S. HRG. 113–215

# THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2013

## HEARING

BEFORE THE

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

**S. 662**

MAY 22, 2013

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# THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2013

**WEDNESDAY, MAY 22, 2013**

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

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Nelson, Hatch, Grassley, Crapo, and Thune.

Also present: Democratic Staff: Mac Campbell, General Counsel; Bruce Hirsh, Chief International Trade Counsel; and Hun Quach, International Trade Analyst. Republican Staff: Chris Campbell, Staff Director; and Everett Eissenstat, Chief International Trade Counsel.

## OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The hearing will come to order.

The American composer, Aaron Copland, once said, "To stop the flow of music would be like the stopping of time itself, incredible and inconceivable."

Like the flow of music, international trade must be orchestrated and properly executed. If trade were stopped, it could cripple the U.S. economy and cause a ripple effect around the world.

Today we are focused on critical legislation to reauthorize U.S. Customs and Border Protection, or CBP, and Immigration and Customs Enforcement, or ICE. These two agencies orchestrate the flow of trade and ensure shipment smoothly through United States ports.

In 1979, when I joined the Senate Finance Committee, total U.S. trade in goods and services was $472 billion. Last year, it was $4.9 trillion, nearly a 1,000-percent increase. Times have changed, and CBP and ICE must modernize to meet the challenges of the 21st century.

On a typical day, 365,000 entries move through U.S. ports. That includes more than 3,000 express entries. These goods arrive in more than 66,000 truck, rail, and sea containers, as well as hundreds of aircraft carrying express cargo shipments. This is just an average. On a busy day, CBP must manage almost half a million entries.

American businesses, ranchers, farmers, and consumers depend on the timely movement of all these goods across borders to remain

competitive. In business, time is money. So CBP and ICE must facilitate trade expeditiously. At the same time, CBP and ICE must ensure that our borders are secure. This is the challenge that CBP faces given the volume of today's trade.

CBP must fulfill its historic mission of collecting duties owed to the U.S. Treasury. CBP and ICE also enforce U.S. antidumping and countervailing duty laws and ensure that foreign companies do not undercut American jobs by circumventing those laws. And CBP and ICE stop counterfeit goods from entering the U.S. market.

In 2002, Congress gave CBP and ICE yet another mandate—to keep terrorists and illegal weapons out of the United States. Since then, CBP and ICE's trade missions have been put on the back burner as they have pursued new security and law enforcement missions.

But trade and security are not mutually exclusive. CBP and ICE must effectively facilitate the flow of trade and ensure our National security. To do this, Senator Hatch and I introduced the "Trade Facilitation and Trade Enforcement Reauthorization Act of 2013."

The bill, which we introduced in March, gives CBP the tools and authority it needs to refocus on its trade mission. This bill creates new high-level positions within CBP solely dedicated to trade facilitation and trade enforcement. It allows CBP to target the imports that are most likely to violate the U.S. intellectual property, import safety, and other laws. And it provides speedy Customs clearance and other commercial benefits for importers with a strong record of compliance.

This bill also includes the ENFORCE Act, as marked up by this committee last year. The ENFORCE Act gives CBP and the private sector the tools they need to combat the evasion of antidumping and countervailing duty laws. I want to commend Senator Wyden and all of the bill's co-sponsors for working with us to mark up the bill last year, and I am glad that we are able to include it here.

The Trade Facilitation and Trade Enforcement Reauthorization Act also provides important benefits for States like Montana. On the average day, CBP processes more than 1,000 entries through Montana ports.

This bill establishes a pilot program for 24-hour port operations. The 24-hour pilot program will help CBP determine whether round-the-clock operation can help manage the flow of goods across the northern border. And the bill helps Montana's honey producers by ensuring their foreign competitors pay the required duties on their imports.

Finally, the bill requires CBP and ICE to do a better job consulting with U.S. businesses that are affected by its policies, as well as with this committee and with Congress as a whole.

The bill, in short, gives CBP and ICE the tools and resources they need to refocus on their trade missions. Or, as Aaron Copland might say, ensures that international trade is properly orchestrated, executed, and continues to flow.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

## OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Thank you, Mr. Chairman. I appreciate this hearing.

The long and distinguished history of the United States Customs and Border Protection agency dates back to 1789, when the First Congress of the United States created its predecessor, the United States Customs Service.

The U.S. Customs Service was the first agency in the Federal Government. Its primary function was the collection of import duties, which placed the agency under the direct authority of the Secretary of the Treasury.

