for legitimate shippers and the timely movement of goods that produce \$20 billion dollars a year in revenue for the United States. The increased nature of commercial activity has led to a need for additional resources available to stem the tide of drugs and illicit money that cross our borders and find their way into our communities.

I am pleased to join with Senators Graham and Grassley in support of their proposal amendment to H.R. 3809. This amendment authorizes resources for the Customs Service and will attempt to address both the needs and goals of Customs and the flow of international trade. This will augment the inspectional needs of Customs, through manpower and advanced technology, at the borders and major ports of entry. The amendment will also increase the number of special agents needed to investigate sophisticated criminal enterprises as they continuously expand their ille-

gal activities. The implications for the people of New York are clear, more Customs agents and inspectors stopping the plague of drugs entering the United States through New York and other ports of entry.

It is these resources which are vital to maintaining Customs diligence at the borders while the global trade community continues to expand. These are crucial needs for an agency which is at the front line fighting drug traffickers, money launderers, terrorists, among other criminals. The authorization of resources is a wise investment towards the safety of our citizens. In addition, every dollar spent on the Customs Service is returned to the Treasury twenty-fold. This country must maintain a leadership role in international trade and law enforcement with the infrastructure of Customs being an essential element in sustaining that position as the primary border agency of the United States.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY

Mr. Chairman, in keeping with my comprehensive approach that is addressed in this legislation and the Customs mission, I believe there is a need for additional investigative resources on the Northern border. H.R. 3809 authorizes an additional \$9.2 million in FY 2000 for trade facilitation equipment, \$920,000 in FY 2001 for support and maintenance of such equipment and 125 cargo inspectors for the Northern border. I would like to see this complemented by authorizing an additional 40 Special Agents and 10 Intelligence Analysts for the Northern border.

I believe we have completed very important work to identify Customs resource requirements that will help Customs move into the next Millennium. The resources contained in this bill represent the only agency-wide resource enhancement since the early 1990s. Under Secretary James Johnson and Commissioner Raymond W. Kelly have expressed their support for these new resources. It is my hope that this will be requested in Customs FY-2000 budget and we see this as part of the President's budget next year.

PREPARED STATEMENT OF HON. ORRIN G. HATCH

Mr. Chairman, I join your welcome of our witnesses before this important first step in what I hope will become a closer relationship between this committee and the Customs Service. Customs is emerging as an ever greater player in two major policy areas facing our continuing evolution into a society that can ensure its people complete freedom to realize the full benefits of global trade, while protecting them from the harms that we sometimes find at our borders, like drug trafficking.

I also recognize, Mr. Chairman, that we have the nomination hearing of Sue Esserman before us today. I will make this opening statement fairly brief, so as to leave time for the questions I have for her, or to submit them for a written reply.

Let me say at the outset, that I have always looked upon Customs as a good-business government agency. It is well managed, as evident from the many National Performance Review awards it has received since 1993. Despite a reduction of \$100 million in funding, Customs has managed to shoulder mighty responsibilities, adding more recently new missions and functions related to combating terrorism, a subject of review by my own Committee on the Judiciary.

While some have said that these added Customs burdens have beggared trade, I disagree. Rather, I share the opinion of one of our witnesses today, Ron Schoof from Caterpillar, that the agency seems to manage these important roles equally well.

But I do fear that Customs' efficiency could be placed at risk unless it is adequately resourced. For that reason, Mr. Chairman, I commend your judgment to increase agency oversight.

The dimensions of the Customs mission are not just impressive, they're staggering. The agency administers over 400 laws in behalf of 40 agencies! Not surprisingly, Customs often finds itself on a hotseat. For example, I strongly support and promote the Customs drug interdiction role, especially on the Southwest border. But I am sensitive to the pleas of many members of this committee to bolster Customs presence on the Canadian border over which, by the way, twice the amount of US trade with Mexico occurs, some of it affecting trade with my own state of Utah. The Northern border gets only 14 percent of customs inspectors. But that's because of the compelling demands of the drug-trafficking problems at the other end of the U.S. Increasingly, Mr. Chairman, we're coming to the realization, and this session today will help, that we need a better allocation of more Customs resources at both borders, and Customs will need more resources to fulfil our expectations.

et me add further that, in this sense, I am especially supportive of the initiatives taken by Senator Gramm to enhance the technology capabilities of Customs.

he lingering question that we will be reviewing today is what should Customs get by way of authorizations. If we had to use a business type of measure, return on investment, we'd all probably gasp: Customs collects over \$21 billion in trade-related revenues on a total agency budget of \$1.8 billion. And, obviously, not all of that goes to trade activities. If Customs ever tenders an initial public offering (IPO), I'll be on the phone to my broker.

But we use other measures for determining government agency spending; although, I have to say, Customs' terrific return on the taxpayer's dollar, and its many NPR management awards, are pretty good criteria. As we scrub Customs' requests today, I hope that we'll keep in mind the terrific work this agency does in many areas and, in the case of its drug-enforcement mission, the sacrifices that its agents are making as they face increasingly dangerous traffickers.

I thank the chair.

PREPARED STATEMENT OF JAMES E. JOHNSON

INTRODUCTION

Mr. Chairman, Senator Moynihan, and Members of the Committee: I am pleased to appear before you today to discuss the role of the U.S. Customs Service in the protection of our borders and the facilitation of trade. Treasury welcomes the opportunity to highlight our support of Customs as a critical component of our departments overall enforcement mission. We would also take this opportunity to thank the Committee for its many efforts to support Customs and to discuss issues relevant to the fulfillment of organizational Customs' mission.

This is an important moment in Customs' long and distinguished history, as it continues to advance its mission under the able helm of newly appointed-Commissioner Raymond W. Kelly. While we should in no way underestimate the seriousness of the challenges facing

Customs, we face them with renewed confidence with Commissioner Kelly at the helm. His knowledge of law enforcement issues, his record of effectively managing public institutions, and his commitment to Customs' broad mission command the highest respect.

I will defer to Commissioner Kelly for a more detailed discussion of the current state of affairs at Customs, and will focus my own remarks more broadly on the vital importance of Customs' activities in anti-narcotics enforcement, revenue collection, and trade facilitation; the ways it seeks to fulfill these missions in an era of limited resources; and some of the current issues that it faces.

CUSTOMS' MISSION

While Customs' mission continues to reflect the range of activities envisioned when the first U.S. Congress enacted statutes providing for levying and collecting duties, it has grown over the years to include many additional responsibilities. Today, Customs collects over \$19 billion in revenue. Its statutory obligations also include protection of our citizens from dangerous drugs that harm our cities, intellectual property rights violations that harm our economy, hazardous materials that harm our environment, and unsafe products that harm our children. These laws have greatly expanded the duties and responsibilities of Customs employees located both at headquarters and at the more than 300 ports of entry.

Narcotics Enforcement

One of Customs' most critical duties is preventing illegal drugs from entering the United States. Both Treasury and the U.S. Customs Service are fully committed to battling narcotics traffickers. Indeed, Customs stands at the core of Treasury's comprehensive efforts to combat the multiple threats posed by narcotics traffickers: 1) Customs stops narcotics at our borders; 2) Customs, IRS, and the Financial Crimes Enforcement Network (FinCEN) work to take the profit out of narcotics trafficking by preventing, detecting, and investigating money laundering; 3) OFAC blocks the assets of narcotics traffickers; and 4) ATF and Customs make it more difficult for narcotics traffickers and their allies to obtain weapons that could be used against our citizens and law enforcement personnel.

Customs has consistently seized more drugs than any other agency. Customs has achieved this standard through effective interdiction, intelligence and investigation that disrupts and dismantles drug smuggling organizations. And while it continues to seize drugs, Customs identifies, disrupts and dismantles criminal organizations

that launder the proceeds generated by the smuggling of illegal drugs. In FY 1997, Customs seized nearly 1 million pounds of narcotics. Customs exceeded this amount during the first nine months of FY 1998. The success stories abound, but two operations—Hardline and Gateway—both of which received tremendous support from Senator Grassley, deserve special mention.

Operation Hardline. The Southwest border continues to command our attention as we work to combat drug smuggling and other offenses. With this goal in mind, Customs implemented Operation Hardline during FY 1996. With the support of Congress, Hard Line resulted in the deployment of more agents, inspectors, technology, and canine officers to the Southwest border. This additional investment meant more primary and secondary searches, more inspectional “blitzes”, better use of technology, better development of intelligence, and more seizures. In 1997, seizures under Operation Hardline exceeded 33,000 pounds of cocaine, 600,000 pounds of marijuana and 190 pounds of heroin.

Operation Gateway. Recognizing that enhanced efforts at one point of the border can result in the movement of a threat to another area, Customs deployed comparable assets to the Caribbean in Operation Gateway. This program, which was tailored to address the air and maritime narcotics threat in Puerto Rico and the Virgin Islands, began its second year of operation in March 1997. From March 1997 through February 1998, Gateway seizures exceeded 18,000 pounds of cocaine, 80 pounds of heroin and \$4.4 million in currency.

Money Laundering

Another element of Treasury Enforcement’s attack on narcotics smugglers and other criminals is our anti-money laundering program. As Secretary Rubin has noted on many occasions, anti-money laundering strategies not only protect our financial systems from the taint of illicit proceeds, but also allow us to unravel complex criminal enterprises. To this end, Customs alone conducted nearly 4,500 money laundering investigations last year.

Operation El Dorado. Operation El Dorado is an example of our anti-money laundering strategies. In this multi-agency task force, Customs was joined by Treasury’s FinCEN, IRS, DEA, and state and local law enforcement agencies in New York who, together, developed evidence that 12 money remitters in the New York City area had funneled approximately \$800 million a year to Colombia. Based on information obtained through El Dorado, then-Under Secretary Kelly signed a Geographic Targeting Order (“GTO”) under FinCEN regulations in August 1996. The GTO was aimed at the 12 money remitters and their approximately 1,600 agents to obtain information on all cash remittances of \$750 or more to Colombia. The use of GTOs forced narcotics traffickers to turn to less convenient means to move their money. As a result, Customs’ currency seizures at East Coast ports of entry increased approximately 400 percent.

Operation Casablanca. Another example of Customs’ success in this area was the recently concluded Operation Casablanca, the largest drug money laundering investigation in U.S. history. The investigation targeted both the infrastructure of the Juarez and Cali cartels and the financial systems they used to launder their U.S. drug proceeds. Through June 1998, Operation Casablanca has resulted in the arrest of more than 160 individuals and the seizure of approximately \$103 million. I will defer to Commissioner Kelly for additional details on Operation Casablanca.

The El Dorado and Casablanca successes highlight the value of a coordinated, multi-faceted approach to money laundering enforcement. Because of our multiple bureaus and offices with both investigative and regulatory responsibilities, Treasury has been able to develop, plan, and execute such coordinated approaches.

Further Progress—Operation Brass Ring

While we are proud of the successes of Customs’ anti-smuggling and money laundering programs, we recognize that we must continually innovate and adapt to changing environments and trends. Such was the basis for Customs’ Operation Brass Ring, which was launched on February 1, 1998 and was completed July 31, 1998. Developed in response to downward trends in seizure data, Brass Ring required local port directors and special agents in charge to intensify their anti-smuggling measures but allowed them to tailor such measures to specific trends and characteristics of their geographic and jurisdictional areas. This strengthened but targeted focus has resulted in significant increases in narcotics and currency seizures when measured against the same period last year. Indeed, from February through July for FY 1997 and FY 1998, narcotics seizures increased 45% and currency seizures increased 59%.

INTEGRITY

Customs' success also depends on ensuring that its workforce is as productive and professional as possible. The opportunity to erect effective barriers to narcotics and protect our frontiers begins with our employees. Treasury Enforcement believes that to accomplish its mission, Customs employees must consistently demonstrate the highest levels of integrity and professionalism. We believe that the vast majority of Customs employees meet this standard. To ensure, however, that all personnel adhere to appropriate standards of integrity, Treasury Enforcement's Office of Professional Responsibility will work closely with Commissioner Kelly and his staff.

COLLABORATION WITH JUSTICE AND INS ON SOUTHWEST BORDER ENFORCEMENT

Our long term success depends greatly on our close collaboration with other federal, state, and local law enforcement agencies. To this end, Customs has developed a Port Management Model in San Ysidro, California in cooperation with the Immigration and Naturalization Service. We believe that the Port Management Model will increase coordination at the ports, strengthen anti-smuggling efforts, and facilitate legitimate commerce, as it has done in San Ysidro. Treasury and Customs are working with INS and Justice to expand the model to other ports.

As currently envisioned, the plan would implement the successful Port Management Model at all Southwest border ports, creating coordinated leadership at the port level for enforcement and traffic management. The plan also would expand joint intelligence collection, adopt a unified investigative approach for Southwest border seizures, provide for coordinated technology deployment and R&D, and harmonize resource decisions. We are working with our sister agencies to finalize this plan and draw on its results to further increase our success in both combating drug trafficking and facilitating legitimate trade.

TRADE FACILITATION

Let me take this opportunity to emphasize that our anti-narcotics efforts do not come at the expense of our trade processing programs. Both Treasury and Customs recognize that for every drug smuggler or other criminal threat to our border, there are many more legitimate crossings and conveyances. Customs, therefore, continues to pursue policies that fulfill its anti-narcotics mission as effectively as possible, while still facilitating legitimate commerce.

One of the ways in which Customs performs such a dual mission is through partnership with private sector trade interests. Such partnerships, for example, have given rise to the Carrier Initiative Program and the Business Anti-Smuggling Program. Far from presenting a false choice between anti-smuggling and trade facilitation, these programs actually enhance both missions. They do so mainly by enlisting legitimate businesses in thorough pre-screening and background checks that allow Customs to target its limited anti-narcotics resources to other, more high-risk carriers. The result is both stronger anti-narcotics efforts and more productive trade facilitation.

One of the most important mechanisms for fostering our partnership with the private sector is the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service, or "COAC." This 20-member private sector advisory group was established by the Congress in 1987, and has been renewed and appointed bi-annually by the Secretary of the Treasury. It has typically drawn top-flight experienced representatives from major multinational corporations, trade associations, and from the customs service sectors, including brokers, lawyers, and consultants. The Committee is chaired by the Assistant Secretary (Enforcement) and it was my privilege to serve in that capacity for over two years. Secretary Rubin met with the Committee last December and listened to their recommendations on a wide range of issues involving Customs' commercial operations.

During the last year, the Committee completed a landmark project, the development of an industry consensus on changes needed in the Automated Export System (AES), a very important component of Customs' efforts to achieve an efficient, paperless environment. The Committee worked with a team composed of Customs and Census officials and, through a process known as IBN or "interest-based negotiations," managed to iron out differences of opinion and develop a consensus proposal that is expected to substantially increase industry acceptance of the AES. Based on the Committee's recommendations, the Customs Service is now at work on the regulatory changes that will be needed to implement the proposal.

Finally, the efforts of both Customs and the public it serves will also be enhanced through improved automation. In this regard, few issues are more important than finalizing the Automated Commercial Environment, or ACE. ACE represents a busi-

ness re-engineering process designed with input from the trade community and other agencies. Once fully implemented, it will drastically reduce unnecessary paperwork, improve ready access to relevant data, enhance enforcement, and expedite trade. The Treasury Investment Review Board continues to monitor the progress of ACE, and Commissioner Kelly can speak at greater length on its progress.

BUILDING ON EXISTING EFFORTS

In conclusion, Mr. Chairman, I would note again that safeguarding our nation's borders is one of the Federal government's most basic responsibilities. It is also one of our biggest challenges. Even as the responsibilities and duties of Customs have increased in a time of tight budgets, we do not anticipate any decline soon in the necessary work of narcotics interdiction or trade facilitation. We therefore support the objectives of the Drug Free Borders Act of 1998, and we look forward to having the Committee's continued support for the U.S. Customs Service as it pursues its mission.

**STATEMENT OF RAYMOND W. KELLY
COMMISSIONER
UNITED STATES CUSTOMS SERVICE
BEFORE THE SENATE COMMITTEE ON FINANCE
SEPTEMBER 3, 1998**

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today and present to you Customs successes from the past year, the current strategies we are undertaking to accomplish our multi-faceted mission, and our Fiscal Year (FY) 1999 budget request. It is our goal over the next year to continue to build upon the excellent working relationship we have with this Committee. Your strong support of the Customs Service has been vital to our success as one of the Nation's primary border interdiction agencies.

While much of our past year's success is the direct result of the ingenuity, dedication and hard work of Customs employees, we have also enjoyed many successes working cooperatively with other Federal, state, and local law enforcement agencies, the trade community, and foreign governments. We will look to strengthen these important partnerships further in the future.

NARCOTICS ENFORCEMENT

Similar to past years, Customs remains at the forefront of our Nation's narcotics interdiction and investigative efforts. Our foremost priority continues to be narcotics interdiction. Customs has seized about one million pounds of drugs each year for the past two years. This year, we have already seized over one million pounds in the first nine months.

In order to meet the challenge of policing the Nation's borders against drugs, Customs has continued to develop and wed new technologies with conventional inspectional and investigative techniques. Last fiscal year, over 118 million automobiles, 9.3 million trucks, 321,000 railcars, and 4.5 million sea containers entered the United States creating an enormous window of opportunity for drug smugglers and a massive drug enforcement dilemma for Customs. Each year, drug smugglers probe for and attempt to exploit the Customs enforcement shield in, around, over and under our air, land, and sea ports of entry. Drug

Smuggling Organizations continue to diversify their smuggling routes and have increased the sophistication of their smuggling techniques. They have established elaborate front companies, both foreign and domestic, to facilitate the movement of illicit drugs; conspired with dock workers and baggage handlers to form internal conspiracies to circumvent the Customs inspection process; deployed stealth boats and sophisticated air drop procedures to go around established ports of entry; and established sizable spotter networks in and around our ports of entry to "pick and choose" smuggling times and routes.

In FY 1997, Customs continued its efforts to fight smuggling along the Southern Tier of the U.S., including Puerto Rico and the Virgin Islands. Through Operations HARD LINE and GATEWAY, we have hired, trained, and placed 677 new employees along the Southern border and Caribbean Basin.

In FY 1997, Southwest border seizures under Operation HARD LINE exceeded 33,000 pounds of cocaine, 600,000 pounds of marijuana, and 190 pounds of heroin. Operation GATEWAY, the multi-staged operation designed to address the air and maritime threat in Puerto Rico, the Virgin Islands, and their surrounding waters, also continued to show positive results. The second year of the operation, March 1, 1997, through February 28, 1998, GATEWAY resulted in the seizure of over \$4.4 million in currency, over 18,000 pounds of cocaine, and over 80 pounds of heroin.

Customs has developed an investigative strategy that focuses activity and resources on those areas where it is estimated the majority of the illegal drugs enter the U.S. The strategy also targets those areas where our intelligence indicates Drug Smuggling Organizations' "command and control" structures are centered. The approach is designed to enhance both internal and external cooperation and intelligence sharing, while maximizing the unique investigative and interdiction capabilities of Customs.

INDUSTRY PARTNERSHIPS

To assist in deterring narcotics smuggling and other offenses, Customs developed and deployed a number of innovative programs and detection technologies that act as force multipliers to meet our enforcement goals. Customs continues to expand its Carrier

Initiative Program (CIP) with the truck industry and with Southwest border railroads and bus companies as well. This program is a joint effort by Customs and the transportation industry to reduce smuggling in commercial conveyances. Presently, 3,998 carriers (933 land, 115 air, and 2,950 sea) have signed agreements with Customs. Building on the CIP, Customs established the Business Anti-Smuggling Coalition (BASC) with Southwest border importers. In FY 1997, information from these two programs resulted in 74 seizures totaling 12,700 pounds of narcotics. We believe these partnerships play an important role in combating narcotics smuggling. Last year alone, 43 percent of the cocaine seizures that were made by Customs as a result of prior intelligence, came from information that was provided to Customs by the trade community.

Building on the success of these programs, Customs has developed the Americas Counter Smuggling Initiative (ACSI), which expands our anti-narcotics security programs with industry and governments throughout Central and South America. This initiative strengthens cooperative efforts with legitimate businesses involved in international trade; increases actionable intelligence on narcotics and contraband interdiction; increases participation in CIP and BASC; prevents narcotics from entering the U.S. via commercial cargo and conveyances; increases narcotics seizures throughout the region; disrupts smuggling by an aggressive attack on internal conspiracies; and forces smugglers to use riskier methods such as air drops and speed boats. In FY 1998 (to date), industry partnership programs have resulted in the seizure or foreign interception of over 35,000 pounds of narcotics. Beginning in January 1998, Customs began detailing Customs officers to South America to assist exporters, carriers, manufacturers, and other businesses. These employees perform security site surveys, develop and implement security programs, conduct post-seizure analyses, foster information exchange and follow up activities, and provide guidance on technology deployment and application to safeguard legitimate trade from being used to smuggle narcotics. Countries involved include Venezuela, Colombia, Peru, Ecuador, Panama, Costa Rica, and Mexico. In FY 1998 (to date), industry partnership programs have resulted in the seizure or foreign interception of over 35,000 pounds of narcotics.

OPERATION BRASS RING

Although Customs, year after year, seizes more drugs than any other Federal Agency, we have become concerned that the quantity of drugs seized may be decreasing. We therefore launched, on February 1, 1998, Operation Brass Ring which continued through July 31, 1998. The objective was "to immediately and dramatically increase the amount of narcotics seized." Operation Brass Ring increased the amount of narcotics seized by 45 percent. When we compare February 1 - July 1997 to the same period in 1998, here are some highlights of what was accomplished:

- Cocaine seizures increased from 55,010 pounds to 72,535 pounds (up 32 percent).
- Heroin seizures increased from 1,134 pounds to 1,280 pounds (up 13 percent).
- Marijuana seizures increased from 373,207 pounds to 548,262 pounds (up 47 percent).
- Currency seizures increased from \$25.5 million to \$40.6 million (up 59 percent).
- Controlled deliveries increased from 100 to 220 (up 120 percent).

Brass Ring has generated a number of other substantial benefits including a significant increase in investigations, multi-functional teams within Customs and with other agencies, expanded use of Strategic Problem Solving, mobility and unpredictability, improved enforcement in processing cargo and passengers, effective use of technology, etc. We have already begun planning for "after Brass Ring, now what?" to build upon this momentum and to institutionalize what works, honoring our negotiated commitment to the National Treasury Employees Union (NTEU) as we proceed.

And Customs has done all of this without adversely affecting the flow of legitimate commerce and travel into this country.

TECHNOLOGY

Technology plays an important role in all Customs counterdrug activities. It provides new capabilities to allow inspections to keep up with changing smuggling techniques, acts as a force

multiplier, increases enforcement effectiveness and efficiency and allows us to cope with growing trade and traffic.

The Administration has developed a comprehensive and structured 5-year Customs technology plan to deploy counterdrug technology to the ports of entry, subject to budget resources, to significantly increase the smuggler's risk of detection all along the entire Southern Tier of the U.S. This technology includes: non-intrusive technologies (e.g. fixed and mobile truck x-ray systems, gamma-ray inspection systems for trucks and railcars, and higher energy heavy pallet x-ray systems); technology for outbound currency and weapons at ports along the Southern Tier; dedicated commuter lanes which depend on technologies such as voice recognition biometric identification, "smart cards" (a chip on a credit card-sized card which stores information about the individual), and vehicle movement control technologies along the Southwest border; investigative, intelligence, and encrypted, digital, voice communications technology; and automated targeting systems. In addition, over the next five years, we intend to deploy similar non-intrusive inspection technology to high-risk airports and seaports which are not located along the Southern Tier, such as John F. Kennedy International Airport in New York and the Newark Seaport in New Jersey. Recent accomplishments in the development of new and larger-scale non-intrusive inspection systems will provide Customs with the opportunity for unprecedented improvement in the intensity and number of inbound inspections of cargo and conveyances.

Customs currently operates five truck x-ray systems in El Paso, Ysleta, and Pharr, Texas and Otay Mesa and Calexico, California. In addition, prototype mobile truck x-ray systems are operating in Laredo, Texas and Miami, Florida. One prototype gamma-ray system is in place at Santa Teresa, New Mexico. The prototype gamma-ray system uses gamma-ray radiation to penetrate the structure of heavier-bodied trucks, such as propane tankers, to allow Customs to examine both the conveyance and some cargoes for the presence of contraband. Since the first truck x-ray system became operational in July 1994, this system, and the four others that have become operational since March 1997, have been involved in 315 drug seizures totaling over 70,000 pounds of narcotics. By December of 1998, Customs will have three additional fixed site truck x-ray systems operational in Laredo and Brownsville, Texas and Nogales, Arizona.