As our Nation evolved, so did the agency's mission. Most recently, following the terrorist attacks of 9/11, Congress passed the Homeland Security Act of 2002 to help improve border security. That act reorganized the U.S. Customs Service along with other agencies into two new agencies now known as Customs and Border Protection, CBP, and Immigration and Customs Enforcement, ICE. Since their creation, these two agencies have faithfully carried out their dual missions of facilitating trade and protecting our Nation from terrorist attacks.

Today, international trade is a vital component of our economy. U.S. imports and exports amount to trillions of dollars. Robust international trade enables companies such as Procter and Gamble and Oracle to expand their operations around the world and in my home State of Utah as well.

As our future economic growth is increasingly linked to international trade, it is important that Congress works to enhance our economic security. That is why Senator Baucus and I have introduced S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

Among other things, this bill would improve our ability to protect one of the Nation's most important economic assets, and that is intellectual property. We included in the bill provisions to codify the National Intellectual Property Rights Coordination Center, which coordinates Federal efforts to combat intellectual property rights violations.

The bill also significantly expands CBP's tools and authorities to protect intellectual property rights at the border by requiring the agency to share information about suspected infringing merchandise with rights holders. Our legislation requires CBP to establish a process for enforcing copyrights while registration with the Copyright Office is pending, and to publish information about unlawful circumvention devices that are seized.

S. 662 also strengthens CBP's targeting of goods that violate intellectual property rights, and requires an intellectual property rights education campaign for travelers at the border. The bill requires the Customs declaration form that everyone entering the country fills out to contain a warning that the importation of goods that infringe intellectual property rights may violate criminal and/or civil laws and may pose serious risk to health and safety.

Now, this seems to me to be an obvious way to raise awareness about the dangers of intellectual property rights infringement at no real cost to U.S. taxpayers.

Our bill will do many other things to facilitate trade, including: improving the CBP Trusted Trader partnership programs; enhancing the private-sector advisory system so that U.S. importers and others involved in trade have a stronger voice in formulating trade policy; and ensuring that CBP completes and deploys information technology systems such as the Automated Commercial Environment, which fosters trade facilitation through the use of automation.

Through these provisions, S. 662 will help alleviate unnecessary and costly delays at the border. At the same time, it will help to prevent unsafe and illegal goods from entering the United States as well as protect American businesses from unfairly traded goods coming into our country.

This legislation is long overdue. I want to compliment the chairman for pursing it. S. 662 is a strong bill that will benefit our economy and help ensure that America remains one of the most competitive nations in the world.

I look forward to continuing our work with CBP to ensure that its dual mission of protecting our homeland and facilitating trade is successfully fulfilled. At the same time, I hope that the administration will soon nominate a new CBP Commissioner. This agency has been without a Senate-confirmed Commissioner since December of 2011, which is far too long. In choosing a new Commissioner, I hope the administration will make sure that individual has a strong foundation and understanding of international trade.

Mr. Chairman, I want to thank you once again for holding this hearing today. I look forward to hearing from each of our witnesses about how S. 662 can help to strengthen and improve the trade facilitation and enforcement functions of CBP and ICE, and I look forward to any criticisms as well.

The CHAIRMAN. Thank you, Senator. I appreciate that.

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

The CHAIRMAN. We are pleased to begin our hearing today with Mr. William Cook, director of logistics and Customs at the Chrysler Group. Following Mr. Cook is Mr. David Cooper, global Customs compliance manager with the Procter and Gamble Company. The third witness, Mr. Clark Silcox, is general counsel and secretary at the National Electrical Manufacturers Association. And finally, we welcome again Ms. Mary Ann Comstock from Sweet Grass, MT. Mary Ann serves as brokerage compliance manager for UPS Supply Chain Solutions.

Everybody, it is all yours. You know the drill here. Statements are included in the record, and we urge you to summarize them for about 5 minutes.

Mr. Cook, you are first.

**STATEMENT OF WILLIAM A. COOK, DIRECTOR OF WORLDWIDE LOGISTICS AND CUSTOMS, CHRYSLER GROUP, LLC, ROCHESTER, MI**

Mr. COOK. Thank you. Thank you, Chairman Baucus, Ranking Member Hatch, and Finance Committee members.