We believe this type of technology is invaluable in enhancing Customs narcotics enforcement capabilities without impeding the flow of legitimate commercial traffic. The fixed site truck x-ray and mobile truck x-ray can inspect approximately eight full size tractor trailer trucks per hour. The gamma-ray system can inspect 12-15 tractor trailer trucks per hour. Both of these systems can inspect any vehicle that is legal for operation on public roadways. Mobile x-ray systems will also be available for use at border patrol checkpoints along the Southwest Border. The first mobile x-ray has been responsible for seizing over 6,000 pounds of narcotics in the past year.

MARINE PROGRAM

Beginning in 1980, the Customs Service implemented a national marine program in response to the tremendous number of narcotics smuggling ventures being conducted in the U.S. Coastal Waters. Comprised of 84 vessels, the mandate of the U.S. Customs Marine Program is to disrupt organizations that are smuggling drugs and other contraband into the United States by vessel. Customs has primary responsibility for interdicting illegal contraband in the arrival zone. Through its investigative efforts the Customs marine interdiction effort has targeted and disrupted various well organized and financed international smuggling organizations smuggling illegal contraband into the United States.

Although the Customs Service coordinates with the U.S. Coast Guard and INS Border Patrol in conducting marine smuggling investigative and interdiction efforts, the Customs Service remains the only federal agency tasked with the primary goal of disrupting and dismantling smuggling organizations that are utilizing vessels to smuggle drugs and other contraband into the 19,943 kilometers of coastline around the U.S.

In FY 1998 to date, the Marine Program has been instrumental in the seizure of 37,222 pounds of cocaine, 38,211 pounds of marijuana, 39 pounds of heroin and 85 pounds of methamphetamine.

AIR PROGRAM

Comprised of 114 operational aircraft, the mandate of the U.S. Customs Air Program is to disrupt organizations that are smuggling drugs and other contraband into the United States by

aircraft. This is accomplished through the utilization of a three-pronged, intelligence, interdiction and investigative approach. To this end, the Air Interdiction Division dedicates its resources throughout the hemisphere to detect, sort, intercept, track and ultimately apprehend traffickers and seize their contraband.

Drugs coming to the United States from South America pass through a six million square-mile area that is roughly the size of the United States. This area, referred to as the Transit Zone, includes the Caribbean, Gulf of Mexico, and Eastern Pacific Ocean.

Throughout the Transit and Arrival Zones Customs aircraft and marine assets play a critical role in the apprehension of drug trafficking aircraft and vessels. In addition, the USCS Air Program is currently providing approximately 80% of Source Zone airborne detection and monitoring. Customs aviation assets deployed to the Source and Transit Zones have had a significant impact on drug trafficking patterns in these regions. The high level of effort in the Source Zone has been accomplished in compliance with Presidential Decision Directive-14. Similarly, Transit Zone responsibility growth has increased as a direct result of the President's International Crime Control Strategy to improve the effectiveness of air (and maritime) smuggling interdiction efforts in the transit zone.

One of the most effective cooperative efforts that Customs has with the Government of Mexico is in the area of air interdiction. Since 1991, U.S. Customs has based two of its C-550 intercept/tracker aircraft in Mexico to provide training and assistance to officers of the Mexican Government.

A secondary, but equally important, mission of the Aviation Program is to support the investigative efforts of Customs and other Treasury Bureaus and, when availability of resources allows, those of other Federal, state, and local agencies. Although investigators employ a number of different tactics, surveillance continues to be a fundamental and necessary element for almost all criminal cases. Aviation support augments these efforts and provides an integral, and often critical, component to the investigative strategy.

In order to carry out direction set forth in the President's initiative to combat terrorism (otherwise known as Presidential Decision Directive (PDD)-62), the Customs Air Program will dedicate resources to ensure compliance with PDD-62 in conjunction with the United States Secret Service to defend against an ever increasing threat of an unconventional terrorist attack.

Absent an effective air interdiction program, general aviation aircraft provide almost an ideal means for smuggling narcotics. Air transportation maximizes control of the load while minimizing the time and frequency of exposure to interdiction and theft. Maintenance of the aviation program will allow us the ability to respond to cross-U.S. border private aircraft intrusion with apprehension and interceptor aircraft, with an emphasis placed on identified high threat areas. The program will continue its support of the Administration's International Strategy and will pursue new frontiers to further disrupt the drug trafficking process.

Customs Citation interceptors and aircrew will continue to be deployed in Mexico and Central and South America. Investigative support will remain a Customs Aviation priority. It is anticipated that Customs airborne interdiction support requirements in the Source, Transit and Arrival Zones will continue to increase. Domestically, there is a need to further expand our traditional air interdiction tactics to address new and changing threats employed by the smugglers.

Customs Aviation remains a vital line of defense in protecting our borders from smuggler intrusion. Thus far in FY 1998, the Customs Air Program contributed to the seizures of 35,567 pounds of cocaine, 83,384 pounds of marijuana, 22 pounds of heroin and the seizure of approximately \$16,454,433 in U.S. currency. The enhancements provided in FY 1998 will enable us to continue to provide this mission critical support and perform other identified and future requirements.

Additionally, Customs will need to maintain funding to meet the demand for Customs airborne interdiction support in the source, transit, and arrival zones. The recently published United States Interdiction Coordinator's Interdiction Resource Requirements

paper calls for increased support in the Transit and Source Zones respectively.

Customs also anticipates a need to sustain air support to Customs investigative activities, particularly in the area of controlled deliveries and cold convoys. These highly effective investigative tools enable law enforcement to closely monitor the activities of drug smuggling organizations and assist in overcoming sophisticated counter-surveillance methods, and are vital to the successful outcome of investigative case work.

Customs aviation operations differ from that of other law enforcement and counterdrug aviation operations in that it has developed its resources exclusively for the air interdiction role. Accordingly Customs aviation assets are generally more specialized, sophisticated and better suited for the counterdrug/air interdiction mission than that of other law enforcement agencies. Like the DEA and FBI, Customs utilizes aviation assets in support of investigative case work. However, Customs is unique in that it uses its aircraft to support the full spectrum of air, land, and sea interdiction and investigative activities.

RAILROAD INSPECTIONS

In FY 1997, Customs processed more than 320,000 rail cars at eight major crossings along the Southwest border -- Laredo, Brownsville, Eagle Pass, Presidio and El Paso, Texas; Nogales, Arizona; and Calexico and San Ysidro, California. Approximately half this volume crossed at Laredo, Texas. In response to the emerging threat of narcotics smuggling via rail, Customs is increasing its intensive inspections of railroad equipment and is testing non-intrusive technology on railcars. Customs recently completed two successful tests of the Vessel and Container Inspection System (VACIS), a gamma-ray imaging system that has been modified for use in the rail and cargo environment. Customs also deployed 47 additional positions to increase rail inspections by Contraband Enforcement Teams, add rail inspection training to its existing Southern Border Interdiction Training course, and to perform joint operations with other agencies.

MONEY LAUNDERING

The changes in investigative strategies and approaches in money laundering investigations initiated in FY 1997 led to history making cases and record seizures in FY 1998. The highlight of FY 1998 was Operation Casablanca, the largest, most comprehensive narcotics money laundering investigation ever conducted in the history of U.S. law enforcement. U.S. Customs agents identified, disrupted and dismantled essential financial functions of two notorious international criminal enterprises (the Juarez and Cali Cartels). During the course of the investigation, agents made over 160 arrests, including corrupt Mexican and Venezuelan bankers, and seized over \$103 million, two tons of cocaine and four tons of marijuana.

As a part of the overall money laundering investigative strategy, Customs has now placed highly specialized Asset Identification and Removal Groups (AIRGs) in 19 SAC offices and one RAC office. The SAC/Los Angeles AIRG was instrumental in effecting seizures during Operation Casablanca and the overall seizure activity of all of the AIRGs has increased by 30% over the previous fiscal year.

In FY 1998, the Money Laundering Command Center (MLCC) became fully operational and is now tracking and assisting all Customs undercover money laundering investigations. Over the past six years alone, Customs undercover money laundering investigations have resulted in the seizure of over \$653 million in cash and monetary instruments.

The Customs led El Dorado Task Force in New York continued to achieve tremendous results disrupting money laundering in the wire remitter industry. Combining law enforcement (undercover operations) and regulatory pressure (Geographic Targeting Orders (GTOs)) to the wire remitter industry, this task force has substantially reduced the amount of money remitted to the Dominican Republic and Colombia. Their efforts have resulted in a 20 percent drop in transactions of more than \$3,000 to the Dominican Republic and a 30 percent drop in remittances to Colombia.

The El Dorado Task Force helped drive the drug proceeds out of this system and contributed to the overall rise in the cost of

laundering drug money. Since its inception in 1992, the El Dorado Task Force has seized in excess of \$200 million and made over 600 arrests.

On legislative and regulatory matters, Customs worked closely with the Department of Treasury and the Financial Crimes Enforcement Network on several notices of proposed rule making for enhanced reporting of money services businesses, wire transfer record keeping requirements, and currency and monetary instruments reporting on foreign bank drafts. Moreover, we continue to work with Justice and Treasury on obtaining outbound mail search authority, a proposal which is now contained in the proposed International Crime Control Act.

For FY 1999, Customs will continue to implement an aggressive money laundering strategy targeting the systems used by international criminal enterprises to launder their ill gotten assets. Initiatives planned in support of this strategy will include: working with the business community to develop intelligence and vital investigative leads; employing undercover investigations to identify illegal activity which is intermingled with actual or seemingly legal activity; using the AIRGs to exact the highest possible cost on illegal enterprises; and working toward increased international cooperation in money laundering investigations and interdiction.

INTEGRITY

While independent reviews have shown that corruption at Customs is not systematic, it still is necessary to develop a strong integrity assurance program to counter perceived and potential threats of corruption. In FY 1997, Customs began an enhanced integrity program to address these issues and redirected resources to strengthen the Office of Internal Affairs (IA). Forty-five (45) positions identified for this critical program have been filled. These employees will be devoted to the new Computer Analysis Division (which will perform forensics, analysis, and assessments of the integrity of automated systems), special undercover operations, inspections and audits, and other similar functions. These activities will also increase current employee awareness of integrity issues.

Pending funding availability requested for FY 1999, Customs will change the process for hiring law enforcement officers by emphasizing pre-employment screening. Upon Department of Treasury and Office of Personnel Management (OPM) approval, polygraph examinations will become part of this process. This should enable IA's background investigations to improve the quality of the Customs law enforcement workforce. IA will also expand its own polygraph capability to address internal investigations of alleged misconduct, and acquire the specialized hardware and software to accommodate the FBI's change to electronic fingerprint technology. Customs has developed a national recruitment and hiring process for Customs Inspector and Canine Enforcement Officer positions which includes built-in screening procedures designed to identify quality candidates who possess the highest standards of integrity. Implementation will begin in FY 1999.

AUTOMATION

Customs vigorous but careful support of automation projects will enhance our ability to improve enforcement while facilitating commerce. Customs has embarked on an aggressive strategy to improve its management of information technology in response to legislative mandates, such as the Clinger-Cohen Act and Government Performance and Results Act, the Federal Acquisition Streamlining Act, and guidance from OMB and GAO. Over the past year, Customs has developed an investment management process that considers the risks, costs and benefits associated with potential information technology (IT) investments. This provides a systematic process within which Customs Investment Review Board (IRB) can make funding decisions and exercise oversight of Customs IT projects. The process instills discipline by making the business sponsors responsible for IT projects, by integrating business and technical risk considerations, and by ensuring adherence to Customs systems development guidelines.

In addition, major Customs IT projects are under ongoing review by the Treasury IRB in order to ensure that these investments meet the criteria of the Clinger-Cohen Act and the goals and strategies of the Treasury Department. One such project, the Automated Commercial Environment (ACE) is reviewed by the Customs and Treasury IRB's every month. The Treasury IRB evaluates the project's progress against established milestones and performance

measures, reviews and approves Customs IRB's ACE funding release requests, approves every status report that is sent to GAO and Congress, and ensures that ACE, as well as Customs enterprise architecture follows GAO's best practices.

ACE will provide the automation support necessary for Customs to implement the trade compliance redesign. This redesign emerged from the business process re-engineering efforts that Customs initiated in 1994. Working with the trade community and other government agencies, Customs spent more than three years conducting a top-to-bottom review and redesign of import processes and laying out the requirements for a new computer system. ACE will support the goals of the redesigned trade compliance process -- increasing compliance with laws and regulations governing imports, decreasing costs of complying with these laws, streamlining import-related processes, and improving customer service.

Customs implemented the first release of ACE this past May with the NCAP prototype. Operating in Detroit and Port Huron, Michigan and Laredo, Texas, Customs has released over 3,000 trucks using electronic data obtained in advance. By any standard, both Customs and trade view this prototype as a big success. The next phase, which provide automated support for cargo examinations will be implemented in the fall. Further development and deployment of ACE is critical to Customs ability to protect our borders without impeding the flow of legitimate trade. Our current commercial system is now 15 years old and must be modernized. ACE is that solution and, as important, fully supports the goals of the redesigned trade compliance process.

Like other federal agencies, Customs is facing an expectation that it develop a comprehensive enterprise architecture to ensure that its information technology investments support business needs and are well integrated and compatible to ensure that they provide the most bang for the buck. Congress is closely monitoring Customs progress and expects Treasury to maintain close oversight. In early August, the Treasury Investment Review Board endorsed Customs progress in developing an Enterprise Information Systems Architecture (EISA). By the end of September, we will have completed all of Treasury's requirements for documenting existing processes and also have documented

requirements for the future state for the trade compliance and human resource processes. We also have provided Treasury with a detailed plan for documenting the architecture required for the future state for the remaining four business processes. We have also provided Treasury with a detailed plan for documenting the next phase of the architecture work.

As of August, Customs has completed the renovation of its mainframe mission critical systems and has validated over 90 percent of these computer programs. Current projections are that all of the renovated systems will be placed into production two weeks ahead of the Treasury mandate of October, 1, 1998. The total costs of the Year 2000 Program, including the development of contingency plans, replacement, and upgrade of personal computers, telecommunications and other equipment, remain within budget. Efforts in Fiscal Year 1999 will be devoted to completing the installation of replacement IT equipment and systems; completing the installation and replacement of non-IT equipment and systems such as x-ray machines, building infrastructure, and laboratory equipment; completing the non-IT contingency plans; and continuing the testing of computer systems in an operational environment.

TRADE COMPLIANCE

Through a complete redesign of the trade process and a focus on key industries and importers, Customs has made good progress toward attaining its goal of 90 percent overall compliance and 95 percent compliance for Primary Focus Industries (PFI). PFIs are industries which are of sufficient trade sensitivity to warrant a heightened degree of attention by Customs with respect to imported goods. The agency also has been able to sustain a close to 99 percent duty collection rate.

However, with the substantial growth in world trade, coupled with limited resources, it is becoming clear that Customs ability to meet or sustain all of the goals for trade compliance is increasingly challenged. Customs is continuing to move forward by constantly refocusing its resources on the primary focus industries and imports, but has adjusted its performance targets to reflect limited resources.

In the Investigative area, Customs has taken a proactive role in the identification of companies involved in using child labor in their production process. Current efforts have resulted in the issuance of five detention orders for merchandise identified as having been produced by child labor. In addition, current efforts to identify investigative targets are ongoing, with further development expected with the establishment of the child labor command center at Customs headquarters.

In accordance with the International Crime Control Strategy, efforts are also underway to update current references available to the field offices regarding Intellectual Property Rights, through the development of an IPR Handbook for field personnel.

Customs continues to prioritize efforts in combating the illegal transshipment of falsely declared textiles and apparel. Worldwide, many violators continue to participate in the criminal transportation and importation of textile and apparel goods into the U.S. Customs has conducted a multitude of textile-related investigations which have resulted in significant enforcement actions. In FY 1998, textile production verification teams visited some 500 factories worldwide, including factories in Africa, the Middle East, Asia, and Central America.

Customs has expanded the utilization of the Numerically Integrated Profiling System (NIPS) to identify violators of U.S. trade laws. NIPS has been successfully used to support a variety of initiatives, including NAFTA investigations which Customs is spearheading within the NAFTA Enforcement Working Group.

With the implementation of the NAFTA Enforcement Working Group trade fraud initiative, Customs has developed a direct-line communication network with our investigative counterparts in Canada to facilitate the exchange of specific investigative information related to potential and actual NAFTA violations. A similar network is currently being developed with Mexico. This international exchange of information on organizations identified as potential NAFTA violators will result in increased investigative leads.

At the beginning of FY 1998, Customs set forth an ambitious agenda. In the trade compliance area, Customs initiated a number of initiatives. Included were: expansion of ACE to additional

ports with additional business functions (to the extent funding is available); finalizing and implementing new drawback regulations to tighten control over this program which was previously identified as a Federal Managers Financial Integrity Act weakness; instituting multi-port compliance efforts focused on specific compliance areas (bearings, production equipment, and gloves) to see if greater organizational focus will result in higher levels of compliance sooner; continuing the informed compliance program with more focus on high impact areas; and continuing efforts to improve Customs compliance measurement program. Trade Compliance expanded the account based-approach to 250 accounts; initiated over 100 compliance assessments of companies; developed a similar compliance approach for Mexican and Canadian NAFTA goods; provided technical support to U.S. Trade Representative (USTR), and technical assistance to the Asia Pacific Economic Cooperation (APEC) on valuation, rules of origin, and risk management; increased focus on our international cooperation efforts with other countries, the World Trade Organization, and the World Customs Organization; and finally continued improvement of our commercial financial systems to improve compliance with the Chief Financial Officers (CFO) Act.

ACCOUNT MANAGEMENT

Customs has implemented the concept of Account Management. The Account Manager is assigned an account (importer) or group of accounts and is responsible for overseeing the efficient application of Customs processes to the account(s). By viewing import practices from a corporate or account level, Customs can craft strategies to maximize compliance which are reflective of developing business practices. The importer benefits by having a single point of contact within Customs.

In FY 1997, Customs had 25 full-time National Account Managers in place and a growing list of accounts participating in the program. In addition, the prototype of Port Account Management was implemented. The Port Account concept also focuses on major accounts -- importers with annual trade value in excess of \$10 million. Currently, there are over 250 importer accounts; these accounts import 27 percent of all goods by value into the United States. The Account Management approach, as exemplified by these programs, is the cornerstone for the future of the trade compliance process. While analysis of trade patterns and

determination of compliance levels for industries and countries of origin will remain critical for effective operations, an account focus is the means for implementing strategies resulting from such analysis. Customs believes that the vast majority of companies who import goods wish to do so in compliance with laws, rules, and regulations. The Account approach enables Customs to assist compliant companies to maintain compliance, while better using its resources and processes to focus on non-compliant activities. Such a focus will enable Customs to maximize the enforcement of laws and further develop risk management.

PASSENGER

In FY 1997, the performance target of 60 percent of the arriving flights providing Customs advance passenger information was met, and Customs continued to attain a 5 minute or less processing rate for 95 percent of arriving air passengers. Informed compliance projects continued with the establishment of 17 self-service informational kiosks at 16 airport departure lounges, production of brief television public service announcements for 8 airport television networks, and AM radio loops at the land borders. This supports our belief that most arriving travelers will choose to be compliant if they understand entry requirements. If the number of inadvertent violations can be significantly reduced, inspectional resources can focus more fully on serious violators.

Passenger targeting and identification were enhanced through continued airport analytical unit training, additional automation improvements to the Advance Passenger Information System (APIS), and improvements to APIS primary processing screens. Port Quality Improvement Committees (PQICs), which are multi-agency, empowered teams established to increase coordination on local passenger processing issues, are in place at 31 land border ports and airports, and are used to coordinate operations between government agencies and industry.

Over the next year, improvements will be made to the passenger compliance measurement program in the commercial air program area. Customs will continue efforts to obtain advance passenger information for 65 percent of all international flights. This will be accomplished through a recently signed Memorandum of

Understanding with various airlines and the Immigration and Naturalization Service.

Customs will continue to expand automated targeting capabilities; test or install several new technologies, such as automated license plate readers, at the land borders; and continue efforts to increase the apprehension of willful violators. The acquisition of non-intrusive inspection equipment will also improve effectiveness while reducing the processing time for secondary inspection at the land borders.

OUTBOUND

In FY 1997, the Outbound Process made significant outbound interdictions of currency, stolen vehicles, and Exodus violations. Outbound seized more than \$55 million in undeclared outbound currency. The majority of undeclared currency going out of the U.S. involved proceeds from illicit activities, with the majority being proceeds from narcotics smuggling into the U.S. Outbound also recovered 2,119 stolen vehicles worth an estimated \$35.3 million. In FY 1997, Customs Exodus Program, an intensified enforcement program intended to intercept illegal exportation of strategic technology and data, interdicted 1,034 shipments of weapons, munitions, and critical technology illegally leaving the United States, valued at more than \$59 million. During FY 1998, Customs was also involved in the investigation of a variety of export violations and the subsequent prosecution of the subjects involved. Some of these cases involved the illegal export of super-computers to Russian nuclear facilities, military aircraft parts to Iran and Iraq, and the illegal export of stolen vehicles.

Customs will continue to enforce a wide range of international laws related to illegal trafficking in materials and technologies which threaten U.S. national and economic security and impact on U.S. foreign policy.

Customs determined through compliance measurement that there was an extremely low compliance rate for exports. As a result of a vessel compliance program initiated last year, the bill of lading compliance rate has increased from 63 percent to 89 percent, Shipper's Export Declaration (SED) filing has increased from 70 percent to 85 percent and manifest timeliness has remained steady

at 90 percent. The Interest Based Negotiations (IBN) between the trade and Government identified and recommended enhancements to the Automated Export System (AES) that could provide a viable export reporting program for the trade and Government. The enhancements that were identified could provide greater flexibility for the trade, more timely enforcement information for Customs and more accurate information for the Bureau of Census through AES. Customs will continue to use the compliance measurement program to address the air and land environments. In addition Customs will: test the concept of Account Management; continue to work with all segments of the trade community to ensure that the AES captures all export information to meet the needs of both the Government and the trade; continue to work with the other government agencies to incorporate their export requirements in AES; standardize used car export procedures; and further a number of initiatives to deal with willful violators (e.g., test new outbound examination facilities funded by appropriations). Outbound will also evaluate new technologies; support Department of Defense and Department of Energy foreign export control programs; evaluate a stolen vehicle initiative started in the Port of Miami; and work with our intelligence units to improve outbound currency interdictions.

ANTI-TERRORISM

Customs will continue to strive to protect our borders from the threat of terrorism. In FY 1997, Customs received \$62.3 million for antiterrorism initiatives to be used to meet the recommendations issued by the White House Commission on Aviation Safety and Security. Customs has filled all 140 positions (100 inspectors, 33 agents, 6 intelligence analysts, and 1 technical support position) authorized under the antiterrorism legislation. One hundred inspectors and 17 special agent positions have been assigned to 14 of the largest international airports. Thirteen Customs agents are assigned to Federal Bureau of Investigations (FBI)-sponsored Joint Terrorism Task Forces across the nation, and 3 additional agents are assigned to headquarters to maintain liaison with FBI and Central Intelligence Agency (CIA) on anti-terrorism issues. In addition, Customs has established an Antiterrorism Intelligence Section to coordinate Customs multi-agency efforts to disrupt terrorism directed at the U.S. Under this initiative, Customs analysts work directly with the FBI's

and CIA's counter-terrorism centers to undermine terrorist support operations in the U.S.

To support efforts to screen baggage and cargo at international airports, \$35 million was specifically authorized to purchase equipment under this appropriation. Of this amount, \$26.4 million has been designated to purchase joint-use equipment that can be shared with airports, airlines and cargo authorities. Equipment procurement will be accomplished over a three year period. Planned use of the funding includes the acquisition of: mobile x-ray vans with explosive and radiation detection technology; tool trucks; mail x-ray systems; explosive particle detectors; and radiation detection pagers. Also, for joint-use with airport entities, the heavy cargo pallet x-ray will be tested in August 1998 in Miami, Florida.

In addition, funding is available to further develop the Automated Targeting System (ATS) to identify cargo shipments that may pose terrorist threats. A prototype test of this system has recently been conducted at New York's JFK Airport. ATS will be implemented at 14 additional international airports in FY 1999.

Since October 1, 1997, Customs made many significant interdictions that support aviation safety and security at 17 international airports that have received resources under this initiative. Customs has assisted in four terrorist related arrests, made 143 firearms seizures and 28 munitions seizures in baggage and cargo, and made 294 seizures of violative shipments of hazardous materials and dangerous goods that would have been placed on aircraft.

RESOURCE ALLOCATION MODEL

Customs is developing a Resource Allocation Model to determine optimal staffing levels necessary to meet current and projected workload and enforcement threats. The model, being built by a highly respected private sector company, is expected to be operational late next Spring. This is an ambitious undertaking. Customs knows of no other agency which has modeled its entire organization, especially not one which has as diverse a mission as Customs.

The model will link operational positions and support positions to provide a Service-wide perspective and will support "what if" scenarios so that we will be able to project resource requirements in response to changing workload or threats. Data generated by the model will be used to support budget requests and resource allocation decisions.

FY 1999 BUDGET REQUEST

Customs proposed appropriation for FY 1999 totals \$1,804,025,000 and 16,766 Full Time Equivalent (FTE) positions.

Budget Highlights

- Our Narcotics and Money Laundering Strategy will provide essential resources which will enhance our investigative and intelligence capabilities while enabling Customs to better anticipate and respond to changes in drug smuggling behavior. The \$5 million and 27 FTE (54 positions) requested will provide us with additional personnel and investigative assets needed to exploit seizures made at the border and effectively identify and disrupt the transportation and distribution cells of drug smuggling organizations within the U.S.
- The Customs Integrity Assurance Program (CIAP) Initiative of \$6 million requested for FY 1999 will allow Customs to conduct more special undercover operations, many in partnership with other Federal agencies, place a much stronger emphasis on intelligence and the analysis of investigative data, and increase our effectiveness in conducting contract and computer fraud investigations. In addition, Customs will change the process for hiring law enforcement officers by requiring increased emphasis on pre-employment screening. Upon Department of Treasury and Office of Personnel Management (OPM) approval, this will include required polygraph examinations.

The quality recruitment component of the initiative will insure that applicants of the highest quality and integrity are hired by using written tests, suitability assessments, structured interviews, and the redesigned pre-employment process. Customs will use the requested funds to help

improve the quality of our law enforcement workforce, expand our polygraph capability in order to address internal investigations of alleged misconduct, and acquire specialized hardware and software to accommodate the FBI's change to electronic fingerprint technology.

- In order to implement an effective child labor enforcement plan, Customs is requesting \$3 million and 4 FTE (7 positions) to fund the three main components of the Child Labor Enforcement Initiative:

The first component is the establishment of the Forced Child Labor Command Center which will be located at Customs headquarters and staffed by two special agents and two intelligence research specialists. The Command Center will act as a clearinghouse for information and will provide 24 hour "hotline" telephone service to a wide variety of audiences in order to provide a venue for allegations about prohibited importations. The second component is the increase in crucial foreign staffing by assigning three additional special agents to areas where forced child labor is the most common. The third component is Customs engagement in outreach programs with the trade, government, and non-government organizations, taken in concert with in-house programs, to achieve successful enforcement of the Harkin-Sanders amendment to Treasury Department FY 1998 Appropriations Act (PL. 105-61, 111 Stat. 1316).

- Our FY 1999 budget request also includes a \$54 million Non-Intrusive Inspection Technology Initiative for land and sea ports. As growth in trade and traffic volumes increases, tools to rapidly screen and comprehensively inspect arriving conveyances and cargo must be deployed. This technology will allow Customs to effectively target and detect high-risk traffic without impeding the flow of legitimate commercial traffic. This funding will allow Customs to acquire two higher energy container inspection systems for sea-going containers (\$10 million), 12 automated targeting systems for Land and Sea Ports (\$3.4 million), and multiple technologies for the Southern land border (\$40.6 million). This investment in proven technologies is essential and critical for enabling Customs to blend state-of-the-art

equipment with law enforcement intelligence, thereby enhancing counter-narcotics capability.

- Congress' FY 1998 enactment of \$9.5 million for the Land Border Automation Initiative is recurred in this budget. This will have the ancillary benefit of improving targeting of arriving vehicles for enforcement purposes. This is the second phase of a joint initiative with INS which began in FY 1998. The automated targeting systems, license plate readers, and Treasury Enforcement Communications System replacement program, will free up inspectors to do more careful visual screening and questioning of vehicle occupants for enforcement purposes, thereby resulting in increases in detections of violations and subsequent seizures and arrests.
- In addition, Customs is requesting \$7.252 million and 80 FTE as part of base resources in response to several mandates. The National Performance Review (NPR) goal to clear most travelers on the Southern border in 30 minutes or less and on the Northern border in 20 minutes or less by the year 2000 for land border travelers by vehicle, and the legislative mandate contained in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 account for \$4.185 million and 46 FTE. The NPR customer service goal is a joint initiative with the Immigration and Naturalization Service (INS) and the Department of Agriculture. Immigration law authorizes Customs and INS to cover all primary lanes during peak processing hours and in equal numbers. This staffing and the staffing requested for the new border crossings, (\$2.706 million/30 FTE) will help to support both requirements. Finally, the adjustments reflect the completion of resource levels for the requirement to staff an additional dedicated commuter lane in El Paso, Texas (\$0.361 million/4 FTE).
- Finally, Customs is requesting an increase in the Merchandise Processing Fee. This increase would provide Customs with a funding source to fund our Information Technology infrastructure and modernize our commercial processes. The fee would be used to develop automated capabilities to respond to the trade's interest in account

management, periodic payment, and capabilities envisioned in the Modernization Act.

While we have much to be proud of, Customs is still keenly aware of the importance of continuing to explore new and innovative strategies for improving its performance in protecting our Nation's borders. This concludes my statement for the record. Thank you again for this opportunity to appear before the Committee.

Responses to Questions From Committee Members

Senator Rockefeller

1. Do you plan to steer Customs in the right direction regarding drawback and loosen the previously too-tight control?

The Customs Service acted in response to a report of the General Accounting Office that criticized tight controls over drawback. Customs is aware that some tension exists between control and liberalization in any tax refund program. The Customs Service hired a professional facilitator and worked with representatives of the major trade groups, through interest based negotiation, to develop regulations to implement recently passed drawback legislation. When specific issues are brought to Customs attention, we endeavor to shed as much light as possible on Customs treatment of said issue. Further, all of Customs actions are subject to judicial review.

2. Will you actively seek to treat the new standard of "commercial interchangeability" as less restrictive than the old test of "fungibility"?

The Customs Service recognizes that a new standard of commercial interchangeability is less restrictive than the old fungibility test. In the regulations promulgated to implement the new test, Customs followed Congressional guidance as delineated within the legislative history.

3. Will you begin using the factors we listed in the legislative history to the ModAct for determining "commercial interchangeability" only for guidance and not as strict requirements?

Customs has, by regulation, provided that in determining whether merchandise is commercially interchangeable, Customs "shall evaluate the critical properties of the substituted merchandise and that evaluation factors considered include, but are not limited to, governmental and recognized industry standards, part numbers, tariff classification and value." These are the factors Congress intended in the legislative history.

4. Will you find commercial interchangeability even where some of the guiding factors listed in the legislative history are not satisfied?

In a number of instances, Customs has determined that the absence of a particular factor did not affect the finding of commercial interchangeability.

5. Will you accept customer affidavits as effective evidence of commercial interchangeability?

The courts have consistently given more evidentiary weight to party's contractual provisions than to a party's affidavits. Customs, as an administrative agency, follows judicial guidance in interpreting the law. The courts have provided guidance on the acceptance of affidavits as evidence and Customs has tried to follow that guidance.

Consistent with the courts' guidance, Customs will consider a customer's affidavit, but Customs will not accept the same as definitive proof of commercial interchangeability.

6. Steel and several other key U.S. manufacturing industries are being hammered this year by record levels of imports due to the major structural economic failures in Asia and now in Russia. Our steel industry, in particular, has made it very clear that given its emerging trade crisis, it would be extremely helpful to receive import data earlier than the current 7-8 week Census Bureau lag time. Canada, Mexico, and the European Union are already providing their steel industries with expedited import data. Unprecedented U.S. Steel import levels and the fact that our major trading partners are already providing early import data to their steel producers, suggest to me that we should do whatever we can to meet the industry's request for expedited import data. What can you do under existing law or directive to meet this request?

We have for the past year discussed with the U.S. steel industry, the Department of Commerce, and the Census Bureau, the request by the industry for expedited data. This included a visit by Customs officials to Fort Erie, Canada, to examine the Canadian system you have referenced.

Commercial entry data is used extensively by Customs to identify and monitor import problems and support a variety of risk management and enforcement activities. Data analysis complements other compliance and enforcement activities carried out by Customs, often in partnership with various industrial sectors, including steel.

To address industry concerns within the current statutory framework, the Administration adopted guidelines regarding the release of preliminary import data in extraordinary circumstances to address import surges (see White House Report to Congress on Steel dated January 7, 1999.) This resulted in the public release of preliminary import data for qualifying industries. This data is available for a limited period of time and is released approximately one month sooner than it was prior to the guidelines outlined in the White House report.

Customs continues to support any efforts to work with other government agencies which have authority over the disposition of the data requested, and will remain active in carrying out its own risk management and enforcement activities to identify and address critical compliance issues.

Customs officials met with representatives of the domestic steel industry on May 5, 1999, and discussed the implementation of a system similar to the Canadian system. It was explained that without both personnel resources and significant automation enhancements, such a system cannot be implemented. We believe the domestic industry understands these limitations.

Senator Mack .

1. A GAO report from April 1998 criticized Customs for not having a process for determining the appropriate allocation of inspection personnel and that Customs attempts to address this shortcoming have been flawed. What steps will Customs be taking to properly evaluate the needs of ports and to ensure the appropriate allocation of Customs resources?

Customs contracted Price Waterhouse Coopers to develop a resource allocation model. It is the first time an entire agency in the Federal government has been modeled for personnel allocations. This model uses techniques for projecting future requirements based on workload, activity times, and desired performance. In addition to predicting core occupation staffing levels, the model also establishes relationships between the core occupations and support needed (i.e. automation and support personnel). A team representing all of the major offices within the agency has been brought together to set the assumptions about future workload and expected performance. There are numerous variables and assumptions which can be set to look at resource requirements. That work will be done and the model will be tested using different scenarios.

2. In 1996, a Customs employee brought to the attention of the Congress serious security problems at the Miami Airport. While I understand the Customs Service has been working to address these problems, I am troubled by the fact that the Customs Service was apparently unable to discover and address these problems internally. What steps do you envision Customs taking to implement an effective self-monitoring system?

It should be noted that the document which the employee provided to the Congress was a Customs internal report (Quarterly Security Report) which identified security concerns at Miami International Airport. The major problem was not that Customs failed to identify security concerns but that the airport authority was extremely slow in addressing these concerns primarily because of a flawed reporting and prioritization mechanism. Since that report was made public Customs and the airport authority have instituted a system which has done much to remedy the situation.

In addition to the regular quarterly security reviews, the Customs Office of Management Inspection and the GAO have conducted security reviews of Miami Airport over the last 2 years and the recommendations contained in these reviews have been implemented at Miami Airport. Miami Customs also developed a Security Awareness Course which was mandatory for all Customs employees and also offered to other agency personnel as well as affected airline and airport employees. Customs management continues to place a high priority on the Airport Security Program and as a result there is a heightened awareness of the importance of the program among both managers and employees at Miami International Airport.

As a result of the emphasis placed on security and the revised reporting system 91 percent of the deficiencies identified in FY 97 and 88 percent of those identified in FY 98 have either been corrected or are pending completion. This represents a marked improvement over the past and we continue to work on improving our security program at all airports.

Security Reports (Areas of Concern) submitted to the Dade County Airport Department (DCAD) Security Analyst.

FY-97

SECURITY REPORTS (Areas of Concern) SUBMITTED - 76

SECURITY REPORTS (Areas of Concern) CORRECTED - 59

SECURITY REPORTS (Areas of Concern) REMAINING - 17

SECURITY REPORTS (Areas of Concern) PENDING - 10*

SECURITY REPORTS (Areas of Concern) UNRESOLVED - 7

FY-98

SECURITY REPORTS (Areas of Concern) SUBMITTED - 48 (Includes 1 Duplicate)

SECURITY REPORTS (Areas of Concern) CORRECTED - 37 (Includes 1 Duplicate)

SECURITY REPORTS (Areas of Concern) REMAINING - 11

SECURITY REPORTS (Areas of Concern) PENDING - 5*

SECURITY REPORTS (Areas of Concern) UNRESOLVED - 6

*Work orders have been submitted or parts are on order.

3. Over the last few years, I have heard from Customs employees who express concern over the manner in which Customs has handled its Management of the Office of Internal Affairs. Are you aware of these concerns and what are your plans with respect to addressing these issues?

I am very much aware of the concerns which have been expressed about the management of the Office of Internal Affairs (IA). I personally am very concerned about maintaining the highest degree of integrity for all Customs employees, which is directly impacted by the effectiveness and perception of IA.

In an effort to strengthen IA management, I have undertaken the following initiatives:

- I have begun to enact major changes in the managerial structure of IA by selecting Mr. William Keefer as the Assistant Commissioner of IA. Mr. Keefer is a former career prosecutor, having held such posts as the Deputy Chief of the Department of Justice Public Integrity Section and interim U.S. Attorney for the Southern District of Florida. Mr. Keefer provides the managerial expertise and anti-corruption vision to ensure a professional, effective and efficient internal affairs operation.
- I have commissioned an SES level Deputy Assistant Commissioner position for IA. The Deputy Assistant Commissioner will work closely with Mr. Keefer in ensuring managerial control and operational effectiveness.
- I have restructured the IA field organization from five areas to four regions with clear reporting and command responsibilities to better focus our integrity and anti-corruption efforts.

- I have elevated the position of the IA Regional Special Agents in Charge (SAIC) to SES levels, bringing the positions to parity with SAIC's in other federal law enforcement agencies.
- I have implemented a rotation process between the IA and the Office of Investigations (OI). Rotation will allow for the placement of seasoned, expert investigators into IA, thus increasing IA's professional standards.
- The rotation process into IA also involves for the first time senior managers at both the Regional Special Agent in Charge and the Deputy Regional Special Agent in Charge positions, further enhancing IA's management strength and effectiveness.

IA has a delicate mission in rooting out corrupt employees and detecting internal systems which may be prone to facilitating corruption. In furtherance of addressing mismanagement concerns and in support of achieving balance between appropriately conducted investigations and effective managerial control, I issued a directive outlining cooperation between IA and OI. Additionally, I have sanctioned an outside reviewing body to assess the quality, effectiveness, and efficiency of IA and related managerial structures and commands.

4a. Is it the policy to discourage sexual harassment in the work place?

It is the policy of the U.S. Customs Service to not only discourage sexual harassment in the work place, but also to take severe sanctions against harassers when such actions are proven. The Customs Service has been a leader among agencies in moving swiftly and aggressively to address sexual harassment as a matter subject to discipline. That is, in addition to the EEO process used by employees to seek redress for sexual harassment, Customs established a Harassment Task Force, housed in the Office of Internal Affairs, to address all allegations of harassment and to investigate them as potentially serious misconduct. Thus, in addition to the EEO process to the employee who believes he or she has experienced sexual harassment, Customs has a process in place to investigate allegations and discipline the harasser as appropriate.

The most recent policy memorandum issued on this subject, dated March 2, 1998, expanded the Task Force to include all forms of discriminatory harassment, including sexual harassment. This memorandum reminded employees of the procedures to report sexual harassment and all discriminatory harassment by calling Internal Affairs or the Harassment Hotline 1-877-ALERT HQ. And, later in FY 1998, all employees were also notified through the payroll statement of the procedures for reporting sexual and discriminatory harassment.

Training is an important component in ensuring a harassment-free workplace. In 1993 all Customs employees received Sexual Harassment training. Since then, training modules on the prevention of sexual harassment have been developed and provided to all new supervisors and all new Customs inspectors.

4b. Would you agree that any adverse action taken against personnel who lodge or support complaints of sexual harassment seriously undermines efforts

to eliminate sexual harassment in the workplace? Are you aware that when EEO complaints are filed, settlement agreements can work against the people they are meant to protect? I believe that it is appropriate, when such allegations are brought to light, Customs should take appropriate corrective action regardless of preexisting settlements.

I agree that any adverse action taken against personnel who lodge sexual harassment complaints, in whole or in part because of the sexual harassment complaint, serves to undermine the process of addressing sexual harassment. I intend to promote an environment within the Customs Service where employees can and will come forward with discrimination complaints without fear of retribution. Retaliation or reprisal for any reason is in and of itself an act of misconduct identified in the Customs Table of Offenses and Penalties. If and when such acts occur, they will be investigated and dealt with in the same manner as other misconduct.

Settlement agreements are only entered into by the agreement of both parties. There are a variety of reasons why the parties might see settlement as a viable means of resolving a conflict. The purpose of settlement is not to absolve individual managers of wrongdoing and the existence of a settlement agreement does not preclude disciplinary action. However, to provide greater controls over the use of settlement agreements, I have recently centralized and elevated the authority to reach settlement agreements to the Assistant Commissioners. This new delegation, which became effective February 1999, provides consistent and thorough review of all actions prior to execution of settlement agreements.

5. Narcotics interdiction is an integral part of the Customs Service mission and certainly one of its most visible functions. This fact notwithstanding, I have for the last several years been unable to get data from the Customs Service relating to their interdiction efforts. It strikes me that this information would be extremely useful to both the Customs Service and the Finance Committee from a practical performance review perspective. Such information would appear essential in order to determine the appropriate allocation of air and marine assets as well as personnel. Does Customs utilize such data? If so, I would appreciate your forwarding this information to me through the Committee. If not, just what process does the Customs Service use to determine its resource allocation to combat drug trafficking?

The allocation of Customs air and marine interdiction resources is based on a requirement to (1) maintain a comprehensive interdiction response capability along the southern tier of the United States and (2) provide augmented coverage in suspected high drug smuggling threat areas as determined by intelligence and investigative information, detected air and marine smuggling events, and seizure results.

Seizure data as well as other performance measures which aid in determining the optimal allocation of drug interdiction and investigative resources are maintained. This data is included in Customs Annual Performance Plan which is submitted to Congress annually via the President's Budget Request. We would be pleased to provide additional data if needed. Please do not hesitate to contact us with a specific request.

Senator Graham**1a. When can we expect the Internal Affairs investigation into allegations of misconduct and mismanagement at the Port of Tampa to be completed?**

The allegations of serious misconduct and mismanagement at the Port of Tampa were received by the Office of Internal Affairs, Miami, Florida, in October 1997. A formal investigation was initiated by the Harassment Task Force in November 1997. The investigation into the initial allegations was concluded in August 1998 and the final report was issued in September 1998 to management at both Headquarters and the Customs Management Center (CMC) in North Florida. In November 1998, a supervisory employee was suspended without pay for seven days and demoted.

Additional allegations of acts of official misconduct of supervisory personnel are currently being investigated by the Office of Internal Affairs, Miami, Florida. These allegations were made when subjects interviewed for the initial investigation brought forth additional allegations that Port of Tampa management officials engaged in retaliatory and discriminatory conduct.

1b. Is it typical that investigations of this type go on for over 1 year without any conclusion or actions? Given the seriousness of the allegations, particularly regarding some supervisor/employee relationships, do you believe that special attention should be given to completing these investigations in a more timely manner?

Yes, these investigations should be completed in a more timely manner. Internal Affairs harassment investigations are initiated immediately upon a complaint being filed with the Harassment Task Force. The Tampa investigation is defined as a "complex investigation" involving multiple complainants and multiple subjects. These investigations typically expand as the alleged "pattern of harassment" becomes visible. The scope of the investigation is determined by the leads developed and the duration of the investigation lengthens as these leads are followed up with interviews, subpoenas, affidavits, and newly developed allegations.

The Tampa investigation looked at a period of time spanning from 1987 to 1997. The scope of the investigation included detailed interviews and sworn statements from approximately 20 present and former employees in three states. The investigation concentrated on three specific but separate issues related to sexual harassment. The last statement was secured in August 1998. The final report detailing the results of the investigation was submitted to management in September 1998.

It should be noted that, at the onset of the formal investigation, a Cease and Desist order was issued by management (North Florida CMC Director) to the subject of the alleged harassing behavior in order to ensure that the alleged harassment was not currently ongoing. This order advised the subject that a complaint had been filed and

that the Office of Internal Affairs was conducting an investigation to determine the facts. According to the complainants and subordinates, there has been no harassing behavior on the part of the subject since the order was administered.

1c. Please provide an accounting of the number of investigations Customs has conducted during the past 5 years, that have involved Equal Employment Opportunity complaints, including the geographical location of the complaint, the outcomes of the investigation and any disciplinary actions that have been taken.

The Customs Service in 1993 created the Sexual Harassment Task Force which is located at Customs Headquarters in order to ensure that a direct conduit for complaints of sexual harassment could be addressed outside the normal EEO discrimination complaint forum. The complainant can report the allegation of discrimination (sexual harassment or discriminatory harassment which is defined to include harassment based on race, ethnicity, religion, age, gender, sexual orientation, or disability) outside the normal chain of command, via a hotline, or direct referral to the Office of Internal Affairs. The complaint is reviewed as an allegation of misconduct of a discriminatory nature. The Harassment Task Force individually reviews all allegations at the onset to ensure that immediate action is taken to address the allegation and ensure that management is accountable in stopping the harassment and taking appropriate corrective or disciplinary action. The EEO complaint process is separate but may run parallel to the Harassment Task Force directed management inquiry or investigative process. In isolated instances the Office of EEO will refer a sexual complaint to the Harassment Task Force with the consent of the complainant to be handled as a possible misconduct case. Of the alleged misconduct cases, most are referred to the Task Force directly from the complainant, management, hotline call, or the field Internal Affairs.

The Harassment Task Force Statistics for FY 93 through FY 98 are attached. Geographically the allegations have been spread over the United States. However, there has been a higher concentration at the Southwest Border. Discriminatory harassment is defined as harassment based on race, ethnicity, religion, age, gender, sexual orientation, and/or disability.

2a. It is my understanding that the Treasury Inspector General conducted an audit of Customs operations in Puerto Rico in late 1997. Reportedly, this audit found deficiencies in 25 of 26 categories. Please provide us with a copy of this audit report.

The report in question is the Customs Office of Internal Affairs Management Inspection Report on the San Juan Special Agent in Charge (SAIC) Office completed in September of 1997. This report details and analyzes the investigative and administrative performance of the San Juan SAIC office over a 3-year period and includes a section on the deficient findings noted during the inspection. The Management Inspections Report contains sensitive law enforcement information. For

this reason Customs respectfully proposes the following accommodation so that the Report can be made available to the Committee while protecting law enforcement information. We propose making virtually the entire Report available for review at by Committee staff (an extremely small part of the Report contains information on open criminal investigations that we are unable to share with the Committee). If the staff desires copies of the Report after the review, Customs will redact law enforcement sensitive information from any such copies (that is, although the staff will have access to this information during its review with Customs officials, given its sensitive nature, redactions will be made to copies actually given to the Committee).

2b. What actions have been taken to correct the deficiencies found in the audit report?

Numerous corrective actions have been taken. All administrative supervisors have been reassigned, as well as a number of investigatory supervisors. Two new Associate SAICs have been assigned to the SAIC San Juan, along with an Assistant SAIC for Administration (new position) and a new Management Program Officer. Administrative supervisors are responsible for correcting deficiencies and maintaining control over administrative operations. The imprest fund and petty cash procedures have been streamlined and, the a new position, a Management Program Specialist, was created to handle HIDTA budget and purchase transactions. Where lacking or inadequate, management controls have been put in place and are being monitored.

2c. Have any supervisors been held accountable for the poor results of this audit?

Yes.

2d. If so, what actions have been taken to hold responsible individuals accountable for this situation?

In addition to putting a new management team in place in most all key SAIC office positions, including a new Assistant Special Agent in Charge to oversee all administrative and enforcement support operations, disciplinary actions were effected against several managers and employees. In addition, several managers were reassigned to new positions in new geographic areas, while some others were reassigned to other responsibilities as part of an internal restructuring within the Office of the SAIC, San Juan. Included in the disciplinary actions were:

Management Program Specialist - Removed

Responsible for the administrative accountability of the most deficient findings in the administrative areas.

Criminal Investigator - 3-Day Suspension

Failure to process Asset Sharing Requests.

Group Supervisor - 14-Day Suspension

Failed to properly manage and supervise the Administrative functions.

Marine Enforcement Officer - 5-Day Suspension

Involvement with disreputable associates who had committed felony crimes.