I want to begin by thanking you again for inviting Chrysler Group, LLC to testify today. Chrysler appreciates being given the

opportunity to share its views on S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

My name is William Cook. I am the director of worldwide logistics and Customs for Chrysler. In this capacity, I lead the team responsible for developing logistics strategy, purchasing transportation services, Customs and export compliance, operating Chrysler Group Transport, and controlling logistics operations.

I am also a licensed Customs broker and served on the Advisory Committee for Commercial Operations (COAC) of U.S. Customs and Border Protection from 2007 until 2010.

Because of the significant volume of trade involved, coupled with the company's reliance on just-in-time inventory management practices, Chrysler's ability to import and export vehicles and parts in an efficient and timely fashion is critical.

In 2012, Chrysler handled almost 300,000 entries into the United Sates worth $24 billion. By volume, 70 percent of these entries were production parts, and the remainder were vehicles. Chrysler also handed 1.2 million entries into Canada worth almost $12 billion and 55,000 entries into Mexico worth $5.5 billion.

Even minimal delays can have serious consequences for the company, and now more than ever, with demand sky-high for Chrysler products and fierce competition in the auto sector, we cannot afford any production delays. As such, it has been Chrysler's practice to take advantage of every opportunity to reduce the time it takes for the company's shipments to cross the border and, more generally, to reduce our direct and indirect Customs-related costs.

Therefore, Chrysler is a charter member of the Customs–Trade Partnership Against Terrorism (C–TPAT) and Importer Self-Assessment (ISA) programs. Chrysler also takes advantage of all border crossing privileges that are provided, including the Free and Secure Trade, or FAST, program. We are also members of the Automotive and Aerospace Center of Excellence and Expertise, the CEE, and have participated in a number of CBP pilots.

Additionally, as a member of CBP's Trade Support Network, Chrysler provides direct input to the agency regarding the design and development of Customs modernization initiatives including the Automated Commercial Environment (ACE). My full statement on S. 662 was previously submitted; however, in the interest of time, today I will only address two key issues for Chrysler.

The first issue is the Automated Commercial Environment. Like the committee, Chrysler looks forward to the day when ACE is fully up and running and appreciates the support for the development of ACE reflected in the bill.

Based on our discussions with CBP, it appears that the agency is making real progress in rolling out the ACE system. However, the inclusion of ACE-related provisions in the reauthorization legislation and the committee's exercise of its oversight responsibilities will help ensure that CBP completes the roll-out in a timely fashion.

Chrysler was one of the original 41 participants in the 2004 pilot. Despite the fact that it has yet to be fully implemented, we already see tremendous benefits from the ACE system and expect those benefits to increase as additional elements of the system are rolled out.

Of particular interest to Chrysler is the International Trade Data System (ITDS) or "single window" concept, which will allow Chrysler to use ACE for all of its entries. Having to file entries in both the Automated Commercial System (ACS) and the ACE systems is administratively burdensome and requires careful monitoring of Chrysler's post-entry work to ensure that it is properly done.

We understand the next ACE roll-out will relate to export reporting, which could improve the company's ability to manage its exports and duty drawback filing, and Chrysler will volunteer to participate in any export reporting pilot program.

The second issue is the pilot program to designate 24-hour commercial ports of entry. Chrysler was pleased to see the language in the proposed legislation requiring CBP to launch this pilot program and designate more 24-hour commercial ports of entry.

Since we rely so much on just-in-time inventory practices, keeping more of the U.S. land border commercial ports of entry open 24 hours a day will help to reduce wait times at the border, facilitate trade, and significantly benefit Chrysler and many other U.S. companies.

In conclusion, Chrysler welcomes the introduction of S. 662 and hopes that it is taken up for consideration by the committee and on the Senate floor as soon as possible. Like many industries, the auto sector is extremely competitive. Many of the measures included in this legislation will help to streamline and make more efficient Customs processes and procedures.

While savings on a single entry associated with these proposed improvements may not necessarily be large, for companies like Chrysler, with our combined 400,000 import and export transactions, the total savings would be significant. Thank you again for this opportunity.

The CHAIRMAN. Thank you, Mr. Cook, very much.

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

The CHAIRMAN. Mr. Cooper?

**STATEMENT OF DAVID COOPER, GLOBAL CUSTOMS COMPLIANCE MANAGER, THE PROCTER AND GAMBLE COMPANY, CINCINNATI, OH**

Mr. COOPER. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for inviting P&G to testify here this morning.

My name is David Cooper. I am the global Customs compliance manager at Procter and Gamble. I also work closely with P&G's global brand protection team, which is responsible for protecting consumers, retailers, and our brands from the threat of counterfeit goods.