Assistant Special Agent in Charge - Directed Reassignment to Headquarters

Resident Agent in Charge - Directed Reassignment to Headquarters

We would be happy to sit down and discuss our efforts in greater detail with you at your convenience.

Additional Responses to Questions From Committee Members

1. A study by the Gartner Group has confirmed that Customs overworked computers will begin to black out in the second half of 1998. These computers are used not only for screening all cargo entering this country, but also by Customs Special Agents to conduct anti-narcotics and anti-money laundering investigations. The backup of cargo on the border and the impact on interdiction would have a devastating effect on Customs mission.

Customs has estimated that it will need more than \$400 million over the next three years to maintain the current computer system and another \$400 million over the next six years to replace it. Yet, the Administration's FY 98 budget request for these projects was \$8.5 million plus a request for an increase in the merchandise-processing fee that is very likely illegal under WTO rules.

What plan of action do you envision for upgrading the automated system needed by Customs? What specific upgrades do you envision to interdict illegal narcotics.

In the near term, the strategy is to shore up the weakest links in the existing Automated Commercial System (ACS). In FY99, Customs identified \$11.9 million for the upgrade of its mainframes, storage, and telecommunications to avoid any black outs. Of the \$11.9 million, \$6.9 million has been reprogrammed within Customs budget to upgrade the hardware and software resources used to run ACS. Customs is currently seeking additional funding sources to make up the shortfall.

Customs needs \$79 million in Fiscal Year 2000 to keep ACS operational and responsive to the increasing demands of the trade. The Administration's budget includes a request for an additional \$35 million over Customs base funding of \$32 million, leaving a shortfall of \$12 million.

The ultimate solution is to replace the obsolescent ACS with a modern commercial system, called ACE. In order to keep ACS operational, develop a modern trade system, and implement field hardware supporting both the commercial and law enforcement communities, current estimates anticipate a cost of \$1.4 - 1.8 billion over the first seven years. This investment will enhance Customs ability to process cargo quickly and efficiently, while allowing the Customs workforce to focus on the inspection of cargo, commercial compliance, and interdiction of narcotics.

2. Various industry groups have expressed concern and frustration that Customs automation efforts continued to be delayed. They also express concern that Customs is paying no more than lip service to their concerns. Further, since the Administration does not seem committed to funding Customs commercial automation projects, why do you believe that their concerns may be unfounded?

The Administration, Treasury, and Customs recognize the need to modernize our automation. We have been working closely with the trade to modernize our processes

and define information systems requirements. The issue now is how to fund the needed improvements in automation.

The Administration proposes to establish a fee for the use of Customs automated systems to be paid for by importer filing electronically. Proceeds of the fee will offset the costs of modernizing Customs automated commercial systems and an international trade data system. The fee will be available for obligation after FY2000.

3. A major initiative by Customs over the past two years has been to increase the screening of outbound cargo. One aspect of this effort has been to collect better export statistics, a job Customs undertakes on behalf of several federal agencies. Customs has been penalizing outbound carriers of merchandise for failing to transmit export data in a timely manner, even in cases where the information must come from the actual owners of the merchandise, not the carriers. The source of this authority is dubious, and not found in the statute or regulations governing Customs operations. Instead the Commerce Department has delegated this authority to Customs through an inter-agency memorandum of understanding. What steps are you taking to remedy this inequity?

The premise of this question, that Customs lacks authority to penalize carriers for failing to submit Commerce's Shippers Export Declarations (SED's), is not correct. Carriers are required by law and regulation to give Customs a cargo declaration with commercial forms at the exit port (19 U.S.C. 1431, 19 CFR Part 4, 13 U.S.C. 303, and 15 CFR Part 30.)

Copies of the bill of lading and associated export documentation, including SED's, are given to Customs by carriers. If an SED is not required (exemptions are given if the shipment is low value or reported electronically), the bill of lading must state that an exemption applies. Commerce regulations require that SED's or an exemption statement be given to the exporting carrier by the exporter or his agent prior to departure from the U.S. This process is key to accountability for filing of export documentation with the government and provides the foundation for Customs/Bureau of Census compliance measurements.

Carriers are required to file a bond with Customs in order to engage in international commerce (13 U.S.C. 304 and 19 CFR 113.64.) Bond violations constitute liquidated damages which are assessed by Customs (19 CFR 113.64 and 15 CFR 30.24.) In the case of missing or late SED's, carriers are assessed liquidated damages. Carriers can also be assessed penalties for withholding bills of lading or otherwise filing false manifests if they ship reportable export cargo (19 U.S.C. 1433 and 1436.) In sum, the carriers perform a vital service to the country in assisting the government in export reporting. If the carriers did not perform this function, then non-reporting of export statistics would become a huge problem in terms of trade statistics and export license reporting.

Customs is now automating the export process for exporters and carriers. Goods electronically reported in Customs Automated Export System (AES) by exporters and their agents do not need to be handed in to the carriers prior to export. Also, the carrier's export manifest is now being programmed for in AES which will serve the government's needs while following the export community's business process. This effort is now underway and could spell some relief for the carriers without imperiling export reporting or enforcement.

PREPARED STATEMENT OF JAMES PHILLIPS

The CANADIAN/AMERICAN BORDER TRADE ALLIANCE (Can/Am BTA) is a transcontinental/bi-national broad-based organization with participation from all 22 states on or near the U.S./Canada Border (Washington to Maine including Alaska) plus the Canadian provinces with a combined network which involves over 60,000 companies and organizations in their individual memberships. Can/Am BTA participants include members from border trade, border crossing and transportation segments including producers, shippers, brokers, mode transportation providers, bridge and tunnel operators, chambers of commerce, business and trade corridor associations, economic development and government agencies.

Over the past ten years I have had first-hand opportunities to participate and experience most aspects of U.S. Customs and INS border protection and facilitation activities on-site at a number of U.S./Canada border crossing locations.

U.S. CUSTOMS WORKLOAD INDICATORS:

U.S./Canada two-way trade, the largest trading partnership in the world, is one of the fastest growing segments of major economic activity in the world economy. It is a primary foundational element of U.S. economic viability and positive growth which directly translates to job creation.

In 1988, the year "before" the Free Trade Agreement was implemented, U.S./Canada Trade was \$194 billion. Since then U.S./Canada trade has doubled and is now crossing our Northern border at the rate of \$40 million every hour reaching \$387 billion in 1997 (see attached chart). In the last three years, truck crossings have increased at an annual growth rate of 11% with 62% of total trucks crossing the Northern land border. Of the 42,000 total trains processed by U.S. Customs in 1997, 85% crossed the Northern land border (see attached charts).

Approximately 40 million privately owned vehicles cross the Northern land border annually which is one third of the national total (see attached chart).

Total containers (1994-1996) increased at an annual growth rate of 8%. Of more timely importance, containers processed in 1997 increased 44% over 1996. (Note point 2 under narcotic threats.)

In the last three years, commercial entries increased at an annual growth rate of 11%. The current number of authorized U.S. Customs Inspectors working on the Northern border is essentially the same number employed in 1980. The formal entries on the Northern border have increased sixfold since 1980 from 1 million to 6 million a year.

In the last three years, total passengers and pedestrians entering the U.S. have increased at an annual growth rate of 2% with approximately 25% of the national total crossing the Northern border. In this category it is important to note that individuals crossing the Northern border have more than doubled from 1989 to 1997 to 112 million with no increasing in U.S. Customs Inspection staff working on the Northern border to accommodate the increased volume.

NARCOTICS THREAT—NORTHERN BORDER CONSIDERATIONS:

In the last three years, the number of narcotics seizures have increased at an annual growth rate of 16%; the majority occur on the Southern and Southwestern borders. However, several factors are at work portending future escalating threats on the Northern border where U.S. Customs Inspection staffing remains at 1980's levels. These threats include:

1. The current escalation of hydroponically marijuana. It is understood that this species is exceedingly potent and commands a street price in the U.S. of \$4,000 a pound, double that of the street price in British Columbia where it is being grown. The necessary additional enforcement/inspection to combat this situation without benefit of added staff is resulting in traffic congestion delays of 1 to 2 hours at the major Washington/British Columbia crossings;

2. The nature of cargo traffic along the Northern land border is changing. Whereas previously U.S. Customs found that the majority of cargo processed along the Northern border originated in Canada, changes in maritime shipping patterns now results in cargo crossing which originates anywhere in the world. Cargo arriving by vessel is now off-loaded in one of several new large container ports in Canada and travels to the U.S. by truck or rail entering at a Northern border land port. As the size of these large ocean vessels increases (some vessels now carry 8,000 containers requiring 4,000 or more trucks to off load) and more vessels with cargo originating in a variety of countries arrive in Canada with cargo destined for U.S. delivery, there is an increased opportunity for a variety of smuggling activities along the Northern border. This is a relatively "NEW

THREAT for Customs and one which will need to be addressed through the same aggressive means Customs has undertaken to address smuggling in other venues. The fatal flaw to providing effective and appropriate response to this new situation is lack of adequate staff and resources to meet current needs much less this new threat to the U.S. Origin reviews by Customs also significantly affects duty collection. With the current Customs understaffing on the Northern border, capability to perform adequate investigation is a concern;

3. Additional U.S. Customs staff and resources (plus that of other agencies) which have rightfully been authorized on the Southern borders in order to combat major levels of narcotics activity (as they succeed in their mission) raises the specter of increased illegal trafficking being initiated through the understaffed Northern land border as the "weakest link" alternative.

VIEW OF THE NORTHERN BORDER SITUATION

From extensive observations and exposure to U.S. Customs border crossing activities and counsel with CAN/Am BTA members, who make their livelihoods on and at the border I offer this testimony to provide information for your review and consideration to support increased funding for Customs.

In the early '90s border crossing infrastructure lane capacity and plaza constraints were a major limitation along with lack of adequate U.S. Customs staffing at the Michigan and New York Bridge and Tunnel crossings which carry 70% plus of the total U.S./Canada trade and traffic.

In the past six years, the Michigan and New York crossing operators have made or are making \$750 million of new investment in capacity additions and improvements (and may I add that no public or tax funds are used).

During the same six year period, quantum leaps were made in technology development and utilization by both operators and federal agencies active at the border for automatic toll collection, transponders computerization, systems development, enforcement equipment, and techniques, license plate readers, biometrics, remote port entry techniques, video cameras, voice analyzers and NATAP pilots achieving seamless commercial passage under selective conditions. These technical developments however are just scratching the surface since enough funding is not currently made available in U.S. Customs Appropriations to actually activate these devices on the Northern border in any volume.

Much improvement in inter-governmental agency cooperation and modernization (especially U.S. Customs and INS cooperation, Agriculture and U.S. Customs cooperation and FDA computerization) has been achieved with more to be done.

The Canada/United States Accord on Our Shared Border agreement commenced in February 1995 which continues to result in increased cooperation harmonization, exchange, shared training, equipment and joint facilities between U.S. and Canadian agencies. This essential bi-national initiative needs to continue to be given priority to finalize achievable improvements which are of paradigm shifting importance.

In spite of the aforementioned positive improvements, some of which are of historic proportions, while communities and private sector entities have stepped up authorized U.S. Customs and INS staffing cannot service the existing required border crossing lane capability. The downside of the success in the array of mentioned improvements is that they "mask" the need for added staff by averting outright crises which would occur without these improvements.

For the past two years, the Bridge and Tunnel operator members of the Can/Am BTA unanimously report that U.S. Customs understaffing is by far the number one cause (coupled with INS to a slightly lesser degree) of congestion and non-operation of in-place crossing processing lanes. This is echoed in the Central and Western regions at Northern land border crossings. Perhaps the most telling example is at the Rainbow Bridge in Niagara Falls, New York where new facilities were constructed doubling the primary inspection lanes to remove long standing choke points and accommodate large, new increased traffic demands from Casino gaming. No new U.S. Customs inspectors were provided so the new capacity remains essentially unused while congestion and delays mount.

At the Lewiston Queenston Bridge in Western New York the second available truck lane remains closed far more often than it operates while trucks queue up due to the lack of Customs staff needed to operate it. At land border crossings in Washington, Montana, North Dakota, Minnesota, Michigan, New York, Vermont and Maine, routinely half of the existing crossing lanes in total remain closed due solely to understaffing of U.S. Customs and INS inspectors. Last Wednesday I crossed through the Detroit/Canada Tunnel at Detroit, Michigan both ways to view the activity. Eight Revenue Canada Customs lanes were operating entering Canada, but

only four of ten lanes were operating entering the U.S. with a queue of cars backed up to the Tunnel.

Trade and tourism are critical to the economy. Both are growing annually in double digits while inspection agency staffing is capped on the Northern border leaving the crossings and area communities to "deal with the resultant congestion and delays".

One of my earliest personal experiences with the U.S. Customs understaffing reality occurred in 1990 while attending a conference in Washington, D.C. the then Customs Commissioner Carol Hallett announced that a 175 new customs inspectors were being added to the Southern border. However, 78 of these positions were being taken from the Northern border, Airports, Seaports (see attached letter). Bluntly at a time when essentially every Northern border was experiencing record setting levels of delay and congestion, this forced decrease, due to lack of adequate funding, while easing the situation on the Southern border caused a serious problem on the Northern Border. In reality, both borders then and now need and require additional staff.

Because of current inadequate funding levels, U.S. Customs has to make "lose/lose" choices continuously at the Northern land border crossings, i.e., operate a passenger car lane or a truck lane when needing both and when a illegal activity/seizure occurs close one or both types of primary in order to provide staff to handle the seizure.

U.S. Customs has dual important missions neither of which should be compromised.

1. Enforcement and interdiction of illegal goods and activities to protect the Country.

2. Facilitation of legal trade and tourism contributes directly to economic growth, taxes and job creation.

U.S. Customs should and must do both, but current imposed funding constraints prohibit their ability effectively do so.

The Southern border has a proven serious protection threat with narcotics and illegal aliens. In the period 1990-1998 every additional U.S. Customs position authorized by Congress was directed to the Southern Border. Total U.S. Customs inspection staffing on the Southern border more than doubled and they need even more personnel.

In deploying all new resources to the Southern border the Northern border was forced to "make do". Actual work load demands in every category grew sharply. Customs has done "yeomen duty" with what they were given to work with. Today their staff is over extended.

The Northern border embodies 40% of the total 301 ports in the U.S. but has only 14% of the currently deployed inspectors who perform 33% of the national Customs workload. The total current primary inspection on the entire Northern land border is under 900 (men and women), the same level it was in 1980. Compare that to the 500 required inspectors currently staffing JFK Airport. The shortage of Northern Border customs inspectors is not a media event as it would be for Southern border drug activity massive delays at busy airports but are just as real.

Annually Customs collects approximately \$20 billion in duty which, it is my understanding, goes to the General Fund. It is unfortunate that "duty income" is not first applied to cover necessary "duty" collection costs before the balance is then directed to the General Fund. Customs 1998 operating budget is \$1.67 billion which I am told equates to 8 cents of each dollar of duty collected.

Duty is collected from trade and production activities which translate directly to economic health, tax generation and most importantly job creation. All of these are impacted Customs capability to provide effective facilitation of commercial activity.

Enforcement protects our populace and cannot be sacrificed. It is mission number one but not at the expense of sacrificing facilitation. The current situation for Customs to provide adequate, much less appropriate, services at current funding levels is untenable. They are continually to choose on the facilitation side i.e., air versus sea versus land ; Northern border versus Southern border and passenger versus cargo. These critical areas cannot continue to be "either/or".

RECOMMENDATIONS

I have interacted with Senator Gramm's staff on his excellent initiative S 1787 Bill to increase appropriations for U.S. Customs. I have worked closely with Senator Abraham et al on S 1360 and Congressman La Falce et al on his companion Bill HR 2955. The proposed 1705 new Customs positions for the Northern and Southern borders and equipment in these Bills are legitimate, required and CAN/AM BTA strongly supports them. The \$48 million of equipment dollars in S 1787

are specified for the Southern border while S 1360 states land borders. The Southern border needs the specified equipment, however, there is also acute need for funds for equipment on the Northern Border. I suggest increasing the proposed funding level to meet both land borders needs. If asked, I am sure Customs can quickly quantify the minimum amount the Northern absolutely requires. I would venture it is \$20 million.

The increase in funding proposed in S 1787 \$200 million a year, or \$220 million for the first year if Northern border equipment is added, is equivalent to one cent on the dollar of duty collected, is cost effective and will generate needed results. Every additional narcotics seizure is an avoided threat to our citizens, especially our children and to interior law enforcement. Cost effective cargo processing and minimizing delay time for the trade community is an investment to increase legitimate trade activity and volume directly improving our economy while ensuring identification and collection of proper duty.

While Section 110 of the 1996 IIRIRA Legislation is not in itself a subject of this hearing, it is relevant to state that the proposed additional staffing provided for in Senator Gramm's Bill S 1787 and INS staffing provided for Senator Abraham's Bill S 1360 will far effectively deter potential and real terrorist, narcotic and illegal alien activities than Section 110 will ever do while avoiding logistic nightmares and border gridlock, which Section 110 in its present form will cause.

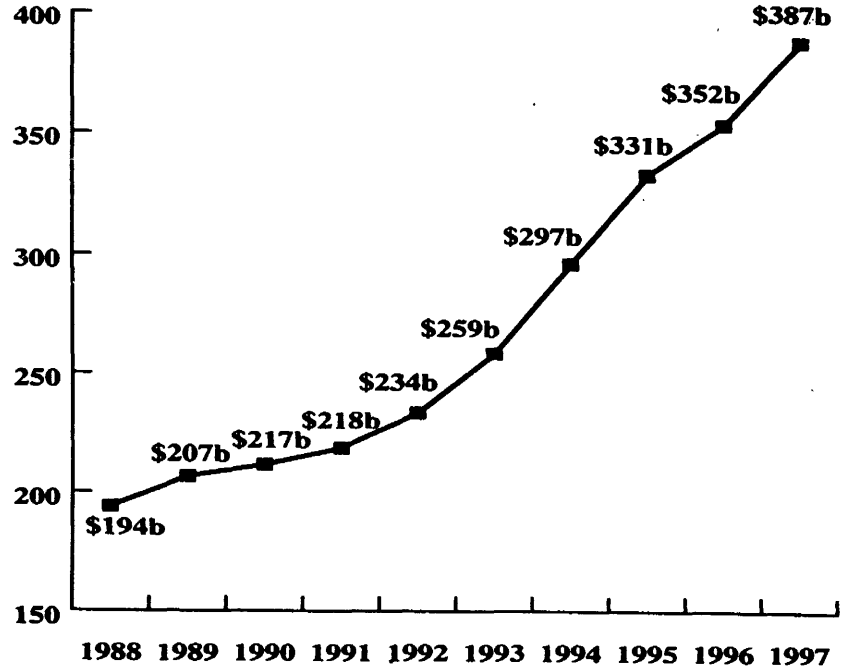
The Southern border needs and deserves every Customs position it has and more as proposed. The Northern border need is even more acute, but while remaining at 1980 levels is perhaps less apparent on the surface. The Northern border now has less than half of the inspector positions on the Southern border. Yet just the Detroit Port processes more commercial transactions than ALL of the Southern border ports combined. My point is that additional Customs staff is needed at both the Northern and Southern land borders for different reasons. It is a wise and prudent investment in the present and future of our country.

I appreciate your invitation to appear before you today to present a unified voice of the Northern border private sector trade and tourism community requesting that you authorize the investment for drastically needs additional U.S. Customs inspection staff and enforcement/facilitation equipment to protect the U.S. from illegal activities and facilitate economic benefits from increasing legal trade and tourism activities.

Thank you.

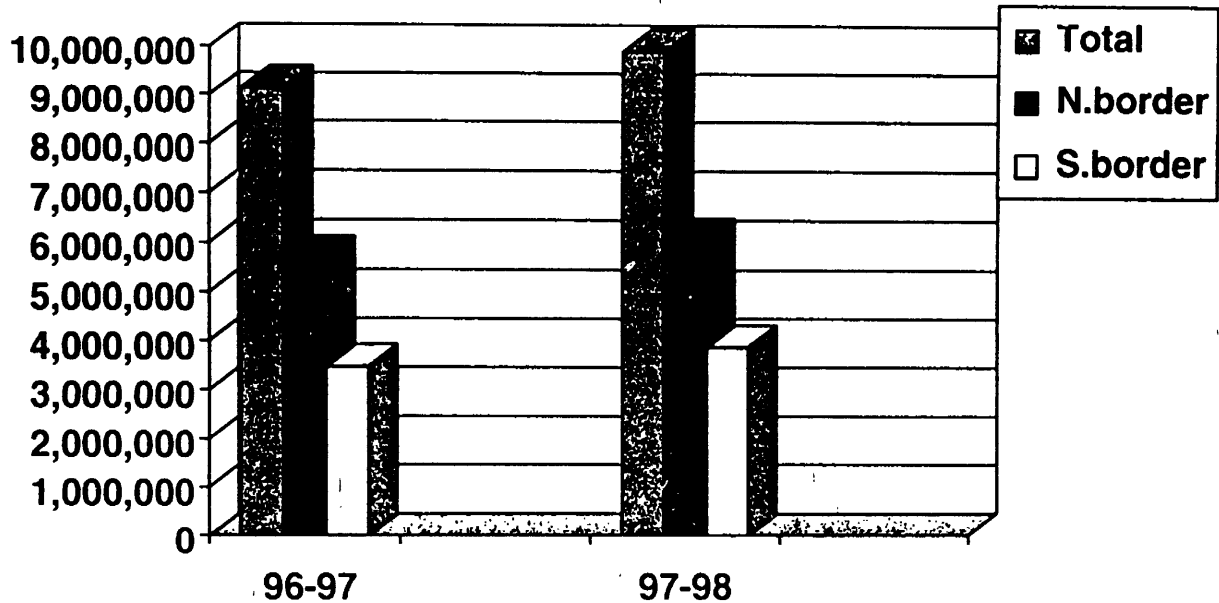
U.S. Trade with Canada

*Exports and Imports, Goods, Services and Income,
1988 - 1997, in billions of U.S. dollars*

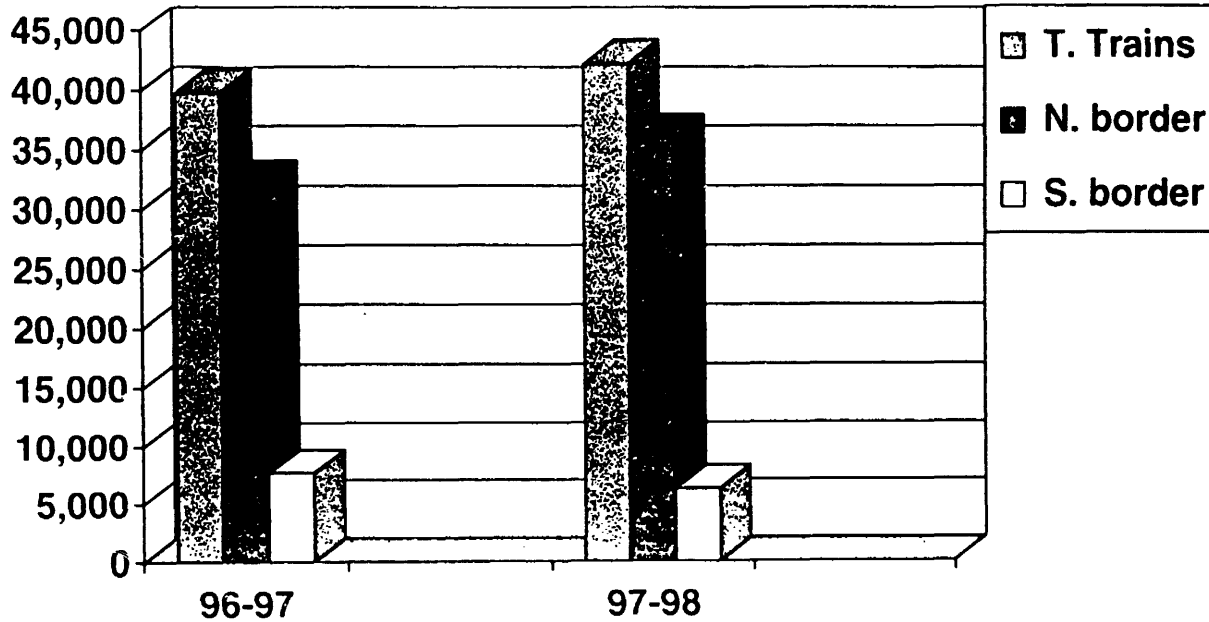


Source: U.S. Department of Commerce

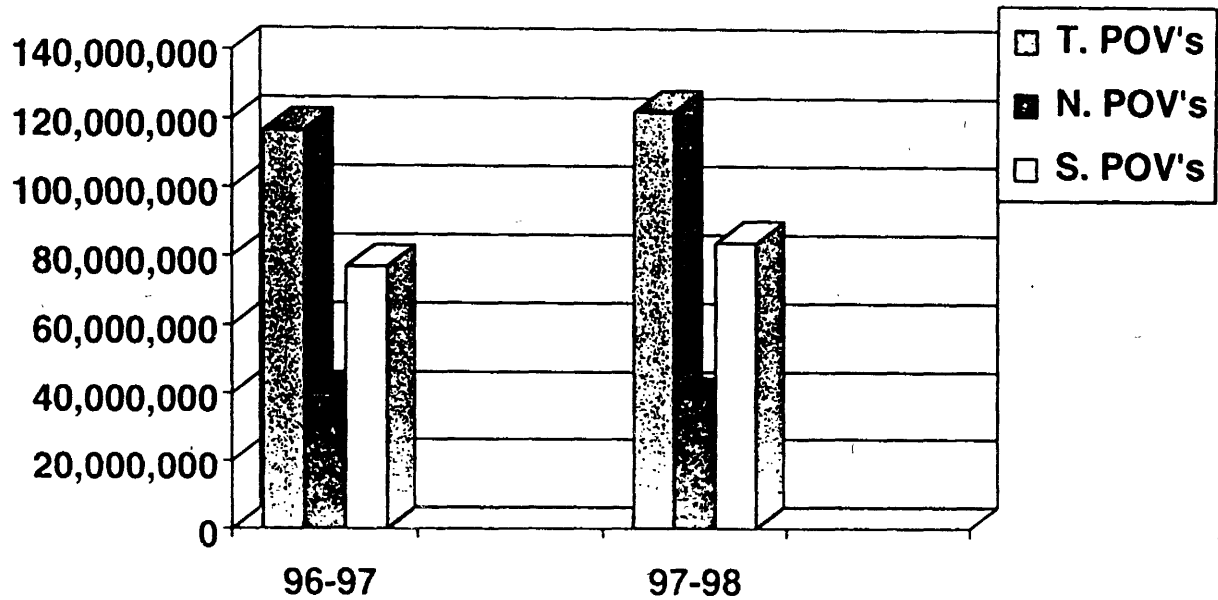
Northern/Southern Border Truck Comparisons



Northern/Southern Border Rail Comparisons



Northern/Southern border POV'S Comparisons



Workload Increases Nationwide

Workload Area	1994-95	1995-96	1996-97	1997-98
Commerical Aircraft	519,123	518,972	535,713	555,809
Trucks	8,008,199	8,313,038	9,220,681	9,968,608
Privately Owned Vehicles	118,865,851	117,311,471	117,434,903	122,068,253
Total Containers	8,659,707	9,725,311	9,974,397	14,382,268
Total Entry Summaries	14,899,489	15,796,726	17,553,887	19,470,421
Total Passengers & Pedestrians	374,949,941	444,175,435	440,985,534	461,830,996
Number of Narcotics Seizures	19,275	22,683	26,422	30,724

Data is shown for the time periods August 1 of each year thru the following July 30

NCBA

Niagara
County

BUSINESS ASSOCIATION

111 MAIN ST. P.O. BOX 850 LOCKPORT, NEW YORK 14095 716-433-7482

June 5, 1990

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The Western Companies

Mrs. Carol Hallett
Commissioner of Customs
United States Custom Service
1301 Constitution Avenue, NW
Washington, D.C. 20229

Dear Mrs. Hallett,

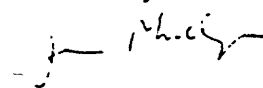
Your insight and candid comments were truly appreciated at our meeting on May 11, 1990. As you suggested, I will continue to work very closely with Bill Brainard and Phil Spayd.

As discussed, the staffing levels, systems and technology used by U.S. Customs in the Buffalo District at our 4 Border Bridge crossings essentially control the levels of Cargo and Passenger volumes which can be handled to make the new Free Trade Agreement with Canada the powerful Economic Opportunity intended. We look forward to continued communication and cooperation.

I attended the Southern Border Alliance meeting and heard your excellent Keynote Address. In it, you announced that effective Oct. 1, 1990 175 new slots were scheduled for the Southern Border. The bad news was that 78 positions were being taken from Airports, Seaports and the Northern Border. I would appreciate your advising me of the impact of this on the Buffalo District. We are very appreciative that cuts versus last year in Summer Staff were averted, but are very concerned that the Buffalo District continues to operate with a shortage of required Full Time Inspector personnel. We must find a way to meet the threat at the Southern Border and at the same time provide adequate staff to take advantage of the emerging Northern Border Economic Opportunity which also generates increased revenues from Commerce and Sales Tax.

Your comments will be appreciated.

Warmest regards,



1997 U.S. - CANADA TWO-WAY MERCHANDISE TRADE
WITH SELECTED STATES

(Billions U.S. \$)

STATE	TRADE VALUE
ALASKA	.4
DELAWARE	1.1
FLORIDA	3.6
ILLINOIS	18.4
IOWA	2.9
LOUISIANA	1.4
MISSISSIPPI	.8
MONTANA	1.5
NEBRASKA	1.0
NEVADA	.5
NEW YORK	27.3
NORTH DAKOTA	1.5
OKLAHOMA	1.4
RHODE ISLAND	.7
TEXAS	13.6
UTAH	1.0
VERMONT	5.2
WEST VIRGINIA	1.1

PREPARED STATEMENT OF RONALD D. SCHOOF

INTRODUCTION

Mr. Chairman and distinguished Members of the Senate Committee on Finance. My name is Ronald Schoof and I am Traffic Administrator responsible for customs compliance at Caterpillar Inc., in Peoria, Illinois. I am also Vice-Chairman of the Joint Industry Group, a coalition of one hundred thirty Fortune 500 companies, trade associations, and individuals actively engaged 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.

I have been asked today to relate to you the position of the Joint Industry Group regarding several Customs' oversight and authorization issues that have already been raised today. My comments will focus on the effects that Customs' drug enforcement efforts impose upon industry, the reasons for the long duration of Compliance Assessment Tests (CAT) and their impact on business, and the milestones that should be established to measure Customs' progress in implementing the Customs Modernization Act and how funding this progress should occur.

OPERATION BRASS RING

The Joint Industry Group actively supports Customs' dual mission of promoting cross-border trade facilitation while at the same time preventing the entrance of illegal individuals and goods into this country. Recently, the Customs Service beefed up its drug interdiction efforts with the establishment of Operation Brass Ring. After seven months, drug-related seizures and arrests have increased with few negative or costly effects to trade and America's global economic strength. Several of our member companies have commented that their cross-border shipments have not faced burdensome and costly delays at the border due to Operation Brass Ring.

The members of the Joint Industry Group fully support US Customs and the other agencies dedicated to protecting our borders from illegal imports. We applaud the continued use of new and innovative technologies to perform this responsibility. On behalf of our group, we request the Committee to fully support funding for the use of this technology. By working in partnership, Customs and the private sector can make a difference.

COMPLIANCE ASSESSMENT TESTS

Several Joint Industry Group member companies have undergone or are currently in the process of a CAT review. Customs has determined that the purpose of a CAT review is to help importers develop internal processing systems that promote compliance with Customs rulings and regulations and facilitate the clearance of goods at this country's ports and border crossings. The Joint Industry Group supports any initiative that increases the flow of goods and promotes the strength of our domestic economy.

With this purpose in mind, however, it is difficult to understand some of the problems encountered by certain companies in connection with their CAT reviews. In particular, several of our member companies have had a wide array of experiences with Customs and the CAT review process. Let me summarize a few of our findings.

Generally, most JIG members have had positive experiences after a CAT review, despite the amount of time and internal company resources that must be dedicated to the CAT process. A few however have experienced several difficulties in completing a CAT in a timely manner and within the original timeframe agreed to with Customs at the outset of the process. In this regard, some have found that it has taken an inordinate amount of time between the end of the field data collection phase of the process and the issuance of the final report and closure of the CAT. On the positive side, many companies have indicated that they have been able to improve corporate compliance with Customs regulations. Especially where the CAT teams are not "out to get" the companies they audit and are willing to work with companies in developing internal processes consistent both with current business practices and Customs regulatory requirements.

Several CAT teams, however, fail to comprehend business processes and difficulties because many have never worked in the business world. Often they do not understand the data and statistics they receive to complete a satisfactory review and are forced to do their own research to understand Customs regulations and how companies should comply with them. CAT teams are also unable to focus on one company at one time because they are working on too many audits at the same time. Some companies have found that certain CAT leaders are difficult to contact and unavailable to answer questions or discuss what the CAT team needs. This

adds to the time and burden both for Customs and industry. On the other hand, some members point to the development of a professional and cooperative rapport between the CAT members and business team members early on in the process as one key to an overall positive CAT experience. Customs has advised the trade that they have made changes in response to some of the problems encountered during the initial CAT reviews. The JIG believes that Customs and the trade will continue to learn from experience and that the CAT process will improve and move forward.

INTEREST RATE CALCULATION

The Joint Industry Group would also like to express concern about the ACS Reconciliation Prototype. Customs has presented draft language to the Finance Committee and the Ways and Means Committee which would give the Treasury Department authority to promulgate regulations for an interest accounting method based on aggregate date rather than on an entry-by-entry basis. It is my understanding that the Committees are evaluating whether or not to include this language as an amendment to H.R. 4342, the Miscellaneous Trade and Technical Corrections Act of 1998.

Without Customs providing the industry with more specific draft regulatory language, it is difficult for the members of the Joint Industry Group to support such a proposal. We agree that legislative language is needed to address the interest calculation issue. However, until Customs presents the industry with more specific draft regulatory language, the Joint Industry Group cannot support such a *carte blanche* proposal. We look forward to working with Customs on developing an acceptable option for interest calculation. We hope this process can start quickly to accommodate the timeframe of this committee's consideration of changes to current law.

AUTOMATION & MERCHANDISE PROCESSING FEE

In the President's fiscal year 1999 budget, the Administration requested an increase in the Merchandise Processing Fee (MPF) as the means to offset the costs of modernizing the Customs Service automated commercial operations. This proposal would increase the ad valorem rate paid by importers on formal entries into the United States from the current .21 percent up to a maximum of .25 percent plus increase the maximum per transaction. With over \$800 million per year already being collected from us to process our merchandise, we are opposed to any increase.

The Joint Industry Group has been an ardent supporter of Customs automation efforts. JIG was a major force behind the drafting and congressional approval of the Customs Modernization Act (Mod Act) in 1993. The Mod Act ushered in a new era of shared responsibility between government and business. In return for industry to accept more responsibility in ensuring that imports and exports comply with customs regulations, Customs promised that trade facilitation and enforcement would be enhanced through the creation of automated systems.

While industry has kept its part of the deal by working with Customs on improving company compliance rates and reducing the number of violations, Customs has been slow to reciprocate by establishing an automation system that is compatible with the needs of industry. Now, the Administration wants industry to continue to fund its failure to conform to Mod Act stipulations by increasing the Merchandise Processing Fee and promising industry that these funds will be used to fund Customs automation programs. The Joint Industry Group and its members seriously doubt whether these promises will indeed be carried through any more than they were over the past four years. A better approach at this late date in Mod Act implementation would be to allocate a portion of the existing \$800 million in revenues to improving the process through automation.

Customs estimates that it will need nearly \$1 billion over the next five years to develop and implement an automation system that will move from the laborious and time-consuming entry-by-entry process to an account-based, remote system of filing customs entries. Budget requests from this Administration over the past four years of less than \$50 million to meet this demand indicate that the Administration is not serious about meeting its Mod Act responsibilities let alone maintaining the current level of automated processing. This year's request of \$8 million drives home this point. Even adding the estimated \$50 million the increase in the MPF will generate, it will take over 20 years to fund this new system.

The current system is 14 years old and by all reports is already antiquated. Of the \$1 billion estimated for Customs automation over the next five years about \$400 million of that is needed to keep the current system operating during the transition. Trade volumes are increasing faster than the current system can absorb the workload. Recently the system went down for one hour. It took four days for Customs

to catch up with the entries delayed during that hour. From all reports, status quo is not an option.

The MPF is considered a "user-fee". It is, in our opinion, merely another tax on imports that distorts the true value of goods and imposes additional costs to the consumer. One example to support our view is the elimination of the fee for processing transactions within NAFTA. Revenues received through the MPF in fact go into the general fund of the Treasury. To be a true user fee, the MPF should be designated for the purpose it should serve, that of processing merchandise, which would only be accomplished when Customs fully automates its operations and activities.

It is the recommendation of the Joint Industry Group that a portion of the existing fee be allocated to automation enhancement. The amount for Fiscal Year 1999 should be at least \$50 million with increases each year for the following four years to provide the \$1 billion needed. Such funding should come with "ropes or cables" attached, not just strings. Congress must be fully satisfied that any Treasury/Customs architecture plan for the new electronic system will meet the needs of both government and industry for the 21st century.

Customs is now reaching out to industry for input into Customs' automation developments. To ensure that the automation program works for both Customs and business, industry must continue to be afforded a full opportunity to help design a system that will work in the era of electronic commerce. The Administration is leading efforts for global electronic commerce. That commerce will not grow as fast, be as responsive as possible or provide as broad a coverage as possible unless the customs processes are part of the global effort. Customs' current automation efforts are under-funded and too slow to develop. Even if the current plan is ever implemented, at the current rate it will be obsolete and inefficient. Industry should be more directly involved as to how these automation programs are developed.

To support this request, the Joint Industry Group Automation Committee is actively working with Customs to that end. We have met with past and current Customs officials on numerous occasions since passage of the Mod Act to lend support and advice on how these automation systems must be designed and implemented to satisfy the needs of Customs and industry. Attached to my statement is a letter to Acting Commissioner Sam Banks outlining our automation position. The Joint Industry Group supports the continued development and full funding of the following automation systems:

- The Automated Commercial Environment (ACE);
- The Automated Export System (AES);
- The International Trade Data System;
- The North American Trade Automation Prototype (NATAP); and,
- The US/UK Prototype.

These systems are vital to the continued leadership of the United States in automating the trade process worldwide.

MILESTONES OR HEADSTONES?

At the conclusion of the Mod Act negotiations, Customs developed an implementation schedule, complete with milestones detailing how and when Customs planned to complete each aspect of the Mod Act. It is the suggestion of the Joint Industry Group that the Committee obtain a copy of the Customs Mod Act implementation schedule and checklist. Then periodically meet with Customs to evaluate implementation progress.

Generally, Customs has been inordinately slow reaching their milestones. Over the past four years the Joint Industry Group has pressed Customs to raise the informal entry limit from \$1,250 to the rate agreed upon in the Mod Act of \$2,500. We still wait for the limit to be extended to the full amount.

Another area of concern to our membership has been the administration of the Unused Merchandise Drawback provisions. It took Customs more than four years from the passage of the Mod Act to promulgate drawback regulations. During the same period, it has been extremely difficult for some exporters, in some cases, industry groups, to obtain responses to ruling requests for a clear definition of "Commercial Interchangeability" for particular drawback eligible products. In some instances requests have gone two to three years without response. These delays have had a chilling effect on the use of Unused Merchandise Drawback, as exporters remain uncertain whether their products will in fact qualify for drawback refund. This is exactly the opposite result intended by Congress when it amended the Unused Merchandise Drawback provisions. At that time, Congress stated its intent to be "to expand exports, facilitate drawback use and ease administrative burdens." We believe that many of these delays result from the manner in which Customs is organized to respond to drawback ruling requests and to administer the drawback laws.

We encourage the Committee to hold Customs accountable for the problems it is having in administering the Mod Act.

CONCLUSION

Mr. Chairman and members of the committee, I have covered a number of important topics in this testimony. The US Customs Service has achieved a level of success in controlling the flow of illegal goods and individuals entering our nation, but more needs to be done. Customs is working hard to improve the commercial compliance of importing companies. Other aspects of the Mod Act are being implemented, albeit too slow. Our number one message to this Committee, however, is that Customs has seriously fallen behind in automating its outdated and antiquated trade processing systems.

An increase in the Merchandise Processing Fee will not guarantee that these revenues will be designated for automation purposes. It will, however, continue to mask Customs' structural inefficiencies and failures at the expense of American businesses and consumers. Rather than punish industry and the American people, the Administration and the US Customs Service need to re-evaluate their automation goals and the necessary steps required to achieve them. Failure to do so will damage the ability of US industry to compete in the global economy and lessen this country's influence in global economic and political affairs.

Attachment.

JOINT INDUSTRY GROUP

1620 I Street, NW
 Suite 615
 Washington, DC 20006
 ☎ (202) 466-5490 📠 (202) 463-8498 📧 fig@molinc.com

Chairman
 Joseph A. Vukotic, Jr.
 Texas Instruments, Inc.

Vice-Chairman
 Ronald Schoof
 Caterpillar, Inc.

Secretary
 James B. Clunson
 JBC International

Treasurer
 William Overton, Jr.
 Baker of Hickende

March 17, 1998

Mr. Samuel H. Banks
 Acting Commissioner
 US Customs Service
 1300 Pennsylvania Avenue, NW
 Washington, DC 20229

Dear Acting Commissioner Banks:

The Joint Industry Group (JIG) Automation Committee was established one year ago under the principles outlined in the attached paper. The first meeting of our Automation Committee was attended by Commissioner George Weise, who agreed to cooperate with us in the development of Customs automation initiatives and outlined Customs ambitious plans for future automation. JIG remains committed to building "a coalition of its members and other industry groups concerned with automation" and "to utilize this coalition to provide a uniform industry position on trade needs and priorities for an automated import, export and trade compliance process."

For more than a decade, Customs has been a leader in developing automated systems to streamline the trade process. As the world's largest trader, it is imperative that the United States remain a leader in trade automation and set the standard for trade automation worldwide. It is through automation and common international business practices that barriers to trade will be reduced and many inefficient and costly business practices eliminated. The biggest beneficiary of this streamlined international system of free trade is the United States. A standardized, streamlined, automated international trade process is the rising tide that lifts all boats and will be to the economic benefit of all governments and industries that choose to participate in the program. The JIG vision of this automated world is outlined in the attached paper (attachment) and briefing charts (attachment). For the reasons outlined above, JIG is in support of Customs and Treasury continued design and development and full funding of the following trade related systems provided that Customs and Treasury cooperate fully with industry in this endeavor:

- The International Trade Data System (ITDS);
- The North American Trade Automation Prototype (NATAP);
- The US/UK Prototype;
- The Automated Export System (AES); and,
- The Automated Commercial Environment (ACE).

ITDS, NATAP, the US/UK Prototype, and AES are the key to continued and future leadership by the United States in automating the trade process worldwide. These systems provide the foundation and framework for integrating the export and import process into a seamless international system of trade and represent the long-term needs for trade automation. In spite of our inability to achieve Fast Track negotiating authority, the US remains the leader in global customs and trade issues and the development of these systems is an essential part of that leadership. The ACE system is essential as the logical extension of the highly successful Automated Commercial System upon which the United States system of trade is so dependent. In view of the importance of the Year 2000 conversion, it will be the subject of a separate letter. In regard to ACE, the JIG Automation Committee recommends full implementation of the entire system with emphasis for early implementation of the following modules:

- NCBFAA recommendations for Enhanced Electronic Entry Program (EEEP);
- Completion of Truck Pre-Arrival Processing System (formerly known as Buffalo Pilot);
- AMS;
- Remote Location Filing;
- NCAP (Track 4 Processing, Reconciliation, Monthly Entry);
- Periodic Payment, and,
- Surety Interface.

By "early implementation" we mean that those projects should be implemented on a phased basis by the end of 1998. Design and implementation should be the responsibility of joint teams consisting of Customs personnel and exporters and importers and their agents with a stake in implementation. We would like to explore the possibility of establishing such joint teams for each of the projects outlined above as a partnership between key trade groups and Customs. This approach would incorporate mutual commitments and public accountability using established techniques for documentation and dialogue.

In all systems development efforts it is essential that the system that Customs develops represents the interests and needs of all Federal agencies. Any system that does not is a step backwards. Of course, this common system will require that other agencies adopt risk management, selectivity, post/pre-audit, and compliance measurement standards.

We believe that Customs and Treasury are on the right path in pursuing these various automation initiatives, however, we have not been pleased with the pace of implementation and the extent to which many of the projects reflect the concerns of the trade. We are also concerned that the early implementation initiatives have been slow in materializing. JIG will make every effort to build the industry coalition to ensure that Customs is adequately funded to achieve the goals summarized above provided that we can agree upon priorities and an implementation schedule with you. In view of the fact that industry is paying the Merchandise Processing Fee, the Harbor Maintenance Fee, Air Passenger Fees, border truck fees, and the importance of these systems to continued prosperity of our economy, it is essential that funding be provided to support these vital national and international systems development efforts. The JIG supports bold and expeditious development of these initiatives and will work cooperatively with you to secure early and sufficient funding for implementation.

These systems are of major importance to industry and the early workable implementation of these projects is long overdue. Perfect implementation is a time consuming illusion. Industry and Customs must jointly assume reasonable risks and proceed to implement.

Please give this matter your consideration and let me know how we can work together on these issues.

Sincerely,

Michael H. Lane
Chairman
JIG Automation Committee

PREPARED STATEMENT OF GEORGE J. WEISE

Mr. Chairman and distinguished members of the Senate Finance Committee, I am both honored and very pleased to have been invited to appear before you today to discuss a subject that is so dear to my heart—the U.S. Customs Service. As you know, Mr. Chairman, it has been one year since I stepped down as Commissioner of Customs and retired from the Federal Government, after spending twenty-five years deeply involved in Customs issues. I began my career working as an import specialist for Customs in the Port of Baltimore. I also spent nine years on the staff of the House Ways and Means Trade Subcommittee, where I was actively involved in Customs legislative and oversight issues. I had the unique opportunity to work with the business community and the Customs Service to help craft the Customs Modernization Act while I was staff director of the Trade Subcommittee, and then oversee its implementation as Commissioner of Customs after its enactment in 1993. I am now practicing law in Washington and am appearing before you as a private citizen and not on behalf of any organization.

I would like to share with you my perspective on the challenges facing Customs and their budgetary needs in the years ahead based on my own experiences. I must confess at the outset, however, that I may not be completely objective on this subject because I continue to believe that the U.S. Customs Service is the best agency in the Federal Government, primarily because of the outstanding and dedicated men and women who so proudly serve this nation as Customs employees.

I would also like to state publicly how pleased I am that Ray Kelly has taken over as my successor to lead the Customs Service as Commissioner. I worked very closely with Mr. Kelly during the last two years of my term as Commissioner when he was the Undersecretary of Treasury. I can assure you that he not only possesses the leadership and management skills to move this great agency forward, but he also has a keen appreciation and understanding of the challenges facing Customs and the determination and drive to meet those challenges head on. He is fortunate to have at his side Deputy Commissioner Sam Banks, who has earned the respect of people inside and outside of Customs throughout his illustrious career in Customs for his knowledge, expertise, innovativeness and compassion. He should be commended for the outstanding job he did in leading Customs over the past twelve months as Acting Commissioner. I am delighted that Customs is in such good hands!

When I was sworn in as Commissioner of Customs in May of 1993, I knew that drastic changes needed to be made in order for Customs to survive and prosper in an environment of dramatically increasing workload and sharply declining budgets. I challenged Customs managers and the Customs workforce to reexamine every aspect of our organization and our work, and to find ways to improve and to measure that improvement. I stressed the need for accountability—that we had to recognize that, even though we were a government agency and a law enforcement organization, we had customers and stakeholders (e.g., importers, exporters, domestic manufacturers and, most importantly, the American people) that depended on us to carry out our mission efficiently and effectively. It was clear that if we were going to meet these challenges, we had to modernize and utilize advanced technology. Two key components of our modernization efforts would be the Customs Modernization Act and the development of a new Automated Commercial Environment (ACE) to replace the antiquated Automated Commercial System (ACS).

We also worked to form closer partnerships with other agencies, our employees and with the law-abiding business community in an effort to maximize our performance results. Naturally, there were some pockets of resistance to change within the organization. But overall, the people of Customs pulled together as a team and embarked upon perhaps the most dramatic period of change in the history of the organization.

I am so proud of what the people of Customs accomplished during my four years as Commissioner. We implemented a comprehensive reorganization that removed management layers and focused on getting more people into front line positions. We significantly improved our financial and accounting systems and, for the first time, began receiving “clean”, “unqualified” opinions in our audits under the Chief Financial Officers Act. With the help of the Customs Modernization Act, we laid the foundation for a redesigned and modernized commercial process that is an account-based system, rather than the transaction-by-transaction approach that preceded it. We implemented successful anti-drug smuggling initiatives such as “Operation Hard Line”, “Operation Gateway”, and the “Business Anti-Smuggling Coalition (BASC)” and institutionalized a system to measure compliance in the commercial arena. Through process management and strategic problem solving, we streamlined and improved many other Customs processes and procedures.

I am particularly proud of the fact that Customs has received twenty-eight "Hammer Awards" for management efficiency from the National Performance Review (NPR) over the past five years. What is most astounding and reflects the quality of the people at Customs, is that, during this period of transition and tremendous organizational upheaval, Customs' measurable performance results actually improved in virtually every category.

In retrospect, I am somewhat disappointed that we didn't move further and faster in the implementation of many of the important provisions of the Customs Modernization Act and we fell far short of our implementation schedule for ACE. Perhaps we spent too much time reaching out to interested parties in an effort to "get it right the first time", but overall, I believe Customs' record of accomplishment over the past five years is remarkable.

One of my biggest frustrations during my tenure as Commissioner relates to the subject of today's hearing—Customs' budget. In my many talks to Customs managers and employees about the need for change, I stressed that, in the environment of scarce resources that the Federal Government was experiencing, those agencies that could demonstrate improvements in efficiency and effectiveness would be rewarded in the budget allocation process, while inefficient organizations would suffer. Unfortunately, my predictions proved wrong when, despite our recognition by NPR as an innovative, efficient organization, our budgets were reduced in real terms by nearly \$100 million over my four-year tenure. By contrast, other organizations less known for management efficiency saw dramatic increases in their budget during the same time frame. For example, the budget of the Immigration and Naturalization Service (INS), an organization that works side-by-side with Customs, saw its budget nearly double during this time frame.

This seemed to reflect a general pattern that, notwithstanding what seemed to be a bipartisan political consensus to strengthen law enforcement, only Justice Department law enforcement agencies received substantial budget increases, while the budgets of Treasury Department law enforcement agencies remained static. Mr. Chairman, I strongly urge the Finance Committee to closely examine this disparity.

I am not in a position today to comment about specific aspects of Customs' budget request, but, based on my experience and my knowledge of the projected increases in Customs' workload, I urge the Committee to consider authorizing a significant increase in Customs' appropriations, particularly in high technology areas, such as sophisticated cargo inspection equipment. There is also a desperate need for full and unencumbered funding for the development of ACE.

The current ACS system is overloaded and nearing collapse! This would be catastrophic not only for Customs and its enforcement mission, but for the entire business community. It is imperative, Mr. Chairman, in my opinion for the Finance Committee and the House Ways and Means Committee to work closely with the Appropriations Committees to find a mechanism that allows Customs to receive full and steady funding for this project, while providing adequate assurances to the Congress that Customs is moving in the right direction. The current approach of providing limited and "fenced" funds will not allow Customs to deliver the ACE system that is so essential for Customs' future and that of our nation.

The United States is currently the world's largest trading nation with nearly \$1 trillion in imports and exports, and Customs' workload is expected to double over the next ten years. At the same time, Customs will be pressured to move legitimate cargo across our borders more quickly as industries rely on international supply chain management systems. ACE is critical to meet this workload demand for service. ACE is also a critical tool in enforcing Customs' laws and protecting our borders. Customs is the first line of defense in the increasing and deadly problem of transnational crime, including trafficking in weapons and munitions, narcotics smuggling, money laundering, and the proliferation of weapons of mass destruction.

In conclusion, Mr. Chairman, I would like to make a final point concerning the mission and priorities of the Customs Service. Clearly, as the principal border agency with the responsibility to enforce over 400 laws for more than 40 different agencies, Customs' mission is extremely broad. Among its many responsibilities, Customs must keep illegal drugs and other contraband from crossing our borders, insure that all imported goods enter this country in full compliance with all applicable laws and that all appropriate duties and taxes are paid, and prevent the export of restricted and sensitive goods to unfriendly nations.

Some have criticized Customs over the years for placing too much emphasis on either its commercial mission (sometimes referred to as "facilitation") or its drug enforcement mission. While I recognize that keeping drugs from entering this country is Customs' most critical and important responsibility, I believe it is dangerous to look at Customs' mission as either law enforcement or commercial facilitation—because it clearly is both! In my view, beyond the obvious importance of Customs' com-

mercial responsibilities to U.S. economic interests, it is just common sense that working with the legitimate business community in the spirit of informed compliance to improve compliance and expedite processing times frees up scarce resources to focus on companies and individuals who intend to circumvent the law, such as drug smugglers. Furthermore, it has been demonstrated, through initiatives like the Carrier Initiative, Super Carrier Initiative and BASC, that the business community can be an important ally in improving Customs' drug enforcement capabilities.

I believe that U.S. Customs today is a model for the world in executing its enforcement, regulatory, revenue collection and service responsibilities in such a way as to maximize all of these missions. American business now produces products of high quality and low cost in extremely short cycle times and Customs must do the same in executing its important missions for the nation. You can be proud to note that our U.S. Customs Service is the most facilitative in the world while also having the best record for compliance and enforcement, seizing more narcotics than all other Federal Agencies combined.

Once again I want to thank you, Mr. Chairman, for the opportunity to appear before you today to express my views on the future direction of the Customs Service. At this time, I would be happy to respond to any questions.

COMMUNICATIONS

STATEMENT OF THE AIR TRANSPORT ASSOCIATION

(SUBMITTED BY CAROL HALLETT, PRESIDENT AND CEO)

The Air Transport Association (ATA) appreciates the opportunity to offer written testimony on behalf of our 28 member airlines concerning the operations of the U.S. Customs Service.

ATA member airlines include: Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen international, Federal Express, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service and US Airways. Associate members are Aeromexico, Air Canada, Canadian Airlines International, KLM-Royal Dutch Airlines, and Mexicana.

Before I begin I believe it is important to recognize and commend the on-going efforts by the Customs Service to bring its procedures and processes into the 21st century. International cargo and passenger transportation by air, sea, or surface encounters a border crossing at an airport, seaport, or land location; all of which have one thing in common: the need to cross an imaginary line.

The result of crossing that imaginary line, specifically for air cargo, is an off-the-chart spike in increased transportation time and costs, and communications requirements. In like manner, the number of participants involved in the transaction increases significantly, creating the need to coordinate activities with numerous transportation partners and government agencies at both origin and destination with similar, if not identical, information. It is truly amazing what an imaginary line can do.

MERCHANDISE PROCESSING

Over the past eight years Customs has achieved success in what appears on the surface to be diametrically opposed responsibilities, that is, facilitation of goods and passengers while enforcing hundreds of laws and international agreements that protect the American public. However, upon closer examination, facilitation and enforcement initiatives compliment one another in a natural way. This was made possible by the extension of Customs' hand to join industry members in an unprecedented cooperative partnership that has produced several working agreements with the trade such as electronic transmission of airline manifest data that vastly improves Customs' enforcement capabilities over traditional paper procedures. This demonstrates that accurate and timely information from the transportation industry allows for legitimate trade to pass across borders while precious and static inspection resources focus on suspect passengers and cargo, intercepting contraband and commercial fraud that threatens the livelihood of all American citizens and businesses. Clearly, this cooperative working relationship has improved the mutual exchange of ideas and information, which lead to better solutions. It is our strong belief that newly appointed Commissioner Raymond Kelly should continue with this proven and effective approach.

Nonetheless, the cornerstone of Customs' effort to maintain pace with the growth of international trade is slowly eroding by the exceedingly long time it is taking to deliver on the promise of the Modernization Act (Mod Act) that requires the support of the Automated Commercial Environment (ACE) system, which is currently a 7 year development initiative. In fact, it is acknowledged by many in the trade that the Mod Act needs to be rewritten and ACE redesigned.

Our concern is not that Customs is an unwilling partner in automation development but is on a collision course with information technology development and its

effect on trade practices. We believe that it is imperative that Customs become a part of the transportation process rather than creating a detour for international shipments caused by manifest and commodity data requirements of a closed proprietary system. The flow of legitimate goods is enhanced if Customs becomes a part of the transaction rather than attempting to manage it. The blueprint of future trade practices is based on electronic commerce and the Internet, however, the ACE foundation to date has very little in common.

Moreover, there are other influences working in the background that prevent further engagement by air carriers in ACE development. It is our view that Customs' current ACS system and the current path of ACE produces a magnification of existing problems inherited from a manual document process. Converting a document into an electronic data format does not take full advantage of automation and information technology development. No less can be said of the recent Automated Export System (AES) implementation; the system attempts to automate a flawed export document process. As a result, a multitude of problems has surfaced for Customs and the trade community.

Furthermore, several problems intrinsic in the Automated Manifest System (AMS-Air) for imports have been carried over to AES. For example, the attempt to reconcile trade (commodity) data with transportation (manifest) data in AMS-Air has been consistently difficult, thereby increasing processing costs and delaying cargo movement, and remains an elusive goal after 9 years of operation.

Having said that, air carriers have several areas of concern related to AES development that is made worse by continuing frustrations with Customs' current import system, AMS-Air. While it is the desire of air carriers to develop an automated export process, industry wide participation in AES may be seriously delayed due to a number of contributing factors, which I would like to expand upon.

Customs' support for AMS-Air has become a very important issue for our members. The airline industry has invested millions of dollars in AMS-Air and incurs significant daily operational costs. Customs' attempt to automate exports at this time is very disturbing, more so since Customs has not yet even delivered a high quality, cost saving automation program for imports. Quite logically, carriers fear another wave of start up investment for ACE and AES, all the while still bearing the costs of an incomplete AMS-Air.

AMS-Air is entering its 9th year of operation with a steady growth to over one hundred participants and 29 ports nationwide. However, serious flaws remain, some remaining since the October 1989 startup date. For example:

1. After 9 years of operation, paperless processing is available at only 2 of 29 ports nationwide.
2. Only 5 freight forwarders nationwide participate in AMS-Air and at only 5 ports.
3. AMS-Air is not fully endorsed by local Customs and USDA personnel. In fact, USDA refuses to participate at some ports, thereby preventing a truly paperless environment.
4. Split manifest processing, a common event in air cargo, is bug ridden.
5. Programming enhancements and system corrections vital to air carrier operation and freight forwarder participation, such as Project 323 (in-bond enhancements) and others, are over 6 years behind schedule.

This is the past and present of AMS-Air. Both are directly connected to the future and cannot be separated from one another. At this time air carriers have little confidence that ACE can deliver the necessary functionality to support future trade processes and volume. Moreover, the current \$1.48 billion dollar estimate for ACE implementation over a 10-year period, for which Customs has little funding, causes great concern for all members of the trade. Likewise, given that ACE development is on 7 year roll-out with most of the manifest functions on the back end, it is in the best interest of our long-term cooperative partnership with Customs that AMS-Air be allowed to reach an acceptable performance level before proceeding further.

Again, we want to be clear that there is no disagreement in the assessment that the ACS legacy systems are in the twilight of life expectancy and that the export process is paper intensive and in dire need of repair by automation. However, the foundation of automation can not be built on the premise that automating the existing manual process will address our mutual concerns. The ideal system fully re-engineers the flow of data to minimize the cost to the trade and government while maximizing information for compliance, quality of statistics, and information enforcement. Clearly, we need to embark on a path where we cooperatively think outside the "box" to produce creative, innovative ideas for export automation and redesign of the import process.

Additionally, we are very concerned with planned obsolescence of the Automated Export Reporting Program (AERP) by the Bureau of Census effective December 31,

1999 despite the fact that AES for air cargo manifest data will not be ready before then. While the module for AES that collects shipper export declarations (SED) is currently available for all modes of transportation, the system is not backward compatible and requires a significant amount of air carrier programming resources. As a result, over 80,000 monthly SED's electronically submitted to Census by air carriers today will have to be submitted in paper format beginning in the year 2000. We are very concerned that AERP will be eliminated before an acceptable replacement is available to the trade community.

Consequently, it is premature for ATA member carriers to consider support at this time for an increase in the merchandise processing fee (MPF) that would be earmarked for Customs ACE automation initiatives. To do otherwise would send Customs and Congress a mixed message regarding the direction air carriers would like Customs to take concerning automation.

Overall, Customs' automation programs are the most important issues for the airline industry. However, in the interest of the Committee's valuable time, I would like summarize a few additional concerns for consideration.

- While ATA appreciates the fact that current Federal law is not adequate to protect consumers and American businesses from the crime of counterfeiting legitimate trademark products, there are parts of Public Law 104-153 that we feel will actually assist those in the counterfeiting business. Overall, ATA supports the concept and goal of the Anticounterfeiting Act. However, we believe Section 11 that allows public access to air cargo manifest data will produce results contrary to its original objective. Specifically, the Act will unintentionally produce (1) added security risks for all shippers, air carriers and other modes of transportation; (2) an environment that fosters corporate espionage; (3) smarter and more opportune counterfeiters and; (4) overwhelming computer development costs for air carriers.
- We understand the intent of the Mod Act is to relieve Customs of the responsibilities in the General Order (G.O.) process but the proposed regulations, as written, would place Customs back into the G.O. business. The role of policing commercial transactions between private parties is a role that would inevitably place Customs in the middle of a commercial dispute. Additionally, Customs is authorized to make bonds ensuring a private sector entity's performance in business conducted with Customs—not with other business entities.
- Paper record keeping, despite the millions of dollars invested in automation, is still required by the Customs Service. The trade community simply can not afford the astronomical costs of managing both paper and automated systems. The sheer volume of transactions demands that we, the trade and Customs, move to a completely paperless environment. Statutory revisions to record keeping laws may be required.
- The overlap of security efforts between the Federal Aviation Administration (FAA) and Customs is another area of concern regarding duplicity between agencies. The Customs' security seal program and other airport security requirements are somewhat redundant and administratively painful and unwieldy. It is our recommendation that security issues be left to the FAA and other appropriate enforcement agencies.
- Reimbursable services program is long outdated and should be reviewed for obsolescence in light of just-in-time inventory practices in the trade industry. The premise for reimbursement is that Customs is rendering special services. However, express shipment volume at some ports has risen in excess of 50%, and therefore should not be characterized as a special service but regular customs business subject to user fees, which would more than cover the cost of services provided by Customs.
- While we are concerned with the pace of Mod Act implementation, there are non-controversial provisions that have not yet been implemented, such as summary manifesting of letters and documents. In our view, this provision is long over due and the time has come for Customs to implement this Congressional mandate to reduce manifest burdens for low risk shipments.
- In a truly global business such as air cargo, developments in global communications, specifically the Internet, will have a profound effect on the way air cargo industry does business. More and more forwarders and air carriers are integrating its systems to the Internet, a communication medium that is ignorant of country, company, and department boundaries and locations. We believe that it would be useful for the Customs Service and other government agencies to seriously explore the potential of this communication technology and the opportunity to become part of the transportation process rather than a detour.

Customs and the trade must take these bold, innovative, and cooperative steps in a genuine working partnership that will allow us to meet the challenges of the

21st century. A course of action, in our view, that will facilitate the movement of cargo and improve Customs capability to oversee trade compliance with import and export laws.

PASSENGER PROCESSING

Customs has made tremendous strides in increasing the efficiency and effectiveness of passenger processing. The innovative use of technology, selective passenger profiles and a concerted effort to forge a partnership with the transportation industry has resulted in a significant decrease in overall passenger processing time with an actual increase in enforcement effectiveness by focussing the Customs Inspector's attention on high risk traffic, while facilitating the majority of the low risk passengers.

We applaud this effort and strongly encourage its continuation. The growth of passenger air traffic and the increase in tourism to the United States will have a continuing impact at our ports of international arrival. Not only must technology continue to advance, but Congress and Customs must recognize that even the most innovative technological inspection aids still require the human factor, either behind the scenes or at the inspection booth.

The collection of the Customs user fee on every passenger ticket has helped Customs to make the improvements in passenger processing over the years, but the many restrictions on the use of the funds, and the lack of a government industry oversight committee has limited the progress. It is an opportune time to remedy these limitations and expand the utility of the fee, increasing the passengers' value for their fee dollar.

The COBRA fee, which funds a baseline of Customs airport staffing, is highly restricted in its use. We propose and strongly support the removal of all restrictions but the requirement that the fees generated in this account be segregated from the general funds and reserved for use only to fund staffing and air passenger related Customs inspection activity. The removal of restrictions on spending for staffing will allow Customs the flexibility it needs to respond to transportation industry needs, trends, growth and changes. In addition, the establishment of a formal mechanism of oversight by a partnership of Customs management and transportation industry representatives will help ensure that fiscal decisions are made in the best interest of the users as well as the needs of the United States. Several oversight models exist both within Treasury in the form of the Advisory Committee on Commercial Operations of the U.S. Customs Service, and in other government agencies which administer a user fee under the form of a federal advisory committee. A structure modeled after Customs' sister inspection agency, the Immigration and Naturalization Service, with its User Fee Advisory Committee has proven to be beneficial and effective.

It should be made clear, however that use of the funds should be clearly restricted to activities that benefit the provider of the funds as a group, the air passenger. Therefore, unrelated activities or operations without a nexus to air passenger inspection should not have use of the funds.

We appreciate that Congress recognizes the special status of Canada and Mexico within NAFTA, and therefore has kept them exempt from paying the fee, as commerce and air travel between these territories begins to expand at ever-increasing rates. In addition, Open Skies in Canada will see passenger traffic increase rapidly in the years to come. Additionally, the adjacent islands of the Caribbean are also deserving of such an exemption because of their unique status within the Americas. These preclearance operations have utilized the highest levels of Customs processing efficiencies without sacrificing its commitment to law enforcement. Therefore, continued funding for enhancements to preclearance staffing from the COBRA user fees collected elsewhere are no less than appropriate.

Termination or reduction of preclearance operations in Canada would have a devastating impact on U.S. carriers operating through and utilizing this service both for Canadian originating traffic and for transit traffic originating in Europe and the Pacific Rim. Continued use of COBRA funds for service expansion and enhancement must be authorized to provide effective and seamless service to the travelling public.

In addition to user fee concerns we have several observations concerning additional operational improvements which should be considered and which will streamline requirements, resulting in more efficiency and lower cost. Customs administers a security program at airports, which restricts access to the Federal inspection areas and international arrival ramps, gates and other areas. The program consists of a background check of the employee or person requesting access and the issuance of a seal or "badge." This activity is unnecessarily burdensome and is duplicative of a similar program required by the FAA. This requirement should be eliminated or

consolidated into the FAA program so that only one check and one insignia need be issued and accounted for.

ATA member airlines have entered into a memorandum of understanding with the Federal Inspection Service agencies to provide Advance Passenger Information directly to the Customs Service prior to the arrival of an international air passenger. This voluntary effort on the part of the US carriers is evidence of the growing partnership between industry and government in efforts to both facilitate the flow of international visitors and businessmen, and to promote tourism and trade. But it is also recognition of the law enforcement mission of the Federal Inspection Service agencies. These agencies analyze this information prior to passenger arrival to target the high-risk passenger and to quickly expedite the clearance of the low risk passenger. Law enforcement statistics have dramatically increased under this procedure and passenger clearance times are down.

Another area, which should be reviewed is that of baggage inspection. Most U.S. air carriers have, for years, provided Customs with advance information on each arriving passenger which allows Customs to check its data bases to identify high risk passengers before they arrive. This enables the low risk passengers in which Customs has no interest to be cleared expeditiously. Unfortunately, the requirement to deliver 100% of the baggage to the inspection area even though Customs is interested in inspecting only a fraction of those bags is not only costly, but now with the advance passenger information being provided, unnecessary. Having to deliver the bags in which Customs is not interested causes delay and congestion in the inspection hall. This requirement should be eliminated or streamlined, especially as the provision of this advance data through electronic means is completely voluntary on the part of the air carriers.

Already we are seeing successes with a targeted baggage delivery test program where only baggage of interest to the inspector is delivered into the hall. This saves time and valuable airport space. We would like to see development, through the use of APIS, of a targeted passenger system where most passengers, particularly US citizens, could be cleared without entering the Customs hall. Customs, working in conjunction with new INS technologies such as INSPASS, which allows a controlled self-inspection, could move in this direction.

Both Customs and Immigration have been able to institute new processes, which make much more efficient use of ever dwindling resources. Having said that, however, we do emphasize the steady growth of passenger traffic to the United States by air, and the need to provide for incremental growth of inspection services at all US international airport locations. We recognize that this cannot be accomplished forever just through increases in personnel. Soon the arrival halls will be bursting at the seams just to accommodate inspection booths. Instead, Customs should be encouraged and funded to develop new technologies and processes for passenger clearance.

Expanded services at growth airports, especially those in preclearance locations and emerging hub airports could also help to alleviate the passenger processing problems. Customs should also be encouraged to continue its partnership with the airlines to reduce the impact some of its law enforcement initiatives have upon passenger flow and hence, trade. While we recognize it is a delicate balance, baggage x-ray and interdiction can sometimes cause flight delays without a fruitful law enforcement outcome. Careful coordination with airline and aircraft scheduling could help alleviate this problem.

Again, thank you for the opportunity to make our views known and we strongly encourage the continued progress of the Customs Service in the area of cargo and passenger processing.

Please let me know if you need any additional information or would like to discuss these issues in detail. We welcome the opportunity to achieve the highest level of cooperation and commend the Subcommittee on International Trade for your active interest in these substantial issues. Mutual understanding will produce the most viable solutions for both government and the industry.

STATEMENT OF THE BORDER TRADE ALLIANCE

[SUBMITTED BY STEPHEN GIBSON]

Mr. Chairman, my name is Stephen Gibson and I am here to testify on behalf of the Border Trade Alliance.

The Border Trade Alliance (BTA) is a grass-roots organization which was founded in 1986 as a group of individuals, entities and business which conduct legitimate cross-border business. As such, we have a unique perspective on North America re-

lations. Although our Board of Directors has members from both our Northern and Southern borders, the emphasis of my testimony today will be on the Southwestern border. However, the justifications I will cite apply equally to our ports of entry on the Canadian border.

I am a member of the Board of Directors of the BTA. I chair the Infrastructure Committee and participate in the Environment and Ports of Entry Committees. I retired as a Senior Foreign Service Officer in 1995. For 2 years prior to retirement, I was the State Department's Coordinator for US-Mexico Border Affairs. Since retiring, I have worked on border-related projects in Texas, Arizona and California.

Mr. Chairman, for several years now, Congress and the Administration have worked to improve the security between the ports of entry and in Immigration Service staffing at the ports themselves. This has resulted in significant increases in resources for the Immigration and Naturalization Service, especially the Border Patrol. We have supported those policies and we will continue to do so.

The time has come, however, to focus on other needs at the ports of entry, particularly as they relate to trade and commerce. HR 3809 (and S 1787) does just that. This legislation will authorize the United States Customs Service to acquire the necessary personnel and technology to reduce delays at our border crossings with Mexico and Canada to move towards a Customer Service Standard of no more than a 20 minute wait, while strengthening our commitment to interdict illegal narcotics and other contraband.

I hope that many of you have had the opportunity to visit some of our ports of entry along the Southwestern border. It can be an awesome experience to witness the amount of trade with Mexico that moves by truck and rail. From Fiscal Year 1992 through Fiscal Year 1997, the number of commercial trucks entering the United States from Mexico increased by more than 50 percent. During that same period, rail traffic shot up by 115 percent. That's just the commercial traffic. Add over 79 million automobile crossings and 304 million persons to get a more complete picture.

In some ways, the figures at the local level are even more impressive. During Fiscal Year 1997, the numbers of trucks entering the United States at some of our busier Southwestern border ports were as follows:

Laredo	693,647 trucks
El Paso	594,974 trucks
Otay Mesa	585,317 trucks
Nogales	223,139 trucks

Improvements in the physical facilities and better transportation connectivity can do much to increase the efficiencies of the ports. The United States has invested a lot of money in bricks and mortar and asphalt and more is on the way, especially in TEA-21.

That is only part of the equation, however. At a time when trade with our neighbors is growing, with benefits to the people on both sides of our border, it is important that we reduce border crossing delays to a minimum while at the same time improving the interdiction capabilities of the Customs Service.

HR 3809 will provide the resources to help achieve those goals. More specifically, the BTA sees the following as some of the direct benefits of this legislation:

- The hiring of additional personnel to open all primary lanes during peak hours. This means shorter waiting times for both cargo and passenger vehicles. One of the important side benefits of this will be lower emissions and improved air quality.
- An increase in canine enforcement officers. Canine technology is very effective at drug interdiction.
- The acquisition and deployment of narcotics detection equipment, including mobile truck x-rays and portable Treasury Enforcement Communications Systems to be moved among ports as needed.

In testimony before the House on April 30, the BTA noted that predictability in the inspection process encourages "Port Shopping." Properly used, mobile resources introduce an element of unpredictability that will enhance anti-narcotics efforts. Mobile resources will also increase the efficiencies of the smaller port of entry.

The deployment of non-intrusive technology will allow the Customs Service to be more efficient and thorough in conducting examinations without damaging shipments.

- Finally, we note that the legislation earmarks funds for maintenance and support of the new equipment.

Mr. Chairman, over the years the Border Trade Alliance and the Customs Service have engaged each other on issues of mutual interest. We are doing so now, together

with other agencies, as we look at trends in trade and transportation over the next 5 years.

While the BTA and Customs haven't always agreed on methods and tactics, we have been in agreement on the need to improve the processing of goods and people in a way that is consistent with the national interest.

Customs inspections should not be obstacles to legitimate trade and commerce. We support HR 3809 because we believe it will provide the Customs Service the resources necessary to accomplish its mission.

Thank you very much.

STATEMENT OF CITROSUCO NORTH AMERICA, INC.

[SUBMITTED BY J. ELLIOTT SEABROOK, PRESIDENT]

Mr. Chairman and Members of the Committee, my name is J. Elliott Seabrook and I am President of Citrosuco North America, Inc. ("Citrosuco"). Citrosuco, a Delaware corporation, with major operations in Wilmington, Delaware and Lake Wales, Florida, domestically manufactures and imports frozen concentrated orange juice for manufacture ("FCOJM" or "COJM").

Citrosuco applauds the Committee on holding this hearing focusing on the U.S. Customs Service. Today, more than ever, with the increased volume of goods flowing both into and out of the U.S., Customs operations play a key role in the success or failure of an international business. My concern is that administrative obstacles to trade derail and hinder U.S. companies ability to compete globally.

Specifically, Citrosuco has faced great difficulty with Customs administration of the duty drawback program. As I understand it, the purpose of the drawback program is to encourage manufacturing in the U.S. by refunding duties paid against imported merchandise upon re-exportation. Citrosuco has the ability and infrastructure to export large quantities of U.S. produced FCOJM. However, prolonged delays by Customs in responding to ruling requests, and the resulting uncertainties of whether or not drawback will be granted, has led Citrosuco to significantly curtail its use of the drawback program.

In 1994 Citrosuco sought a ruling as to the definition of "commercial interchangeability" of FCOJM under the unused merchandise drawback provisions. We are still awaiting Customs final determination. Customs had stated that pending litigation prevented it from issuing such a ruling. Although, litigation should not have delayed the issuance of a ruling, the litigation was settled last April and we still have no decision.

The issue involves unused merchandise drawback. When Congress changed the criteria for evaluating a claimant's eligibility for non-manufacturing based drawback from requiring "fungibility" of products under the old "substitution" provision to "commercially interchangeable" under the new "unused merchandise" provisions, it clearly intended "to permit the substitution of merchandise when it is commercially interchangeable," rather than when it is commercially identical." H.R. Rep. No. 361, 103rd Cong., 1st Sess. 131 (1993) (emphasis added). Congress intended to make the new standard less restrictive by providing:

The Committee intends that, in determining the commercial interchangeability of two articles, the Customs Service should consider the following criteria, among other factors: governmental and recognized industry standards, part numbers, tariff classification, and relative values.

Id.; see also H.R. Rep. No. 361, 103rd Cong., 1st Sess. 131 (1993).

Citrosuco as well as the entire FCOJM industry has been awaiting a ruling on commercially interchangeable for over four years.

Customs' failure to rule on Citrosuco's requests have created a chilling effect on our ability to claim unused drawback. The company has been forced to let millions of dollars of drawback rights expire rather than use them and risk Customs denying the claims.

It is important that the Finance Committee determine if Customs failure is due to overburden. If so, we would encourage the Committee to authorize the necessary funds to ensure that the drawback statute be properly administered. If however, Customs failures are not funding related, but rather result from a failure of the administrative agency to implement the will of Congress, than we would urge Oversight hearings and Congressional action to assure that Customs implements the intent of Congress.

In sum, Mr. Chairman and Members of this Committee, Citrosuco appreciates your interest in assisting U.S. industries in competing globally by reducing trade obstacles.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify.

NATEMAN & KALIK L.L.P.

Attorneys At Law
1200 G Street, N.W.
Suite 340
Washington, DC 20005
Telephone (202) 347-3060 Facsimile (202) 530-0608
e-mail natekal@nwk.com

July 8, 1998

Mr. John A. Durant
Director
Commercial Ruling Division
U.S. Customs Service
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Citrosuco North America, Inc. (formerly Juice Farms)
Customs Reference No. 228008

Dear Mr. Durant:

This letter is submitted in response to your letter of June 29, 1998 in which you requested Citrosuco North America, Inc. ("Citrosuco") again provide information in the above referenced case. To suggest that such information has not been provided to the United States Customs Service ("Customs") is simply incredible.

Over the last four years, Citrosuco has submitted vast amounts of information in response to seemingly unending requests of Customs. I was personally assured in 1996 by Mr. Rosoff's staff that no further information need be provided. Additionally, I attended a meeting with you and Mr. Rosoff, along with representatives of the National Juice Products Association ("NJPA"), in May 1996, at which time we were told that these issues would be promptly resolved. Instead, Customs has delayed and continues to delay, and when it cannot delay any further, it asks for more information. As the former President of the United States for which the building which now houses Customs headquarters is named, once said, "here we go again."

On the chance that your staff has not fully briefed you, let me provide a short history.

On February 2, 1994, Juice Farms Inc., requested a determination regarding substitution same condition drawback of frozen concentrated orange juice ("COJM"). Mr. William G. Rosoff, Chief, Entry Rulings Branch, acknowledged receipt of this correspondence in his letter dated February 16, 1994. On July 25, 1994, Mr. Rosoff requested information on any Governmental and recognized industrial standards, tariff classification, and relative values before

making a determination on "commercial interchangeability."

Beginning in June 1994, Juice Farms, Inc., began submitting drawback claims to Customs Miami office with all documents including invoices, score sheets, etc., required to properly support its specific drawback claims. These files were later transferred to Boston Massachusetts.

On August 21, 1995, Juice Farms, Inc. submitted a response detailing the Government and recognized industrial standards, tariff classification, and relative values of frozen concentrated orange juice. Mr. Rosoff acknowledged receipt of this correspondence in his letter dated August 23, 1995, case 226383, and stated that this "inquiry has been assigned to Gerry O'Brien." On August 24, 1995, Mr. Rosoff requested information with respect to the issue of confidentiality within 30 days.

On September 7, 1995, Juice Farms, Inc., submitted an amended version of the submission with the request for confidentiality deleted. Mr. Rosoff acknowledged receipt of this correspondence in its letter dated September 13, 1995, now case 226405.

On October 9, 1995, Juice Farms, Inc., in response to Customs request for additional information, submitted documentation regarding purchases and sales of COJM. Included were purchase orders and sales invoices containing the grade and score of each product, and USDA inspection certificates.

In October 1995, NJPA submitted its request for a binding ruling finding that USDA Grade A COJM substituted for USDA Grade A COJM is commercially interchangeable.

On November 2, 1995, Juice Farms, Inc., in response to Customs request submitted additional import and export data.

On November 22, 1995, Juice Farms, Inc., in response to Customs request for additional information, submitted documentation regarding export sales and domestic sales of import product between July 1, 1995 and September 30, 1995. Included were a list of all invoice prices, grade and score of the imported or exported product.

On December 1, 1995, Juice Farms, Inc., in response to Customs request for additional information, submitted documentation regarding import product purchases for 1995. All purchases were of USDA Grade A product and each products score was indicated.

On January 31, 1996, Juice Farms, Inc., in response to Customs request again submitted information.

Mr. Rosoff, in his letter dated September 11, 1996, acknowledged receipt of the October 9, 1995, November 2, 1995, November 22, 1995, December 1, 1995, an January 31, 1996 submissions in response to Customs requests for additional information. Additionally, Mr.

Rosoff stated that "COJM which has a USDA score of 94 and/or 95 is commercially interchangeable within the meaning of 19 U.S.C. 1313(j)(2) with COJM which has a USDA score of 94 and/or 95."

Mr. Rosoff, in his letter dated July 23, 1996, stated that Juice Farms, Inc., ruling request was "being held up pursuant to the advice and instruction of the Department of Justice based upon certain matters that are currently in litigation." The pending litigation was Ventura Coastal Corporation v. United States, (Ct. Int'l Trade case 92-09-00609). However, we later learned that this case involved no issue relating to Juice Farms' ruling request.

On April 30, 1998, Citrosuco (formerly Juice Farms, Inc.), requested that Customs act on its ruling request based on the settlement of Ventura Coastal and the letter of the Citrus Associates of the New York Cotton Exchange ("Citrus Associates") stating that its recognized industrial standards are the "USDA standards of grade." Customs acknowledged receipt of this correspondence in its letter dated May 12, 1998 (now case 228008).

On Jun 29, 1998, Customs requested that Citrosuco, resubmit all its purchase orders and sales invoices.

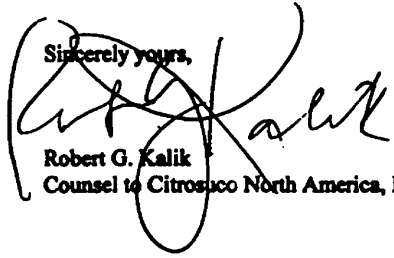
It is apparent that, after four years of submissions and delays, we are back at square one. It is the sworn responsibility of Customs officers to assure that U.S. tariff laws are faithfully executed and not abused. Customs failure to act after all this time is in itself unlawful. Congress' clear intention in amending the drawback law was to "expand U.S. exports, facilitate drawback use, and ease administrative burdens." See H.R. Rep. No. 361, 103rd Cong., 1st Sess. 131 (1993). Nowhere in the statute did Congress direct Customs to frustrate importers until they stop using the drawback program.

Customs reliance on the Citrus Associates standards as the recognized industry standards has been discredited. Your request for evidence beyond that provided by the Citrus Associates and the submission of Winter Garden Citrus Inc. is baseless. Further, Customs practice of applying the USDA standards of grade for (1) substitution manufacturing drawback (19 U.S.C. §1313(b)), and (2) substitution unused drawback of oranges, peaches, avocados and lettuce, while refusing to apply the same recognized Governmental and industry standard for substitution unused merchandise drawback of COJM is patently discriminatory and without any support in law.

Citrosuco, as always, stands ready to provide any and all information required to establish a definition for commercially interchangeable. However, we need detail of what you now require. Further requests should be made in writing, specifically detailing the documents to be submitted. We believe however, that Customs has more than sufficient information upon which to base a definition for COJM commercial interchangeability. Customs should either grant Citrosuco's drawback claims or deny them and allow the issue to proceed to the Court of International Trade.

I urge you to resolve this situation immediately.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. G. Kalik". The signature is written in a cursive style with some overlapping loops.

Robert G. Kalik
Counsel to Citrusco North America, Inc.

cc: Chairman William V. Roth, Jr.
Senator Bob Graham
Senator Alfonse M. D'Amato

Board of Trade of the City of New York, Inc.*Four World Trade Center New York, New York 10048 (212) 742-1000*

TO: ROBERT G. KALIK, ESQ.
NICHOLAS TSOUDIS, ESQ.

COMPANY: NATEMAN & KALIK L.L.P.

FROM: HENRY K. SASSER - COMMODITIES OPERATION ADMINISTRATOR

DATE: AUGUST 14, 1998

The information contained in this letter is being sent to you in response to your request, dated August 10, 1998, for volume and delivery information for the past five years.

FROZEN CONCENTRATED ORANGE JUICE

YEAR	FUTURES VOLUMES	NOTICES ISSUED	NEW SHIPPING CERTIFICATES
1993	640,131	12,204	3,678
1994	653,824	6,595	2,683
1995	688,932	6,495	1,628
1996	654,937	5,639	3,467
1997	1,029,861	5,231	1,896
1998 ytd	544,532	2,970	419

If I can be of any further assistance, please call me at (212) 742-5091.

*The Board of Trade of the City of New York, Inc. is the parent company of the
Coffee, Sugar & Cocoa Exchange, Inc. and the New York Cocoa Exchange*

Volumes, Notices, Open Interest

Year	Volume	Notices	% of vol	RegCerts	% of vol
1993	640,131	12,204	0.019	3,678	0.005
1994	653,824	6,595	0.01	2,683	0.004
1995	688,932	6,495	0.009	1,628	0.002
1996	654,937	5,639	0.008	3,467	0.005
1997	1,029,861	5,231	0.005	1,896	0.001
1998ytd	544,532	2,970	0.005	419	0.0007

Citrus Reference Book



Florida Department of Citrus
 Economic and Market Research Department
 Revised April 1997

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U.S. Grade A Frozen Concentrated Juice Standards

Scoring Factors	Orange	Grapefruit
Color	Minimum 35 points, but OJ 6 color tabs	Minimum 40 points
Odors	Minimum 10 points	Minimum 10 points
Flavor	Minimum 30 points	Minimum 34 points
Minimum Total Score	60 points*	60 points*
OTHER FACTORS*		
Ratio	12.5:1 to 16.0:1	9.0:1 to 14.0:1
Concentrate Brix	Minimum 11.5°	Minimum 10.5°
Reconstituted Brix	Minimum 11.5°	Minimum 10.5°
Slaking Pulp	No requirement	Minimum 10%
Recoverable Oil	Minimum 0.001%	Minimum 0.001%
Gel Test	No requirement	No requirement
Washed Pulp Solids	In-line permitted	Not permitted

*The lowest score of any one factor (color, odors or flavor) determines the grade once the total score for the product passes 60. Florida requires that POUJ exceed Grade B and have a Grade A Flavor. SOURCE: Federal Register.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE



RR:CR:DR:BJB
228008

JUL 22 1998

Robert G. Kalik, Esq.
Nateman & Kalik, L.L.P.
Attorneys at Law
1200 G Street, N.W.
Suite 360
Washington, D.C. 20005

Dear Mr. Kalik:

I have received and read your letter of July 8, 1998, a letter responding to an Office of Regulations and Rulings request for clarifying information in the above-referenced case. Your expression of frustration at the prospect of having to provide additional information has struck a sympathetic chord. I am writing to say that I share in your frustration.

Over the last four years, both members of my Staff and I have frequently attended meetings and engaged in discussions with representatives of the National Juice Products Association, including representatives from Citrusuco North America, Inc., in attempts to resolve the very issue raised in your present request for a ruling. What I have found is that frequently industry representatives take a position as to what comprises an "industry standard," but are unfortunately slow to provide the promised empirical data necessary to substantiate their claims. I agree that this process has dragged on too long. Indeed our letter of June 29, 1998, to which you responded on July 8, 1998, was an attempt to point out our deep concerns to you.

In immediate follow-up to your July 8, 1998 letter, I have instructed my staff to move ahead with a ruling on your request with respect to commercial interchangeability of substituted Concentrated Orange Juice for Manufacturing ("COJM") pursuant to 19 U.S.C. 1313(j)(2). My Staff has also been instructed to base its ruling per your request, absent the need for any further documentation in the file, and to do so as soon as reasonably possible.

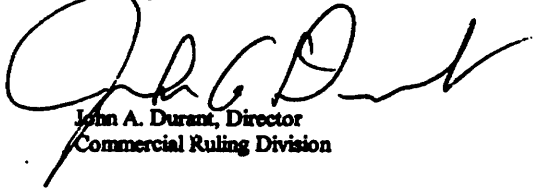
We understand you are requesting we revoke or modify our existing ruling (HQ 226100) and in its stead, hold that all orange juice meeting the USDA Grade A standard is commercially interchangeable, without regard to the USDA score. Your client has submitted documentation, as evidence of its COJM agreements, which we will consider in light of your client's claim that it operates under broader government USDA Grade A standards. We do sympathize with your frustrations in seeking the resolution of the commercial interchangeability issue raised by this case and we will continue our efforts to resolve it.

Please visit the U.S. Customs Web at <http://www.customs.usstrea.gov>

Should you have any further inquiries, you may direct them to Mr. Benjamin J. Bornstein of the Duty and Refund Determination Branch, at (202) 927-2077.

All questions regarding the priority or status of the processing must be raised with Mr. William G. Rosoff.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Durant". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

John A. Durant, Director
Commercial Ruling Division

NATEMAN & KALIK L.L.P.

Attorneys At Law
1200 G Street, N.W.
Suite 340
Washington, DC 20005

Telephone (202) 347-3060 Facsimile (202) 530-0608
e-mail natk.alk@erohk.com

August 26, 1998

Mr. William G. Rosoff
Chief, Duty and Refund Determination Branch
Office of Regulations and Rulings
U.S. Customs Service
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Citrosuco North America, Inc. (formerly Juice Farms, Inc.)
Customs Reference No. 228008

Dear Mr. Rosoff:

This letter is submitted on behalf of Citrosuco North America, Inc., 5937 Highway 60 East, P.O. Box 3950, Lake Wales, Florida 33859-3950, in response to inquiries made by Mr. Benjamin J. Bornstein, of the Duty and Refund Determination Branch in reference to Citrosuco's remaining outstanding drawback issues.

I. Issues To Be Resolved

In information letter 226405, dated September 11, 1996, Customs partially resolved the questions raised by Citrosuco in its submission of August 21, 1995. Information letter 226405 states that 94 and 95 score COJM are commercially interchangeable. The following questions remain unanswered:

1. Is 92 score COJM commercially interchangeable with 94 and/or 95 score COJM.
2. Is 93 score COJM commercially interchangeable with 94 and/or 95 score COJM.

3. Is 96 score COJM commercially interchangeable with 94 and/or 95 score COJM.

II. Evidence Supporting Citrus Associates Assertion

Mr. Bornstein requested supporting authority for Mr. Joseph J. O'Neill's, Secretary of the Citrus Associates of the New York Cotton Exchange, Inc., statement that "less than five percent (5%) of all deliveries of FCOJM in the United States take place under Exchange contracts." The data provided as Exhibit I sets forth the information confirming Mr. O'Neill's statement. Exhibit I includes (i) a memorandum from Mr. Henry K. Sasser of the Board of Trade explaining the New York Cotton Exchange policy requiring USDA to review all actual physical deliveries of futures contracts; (ii) a letter from the USDA to Mr. Sasser stating that 631 Futures samples were reviewed and the Florida Department of Citrus statistics for FCOJ movement calculated in 42° Brix gallons. This figure does not include deliveries from Mexico, Belize and Costa Rica, Brazilian imports delivered from north east tank farms, or deliveries of California produced FCOJ. In 1996-1997, 265.4 million gallons of FCOJ product moved out of Florida. During that time period, according to the USDA, 631 futures contracts or 2,277,430 gallons of FCOJ 42° Brix were physically delivered in satisfaction of shipping certificates.¹ Thus, futures contracts deliveries represent less than 1% of all Florida movement during 1996-1997. Futures deliveries represent an even smaller percent of deliveries when all movement is calculated. Customs can verify this delivery data or data for previous years by directly contacting the USDA.

Irrespective of the data in Exhibit I, the primary point made by Mr. O'Neill in his letter is that the "recognized industrial standard" used by the Citrus Associates of the New York Cotton

¹ An individual futures contract represents 15,000 lbs. of solids. One pound solid of FCOJ equals 4.156 gallons of FCOJ at 42° Brix. See Citrus Reference Book, Florida Department of Citrus (April 1997) at 37.

Exchange pursuant to its by-laws is "the USDA standard of grade." Custom's concern that relying on a standard other than the Cotton Exchange is a major change in policy is unfounded. First, the original policy was based upon a fungible statutory standard. Second, as noted by Mr. O'Neill, the past reliance on the Cotton Exchange contracts was misplaced.

Just as the New York Cotton Exchange standard is based on the USDA grade standard, so is the standard of the Florida Department of Citrus. The Citrus Reference Book of the Florida Department of Citrus states in the table of contents that industry standards are USDA standards. Citrus Reference Book, (April 1997) at iv. See Exhibit II. The Florida Department of Citrus bases industry standards on the USDA standards as printed in the Federal Register, and makes no mention of any contracts of the Citrus Associates of the New York Cotton Exchange. See Exhibit II.

In fact, Customs has held that "the standards of identities of the Food and Drug Administration (FDA) and the standards of grades of the Department of Agriculture (USDA) for orange juice products (21 CFR, part 146, and 7 CFR, part 2852) represent industry standards of these products." C.S.D. 81-96. Moreover, Customs has held that the USDA standards of grades "are used by the citrus processing industry, the Commodity Futures Act, supermarket buyers, consumers, and the State of Florida Department of Citrus to define quality levels of various forms of orange juice traded in the marketplace." T.D. 80-153, 14 Cust. B. & Dec. at 335.

Specifically, the legislative history of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, § 632, 107 Stat. 2057, 2192-2194 (1993) states that "the Committee intends to permit the substitution of merchandise when it is 'commercially interchangeable' rather than when it is 'commercially identical.'" H.R. 103-361, 103d Cong., 1st

Sess. (1993) at 131. Likewise, Customs has ruled that the commercial interchangeable standard "was intended to be less restrictive." HQ 226100 (December 5, 1995).

III. Request for Commercial Documentation

Mr. Bornstein also requested commercial documentation be provided to Customs before a decision on commercial interchangeability could be determined. As you are aware, the new drawback regulations define "commercially interchangeable" as "merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2))..." 63 Fed. Reg. 11007 (March 5, 1998). Moreover, the regulations state that "[i]n determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value." 63 Fed. Reg. 11019 (March 5, 1998). However, the Court of International Trade has held that "the practicable standard for commercial interchangeability is the acceptance of the buyer in an arm's length transaction of the listed product on the import invoice with the listed product on the export invoice." Texport Oil Company v. United States, Slip Op. 98-21 (March 5, 1998). From Mr. Bornsteins' request for commercial documentation, we can only conclude that Customs intends to apply this judicial interpretation of commercial interchangeability, notwithstanding the fact that Customs has appealed that decision to the Court of Appeals for the Federal Circuit (Consolidated Appeal No. 98-1352). As far as we are concerned, all of Citrosuco's imported and exported merchandise was commercially accepted in an arm's length transaction and the description of the imported and exported merchandise match on the sales invoices. Therefore, the imported FCOJ is commercially interchangeable with the

exported FCOJ under Texport.

As set forth in our letter of July 8, 1998, Citrosuco has submitted to your office significant data related to import and export sales. The information provided was specific to requests made by Mr. O'Brien. Separately, all sales invoices, bills of lading, USDA quality certificates, scale tickets and Customs forms were submitted to Customs Boston office on March 27, 1996; July 3, 1996; and May 20, 1998. This can be verified by contacting Ms. Jean C. Nolan, Customs Officer, Drawback Branch, Boston.

In sum, Citrosuco believes that over the past four years, it has supplied all data that Customs would need to make a determination on all outstanding issues. At this point, we request an expeditious final determination.

Respectfully submitted,



Robert G. Kalik

Counsel to Citrosuco North America, Inc.

COPY

GILVIN & MLAWSKI

Attorneys at Law

440 Park Avenue South - 9th Floor
New York, New York 10016-8067

Tel: (212) 679-1500

Fax: (212) 663-9619

July 24, 1998

VIA FEDERAL EXPRESS

Commissioner of Customs
 United States Customs Service
 Ronald Reagan Building
 Entry Ruling Branch
 (Franklin Court)
 1300 Pennsylvania Avenue, N.W.
 Washington, D.C. 20229

Attn: Mr. John A. Durant, Director Commercial Ruling Division

Re: Commercial Interchangeability of Substitute Frozen
 Concentrated Orange Juice for Manufacture;
 19 U.S.C. § 1313(j)(2)

Dear Mr. Durant:

Reference is made to your office's June 29th response to our May 1, 1998 request for a ruling confirming that the duties paid on imported USDA Grade A frozen concentrated orange juice for manufacture ("FCOJM") are eligible for drawback against prospective exportations of substitute USDA Grade A FCOJM under the provisions for substitution unused merchandise drawback [19 U.S.C. §1313(j)(2)]. In your response, you explicitly reference the criteria that Congress has required be considered when determining whether two articles are "commercially interchangeable" and implicitly embrace Headquarters' prior Rulings which properly hold that Governmental and industry standards "is the most important criterion with respect to determining commercial interchangeability" for purposes of applying 19 U.S.C. §1313(j)(2). (e.g., See Ruling 225409 of August 29, 1995).

When applying this criterion to the citrus industry, it is our position that Headquarters' prior unpublished rulings holding that the standards of the Citrus Associates of the New York Cotton Exchange governing trade in futures contracts "represent industry standards for COJM" is clearly erroneous. Although acknowledging

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that the letter of the Secretary of the Citrus Associates of the New York Cotton Exchange, Inc., supports our assertion, you nevertheless state that "clarification" in the form of additional "evidence" "that the Cotton Exchange no longer sets a viable industry standard" is needed. Additionally, you advise that, in the event our assertion is "substantiated," your office will need complete copies of our client's "representative purchase and sales contracts, including purchase orders and sales invoices, as relevant, which illustrate the elements that Congress has require ... [Customs] to consider."

DISCUSSION

I. RECOGNIZED INDUSTRIAL STANDARD OF THE CITRUS INDUSTRY

- A. The Standards of the Citrus Associates of the New York Cotton Exchange for FCOJM Futures Contracts Do Not Represent Industry Standards Since, As a Matter of Federal Law, Sales of FCOJM for Actual Delivery are Not Subject to Such Standards.

In addition to providing a copy of the aforementioned letter from the Secretary of the Citrus Associates in support of our contention, references to the Federal statute governing commodity futures contracts (7 U.S.C. § 6); judicial construction of the same; and, excerpts from relevant Department of Commerce publications were also provided. As cited to at greater length in our May 1st submission, in its publication entitled U.S. Industrial Outlook 1994 (January 1994), Commerce's discussion of commodity futures trading included the following (at Chapter 47, page 47-2):

U.S. commodity futures and option markets are regulated by the Commodity Futures Trading Commission (CFTC), an independent federal regulatory agency. The CFTC carries out its responsibilities through direct regulation and through oversight of industry self-regulatory organizations (SROs) that include the futures exchanges themselves, as well as an industry-wide SRO, the National Futures Association (Table 1).

FCOJM futures contracts traded on the New York Cotton Exchange are subject to the oversight of the Exchange, direct regulation by the CFTC, and the provisions of Title VII of the United States Code. However, as the previously provided materials uniformly and unequivocally "substantiate," sales of commodities such as FCOJM for actual delivery are exempt from the statutory (i.e., 7 U.S.C. § 6), regulatory (CFTC) and exchange requirements governing commodity futures contracts. As observed by the court in Commodity

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Futures Trading Com., v. Petro Marketing Group, Inc., 502 Fed. Supp. 806 (1980, C.D. Cal.), aff'd., 580 F.2d 573, this exemption is due to the fact that, unlike commodity futures contracts, the actual sales of cash commodities are predicated upon the expectation that the purchaser will have the capacity to accept delivery and the seller will have the capacity to make delivery so as to permit both parties to properly plan and use storage and production facilities and to make future commitments thereon. The court concluded that such contracts are distinguished from commodity futures contracts inasmuch as the commodity futures dealer rarely intends to take or make actual delivery of the commodity.

As a matter of Federal law, Headquarters is compelled to recognize that sales of commodities, including imports and exports of FCOJM, for actual delivery are exempt from the statutory and CFTC regulatory requirements governing commodity futures contracts as well as the terms contained in the By-laws of the Citrus Associates of the New York Cotton Exchange for FCOJM futures contracts. Indeed, a local phone call to Janene Smith, Esq., at the Office of General Counsel for the CFTC (Tel.: 202-418-5120) will confirm the foregoing.

In relying upon the terms contained in the By-laws of the Citrus Associates of the New York Cotton Exchange for FCOJM futures contracts, Headquarters apparently equated and continues to erroneously equate trading in FCOJM futures contracts with actual sales and purchases of the underlying commodity itself. As is clearly established above, sales of commodities such as FCOJM for actual delivery are not subject to the terms contained in the By-laws of the Citrus Associates for FCOJM futures contracts.

Although the foregoing references all "substantiate" and, indeed, corroborate Secretary O'Neill's "contention" that actual deliveries of FCOJM are made under futures contracts, in any event, it is indisputable that sales of FCOJM - such as the imports and exports here in question - for actual delivery are not subject to the terms contained in the By-laws of the Citrus Associates for FCOJM futures contracts. As such, it is equally indisputable that Headquarters' position that such terms "represent industry standards [of the citrus industry] for COJM" is clearly erroneous. Rather, as was directly addressed and expressly decided in previously published Customs' Treasury Decisions and Customs Service Decisions, the USDA standards of grades, which incorporate the FDA standards of identities, represent the industry standards for these products.

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B. The USDA Standards of Grades, Incorporating the FDA Standards of Identities, Represent the Industry Standards for FCOJM.

In *Treasury Decision 80-153* (T.D. 80-153), Customs Headquarters properly found that, "[a]ccording to the *USDA submission, the USDA standards of grades, which incorporate the FDA standards of identities,*

are used by the citrus producing industry, the Commodity Futures Act, supermarket buyers, consumers, and the State of Florida, Department of Citrus to define quality levels of various forms of orange juice traded in the marketplace.

Customs concludes, therefore, that the USDA and FDA standards represent industry standards. (14 Cust. Bull. at 335)

In *Customs Service Decision 81-96* (C.S.D. 81-96), Headquarters reiterated its holding in *Treasury Decision 80-153*, stating:

In a publication in the Federal Register, June 10, 1980 (45 R.R. 39244, T.D. 80-153), the Customs Service concluded that the standards of identities of the Food and Drug Administration (FDA) and the standards of grades of the Department of Agriculture (USDA) for orange juice products (21 CFR, part 146, and 7 CFR, part 2852) represent industry standards for these products. (15 Cust. Bull. 929 at p. 930)

When C.S.D. 81-96 is read in conjunction with T.D. 80-153, it is painfully obvious to even a casual observer that United States Customs has unequivocally determined that the Governmental standards embodied in the *USDA standards of grades for orange juice products and incorporating therein the FDA standards of identities for orange juice products "represent industry standards for these products."* Additionally, reference to "*General Notice (521412)*" upon which T.D. 80-153 was based removes any doubt as to the correctness of the holding therein. Specifically, T.D. 80-153 was issued following Headquarters' August 29, 1979 Notice soliciting the views of the public on the standards Customs employs for determining same kind and quality for orange juice products under the drawback law.¹

¹ See Oct. 8, 1979 *Customs Bulletin* (Vol. 13, No. 41, 44 P. Reg. 55690 of Sept. 27, 1979).

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In its Notice, Customs advised that it "has consistently applied" both the standards of identities of the Food and Drug Administration and the standards of grades of the Department of Agriculture "for orange juice products," and included the following brief historical summary regarding the promulgation of these standards at pages 13-15 thereof:

STANDARDS OF IDENTITIES

The standards of identities for orange juice and orange juice products were published in the Federal Register (28 F.R. 10900) dated October 11, 1963. The citrus industry, primarily located in Florida, petitioned the Food and Drug Administration to establish standards of identities for orange juice products. The industry participated in the rulemaking process by the submission of written opinions and oral evidence at the hearing. The commissioner of the Food and Drug Administration made certain findings of fact based upon the evidence.

* * * * *

STANDARDS OF GRADES

The regulations of the Department of Agriculture set forth certain standards of grades for orange juice products and refer to the standards of identities of the Food and Drug Administration to define those products. * * * There are several standards of grades, such as grade A, B, or C, which determine the quality of the product based upon a scoring system for color, defects, and flavor including a minimum degree brix and brix-acid ratio. (emphasis ours)

Our puzzlement over Headquarters' reliance upon the terms in Section 82 of the By-Laws of the Citrus Associates of the New York Cotton Exchange governing FCOJM "futures contracts" traded on the New York Cotton Exchange under the Commodity Futures Act is all the more compounded by the fact that, as observed in T.D. 80-153, contracts subject to the Commodity Futures Act are themselves expressly governed by the aforesaid USDA standards.²

² As noted in Secretary O'Neill's letter, the Exchange's futures contracts expressly incorporate and provide that they are subject to USDA standards:

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As the foregoing makes abundantly clear, the USDA standards of grades incorporating the FDA standards of identities were promulgated at the request of the citrus industry. Inasmuch as Treasury Decision 80-153 and Customs Service Decision 81-96 expressly conclude that these standards "are used by the citrus producing industry, the Commodity Futures Act, ... and the State of Florida, Department of Citrus to define quality levels of various forms of orange juice traded in the marketplace" and "represent industry standards for these products," we are at a complete loss to explain to our client Customs Headquarters' refusal to recognize and apply these holdings, let alone correct, by rescission, directly conflicting unpublished rulings which erroneously hold that "the standards followed by the Citrus Associates of the New York Cotton Exchange represent industry standards for COJM".

We reiterate our position that there exists no basis in law or fact supporting Headquarters' continued assertion that the standards followed by the Citrus Associates of the New York Cotton Exchange "represent industry standards for COJM". On the contrary, as was properly found by Headquarters in T.D. 80-153 and C.S.D. 81-96, it is the USDA standards of grades, incorporating the FDA standards of identities, which represent the industrial standards of the citrus industry and, accordingly, which comprise both "the Governmental and recognized industrial standards," the most important criterion with respect to determining commercial interchangeability for purposes of applying 19 U.S.C. § 1313(j)(2). We again refer to our earlier submission wherein the application of these standards is discussed at length.

II. Criteria of Tariff Classification and Relative Values

As with the Governmental and industry standard criterion, detailed discussion was provided at pages 9 through 12, inclusive, of our May 1st submission regarding the Congressionally cited criteria of tariff classification and value. Although obviously ignored, the evidence presented therein unequivocally establishes that both tariff classification and value (i.e., pricing) are dependent upon "degree Brix" which is, by definition, merely a measurement of the quantity of the soluble sugar solids present in the FCOJM solution. A telephone call to Customs National Import Specialist John Maria (Tel: 212-466-5730) in New York will confirm that FCOJM is bought and sold on a "pounds solids" basis and that duties are assessed thereon by converting the pounds solids present in a particular shipment into equivalent "single strength" liters having an average Brix value of 11.8 degrees. (See 19 CFR § 151.91)

³ See, Additional U.S. Note 1(c) to Chapter 20, HTSUS.

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(a) *Relative Values*

FCOJM is bought and sold on the basis of the amount of soluble sugar solids per pound of solution (i.e., "pounds solids"), as measured by its "Brix value". The quantity of soluble solids present in a particular concentrate solution will ultimately determine the amount of single strength juice which can be produced therefrom and, accordingly, its value expressed in terms of the market price per pounds solids. As with all commodities, the day-to-day pounds solids market price of FCOJM may vary depending upon market conditions reflecting immediate and long-term seasonal supply and demand. In the event price remains constant, however, the "relative values" of FCOJM purchased months apart would provide little, if any, guidance for determining quality and, thus, commercial interchangeability. Rather, as noted in C.S.D. 80-162 (14 Cust. Bull. 1002), FCOJM quality is determined by applying the grade A quality standard of the USDA which is based upon a scoring system for color, defects and flavor. Thus, as properly found by Headquarters therein, domestic USDA grade A FCOJM of 50 degrees Brix and imported USDA grade A FCOJM of 65 degrees Brix, "are used interchangeably by the citrus industry in the manufacture of other orange juice products ..." notwithstanding the express observation that the domestic FCOJM contained significantly less soluble solids than the import.

We understand that voluminous "complete copies" of "representative purchase and sales contracts, including purchase orders and sales invoices," illustrating "the elements on which purchases and sales are made" were provided by the law firm of Nateman and Kalik, L.L.P., in connection with its February 2, 1994 ruling request regarding 1313(j)(2) drawback of FCOJM which, to date, has not been acted upon by Customs. As discussed above as well as at pages 9-12 of our original submission, it remains our position that such information is totally irrelevant to applying the relative values criterion to FCOJM. Indeed, for purposes of determining the commercial interchangeability of commodities generally, and FCOJM specifically, the "relative values" criterion provides little, if any, utility. In any event, when compared to the Governmental and industry standard, it is far less relevant - if not completely irrelevant - in making the required determination.

Finally, in response to your request, our client has confirmed that "part numbers" play no role whatsoever in the marketing of frozen concentrated orange juice for manufacture. For future reference, however, note should be taken of Headquarters' prior determinations that "[t]here is no evidence to suggest that part numbers is a pertinent criterion" for determining commercial interchangeability of FCOJM (e.g., Ruling No. 226444 of Feb. 13, 1996).

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(b) Tariff Classification

Inasmuch as all FCOJM is classified under the same tariff provision (i.e., subheading 2009.11.00, HTSUSA), the criterion of tariff classification supports our position regarding commercial interchangeability. That is not to say, however, that imported USDA grade A FCOJM is interchangeable with exports of USDA grade B FCOJM merely because both are classified in the same 8-digit HTSUS subheading.

Although both the tariff classification and pricing of FCOJM support the conclusion that imported and substitute domestic FCOJM meeting the USDA grade A quality standards (and the FDA standards of identities incorporated therein) are commercially interchangeable within the intentment of section 1313(j)(2), as Headquarters has correctly held, it is the Governmental and industry standard which "is the most important criterion with respect to determining commercial interchangeability".

CONCLUSION

Prior Headquarters' rulings which erroneously hold that "the standards followed by the Citrus Associates of the New York Cotton Exchange represent industry standards for COJM" should be immediately rescinded. Rather, the USDA standards of grades, which incorporate the FDA standards of identities, constitute the "Governmental and recognized industrial standards" of the citrus industry. Reiterating the holdings in T.D. 80-153 and C.S.D. 80-162, although differing in degrees Brix, Brix-acid ratio and/or individual scoring, FCOJM meeting USDA grade A standards is "used interchangeably by the citrus industry in the manufacture of other orange juice products". Accordingly, FCOJM meeting the USDA grade A standards is commercially interchangeable with other FCOJM meeting the same standards regardless of differences in the degrees Brix, Brix-acid ratio, and/or individual scoring for color, flavor, and defects.

Respectfully yours

Galvin & Mlawski
Attorneys-in-Fact for
Winter Garden Citrus Co.

JJG/pf

TESTIMONY OF ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

Chairman Roth, Ranking Member Moynihan and Members of the Committee, my name is Robert M. Tobias, and I am the National President of the National Treasury Employees Union (NTEU). On behalf of the men and women of the United States Customs Service who enforce our trade laws, collect duties on imported goods, and fight to curb the flow of illegal narcotics and contraband into our country, I would like to thank you for this opportunity to submit our Union's views on the Customs Service Authorization bill pending before this Committee.

Although the Customs Service began in 1789 as a collector of duties on imported goods, its mission has transformed over the years into a front line enforcement agency for trade laws and drug interdiction efforts. In FY 1998, Customs employees will have processed over 457 million air, sea and land passengers through 301 ports of entry. That number is expected to increase to 470 million for FY 1999. Through these same ports over 132 million automobiles, trucks, railcars and sea containers entered the U.S. in FY 1997.

The Customs Service enforcement mission is twofold. Customs employees must ensure the public's compliance with hundreds of import laws and regulations while stemming the flow of illegal drugs into the United States. Over the past few years, legitimate U.S. imports have grown at double digit rates and illegal narcotics smugglers have begun to exploit new and sophisticated methods of moving drugs into the country. In addition, Customs employees have become responsible for preventing international money-laundering and arms smuggling. Yet, the Customs Service has confronted its rapidly increasing workload with relatively static staffing levels and resources.

During FY 1998, the Agency's total workforce reached a level of about 19,469 full time equivalents (FTEs). In comparison with FY 1995 when the number was 18,438, there has been a relatively small increase in personnel worldwide, despite the dramatic increases in trade resulting from NAFTA, the increased threat of drug smuggling and the opening of new ports and land border crossings each year. This Customs Authorization Bill, S. 1787, would increase Customs Service personnel and technology to facilitate the free flow of legitimate cargo across the border, while intensifying efforts to stop drug trafficking and money-laundering.

This legislation proposes an additional 1705 positions, including 1195 inspectors and canine enforcement officers, 460 special agents, and 50 internal affairs employees. These additional personnel will be directed to specific regions of the country that are experiencing the most dramatic increases in international trade and illegal drug smuggling. The Southwest border is one of these areas. It is estimated that over half of the illegal drugs that enter the United States are smuggled through the Southwest Border.

Over the last few years, Customs has focused its drug interdiction efforts on the Southwest Border by implementing successful joint efforts with the transportation industry and Southwest Border trade community. Through the Business Anti-Smuggling Coalition (BASC), Southwest Border importers share information with Customs officials leading to high rates of drug seizures and arrests in the area while continuing to facilitate trade. The strengthening of cooperative efforts with legitimate trade businesses disrupts smugglers efforts and safeguards legitimate trade

from being used to smuggle drugs.

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. Operations HARD LINE and GATEWAY were successfully implemented in FY 1997 to respond to the drug smuggling threat along the Southern Tier of the U.S., Puerto Rico and the Caribbean Islands.

The latest drug seizure statistics highlight Customs' more recent successes in the war on drugs. Despite the increased trade and traffic this year, Customs has already seized twenty-five percent more narcotics this fiscal year to date than in 1997. The total amount of narcotics seized from February 1, 1998 through July 31, 1998 is forty-five percent higher than the same time period in 1997. Fifty-nine percent more outbound currency has been interdicted. Several individual ports of entry report even higher local percentages for certain categories of activity.

This impressive enforcement record for 1998 is not accidental or the result of a fluke. The record is a result of Operation Brass Ring, a Customs program that officially began on February 1, 1998 at 129 land, sea and airports around the country. In this endeavor, Customs rank and file employees worked with their supervisors to design innovative enforcement operations aimed at seizing more drugs, but fashioned to fit their local needs. Through this field-based, field-driven program, new methods of inspecting cargo were developed, tours of duty were modified for unpredictability, and through NTEU, the front line employees were tapped for their expertise and judgment in intensifying drug interdiction efforts.

During Operation Brass Ring, there was increased and unprecedented cooperation among Customs inspectors and the local Customs criminal investigators. The sharing of intelligence and techniques led to the dismantling of hundreds of sophisticated drug smuggling operations as well as a one hundred percent increase in controlled deliveries and an eighty-two percent increase in arrests. Trade industry representatives have said that Operation Brass Ring activity did not create an additional burden on the flow of trade.

Like in the Southwest, many ports on the Northern border contributed to the success of Operation Brass Ring. As reports show, America's drug problems are not confined to the Southeast or Southwest. Presently, we are experiencing an increase in the smuggling of a powerful strain of Canadian marijuana grown in British Columbia known as "BC Bud." The potency of this crop has created a market in which the drug's street value is worth \$4000 per pound compared to Mexican grown marijuana that currently sells for approximately \$200 per pound. The number of marijuana-related cases from the Northern Border has increased tenfold in the last few years. In addition, U.S.-Canadian trade and commercial traffic have nearly doubled in the last decade. Unfortunately, about the same number of Customs inspectors assigned to the Northern Border ten years ago are expected to process double the volume in trade. The Customs officers on the Canadian border need additional resources and technology to continue to facilitate trade with Canada, while responding to the growing concern of drug addiction in their Northern communities.

Although Operation Brass Ring officially ended on July 31, 1998, Customs and NTEU are working together to outline a second phase of this drug interdiction effort. Employees are motivated to keep pressure on the smugglers and maintain the high drug seizure rates without slowing the movement of legitimate commercial goods. In October, labor and management will meet to incorporate the best practices and lessons learned from Operation Brass Ring into a model for future Customs' drug interdiction efforts.

Employees of the Customs Service, like their law enforcement counterparts around the country, are committed to the eradication of drug abuse in America. They risk their lives in the war on drugs, and sadly, many have died in that battle. While we appreciate this legislation that will authorize more resources for the Customs Service programs and personnel, we request that this committee actively oppose any misguided amendments that would cut the pay and eliminate the collective bargaining rights of the Customs rank and file employees.

Operation Brass Ring is a departure from top-down management and an excellent example of labor and management working together, respecting each others' voice on critical work related issues and delivering positive results. I know that the more than 13,000 Customs employees represented by the NTEU are capable and committed to the Customs drug interdiction mission. They are deserving of more resources and technology without restrictions on their rights and benefits. NTEU supports S. 1787, but would strongly oppose it if amendments were added that would limit the pay or rights of the Customs employees we have over tasked.

While Customs drug seizures between February 1 and July 31, 1998 have amounted to 622,077 pounds, (more than the total drug seizures of all other federal agencies combined), Customs continues to meet its money laundering and trade enforcement responsibilities as well as other performance standards. During the months of Operation Brass Ring, Customs seized \$43.7 million in currency compared with \$30.1 million dollars for the same time period in 1997. The Agency continually meets its performance measure that requires that ninety-five percent of all airline passengers be cleared within five minutes of retrieving their checked luggage. With additional resources, the Customs Service can continue to fulfill its dual mission of enforcing trade laws and interdicting illegal drugs.

Despite this record of unparalleled achievement in so many law enforcement areas, the Customs inspectors and canine enforcement officers still do not qualify for federal law enforcement status. As in past years, NTEU will continue its efforts to enact legislation (H.R. 1215 and S. 397) to end this disparity. While we appreciate the significant budget implications, we believe that denying the brave men and women of the Customs Service the same employment rights of other federal employees who risk their lives every day to combat dangerous illegal import activity and the trafficking of drugs is unjust.

In addition to more personnel, this legislation authorizes over \$53,000,000 for acquisition, full deployment and one year of maintenance of narcotics enforcement equipment and cargo processing technology along the Southwest border. Specifically, the bill authorizes expenditures for vehicle and container inspections systems (VACIS) and mobile truck x-rays that are

necessary to keep the traffic flowing while thoroughly inspecting vehicles transporting goods manufactured in Mexico, Central and South America and other countries.

This state of the art equipment is essential to move the traffic at the various bridges and land crossings in the Southwest, and to balance the trade facilitation with intensified drug interdiction efforts. For example, over 25,000 vehicles cross through the port of El Paso, Texas every day. The vehicles range in size from bicycles and motorcycles to buses, tractor trailers and tankers. The length of lines waiting to cross is directly related to the number of inspectors and other personnel there, while the length of the inspection process has to do with the quality and sophistication of the equipment used to inspect the vehicles.

Traffickers routinely transport drugs across the border by hiding them among legitimate goods. In El Paso, it may take three to four hours for a routine inspection of a semi-tractor trailer. Fixed truck x-ray systems authorized in this bill can scan an entire truck in minutes -- or just about as long as it takes the rig to move through what looks like a giant car wash. The x-ray capabilities can determine wall density, detect false compartments where drugs are concealed, and highlight areas that should be hollow truck parts. Currently, drug smugglers use unique engineering to conceal drugs in all parts of all types of vehicles, including, diesel engines, gas tanks, ceilings, butane tanks and false panels. Customs must respond to these efforts by employing the most high-tech equipment for the detection of drugs, outbound currency and weapons. This type of equipment is essential for the efficient movement of legitimate imports across the Texas border.

Mobile truck x-ray units authorized in this bill also alert inspectors to illegal contraband while keeping the traffic flowing. Today, this equipment is essential in the expeditious processing of hundreds of bus passengers as they enter the United States every hour. The x-ray machines instantly reveal any concealed narcotics, laundered money or other contraband in the passengers' luggage or on their bodies.

In addition, this bill would provide badly needed high-tech camera systems to perform counter surveillance operations on drug and currency smugglers. These criminals known as "spotters" generally observe Customs operations with their own camera equipment to better predict the inspection process and to advise co-conspirators which lanes to drive through at a certain times of the day. By using high-tech camera systems to keep an eye on these smugglers, Customs takes a proactive role in concert with the Border Patrol, INS, DEA and local law enforcement to promptly dismantle sophisticated drug smuggling conspiracies.

In FY 1999, Customs estimates it will process over 470 million land, sea and air passengers. Over 130 million carriers will enter our ports in 1999 and over \$850 billion worth of merchandise will be processed at the borders. While we expect to keep the drug seizures high in 1999, the additional resources, personnel and technology proposed in this bill are necessary for this effort and to succeed in the war on drugs without placing an undue burden on local trade as a whole.

Mr. Chairman, thank you for the opportunity to submit the views of the National Treasury

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Mr. Chairman, thank you for the opportunity to submit the views of the National Treasury Employees Union on this matter. I applaud you and the other members of the Committee for taking a closer look at the resource needs of the Customs Service.



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