Ninety-nine percent of American households contain at least one P&G product, and over 90 percent of the products we sell in the U.S. are manufactured in one of our 33 U.S. facilities, including our new Box Elder facility in Utah.

More than 4.6 billion times a day our trusted brands touch the lives of consumers in virtually every country. I would like to briefly discuss P&G's supply chain and brand protection issues as background for why the Trade Facilitation and Trade Enforcement Reauthorization Act is important to us.

P&G has a global supply chain. We purchase raw materials, equipment, packaging, and other inputs from thousands of suppliers in the United States, but imports from foreign suppliers play a key role in our U.S. manufacturing capabilities as well.

Direct P&G imports amount to more than 35,000 entries each year with a value of roughly $3 billion. On an average day, we manage almost 100 entries at a value of more than $8 million. The ability of these shipments to quickly and efficiently pass through the Customs and Border Protection import process is critical to our U.S. manufacturing operations.

As important as efficiency is to us, our supply chain is more than a logistical or operational issue. Millions of times every day, imported materials are used by U.S. consumers as part of the Pampers diapers we put on our children, the Gillette razor blades we use to shave, the Nyquil cold medicine we take, and the Tide detergent we use to care for our clothes.

The safety of P&G products is our number-one priority, and we build our supply chain around that fact. We have strict policies with our partners at all stages of our supply chain to ensure that imports are safe for consumers, and that finished products that cross into the U.S. are genuine P&G brands and not counterfeits.

Protecting consumers against counterfeits is a business and consumer protection imperative for us. Counterfeits are inferior products that undermine consumer trust in our brands. They are often sold at artificially low price points which affect our legitimate sales and profits, eroding the significant investment P&G makes in research and development.

P&G's relationship with CBP on intellectual property rights is a great example of a public/private partnership that is critical to an effective IPR enforcement regime. We work with CBP on 70 to 80 counterfeit cases every year by offering our expertise and cooperation to identify and investigate counterfeit products.

Each year we conduct training sessions for hundreds of law enforcement and CBP officers on how to distinguish genuine P&G products from counterfeits.

P&G applauds the efforts of this committee in addressing trade facilitation and intellectual property protection in S. 662. We support the bill and find particular value in the following provisions.

Section 201 requires the Commissioner of the CBP to consult with private- and public-sector stakeholders to ensure CBP partnership programs provide companies commercially meaningful and measurable benefits. P&G is a Tier II C–TPAT company and, as such, we anticipated receiving measurable benefits for our participation in the program. We support 201 although, to date, we have not seen these benefits apply in a measurable way to our entries.

Section 202 authorizes a trusted importer program that will be a powerful trade facilitation tool, particularly the provision that allows pre-clearance of imports for companies that demonstrate the highest levels of security and compliance.

Section 206 provides CBP the resources and time line required to fully implement the Automated Commercial Environment program. If all 30 aspects of this program are fully implement as intended in the 1993 Customs Modernization Act, importers like

P&G will benefit from a simpler, more transparent, more efficient Customs experience, facilitating legitimate trade.

Section 231 codifies the National Intellectual Property Rights Coordination Center, which P&G strongly supports. P&G has worked closely with the IPR Center on a number of critical counterfeit investigations and has benefitted greatly from coordinated enforcement efforts.

Section 241 authorizes CBP personnel to seek and receive assistance from experts in the private sector to quickly ascertain whether a suspect shipment is genuine or counterfeit. We believe CBP officers should be allowed to share product samples or identifying packaging information with rights holders like P&G as quickly as possible. This would enable CBP to officially authenticate legitimate goods so they can make it to consumers, or seize counterfeit goods to rightfully prevent their entry into the market.

Mr. Chairman, Senator Hatch, thank you again for the invitation to testify this morning. P&G values our partnership with you and this committee on these issues. We also value our partnership with CBP, and we believe this bill will help CBP keep our country safe while allowing globally engaged companies like Procter and Gamble to be competitive here in the U.S. and throughout the world. Thank you.

The CHAIRMAN. Thank you, Mr. Cooper, very much.

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

The CHAIRMAN. Mr. Silcox?

**STATEMENT OF CLARK R. SILCOX, GENERAL COUNSEL AND SECRETARY, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, ROSSLYN, VA**

Mr. SILCOX. Good morning, Chairman Baucus, Ranking Member Hatch, members of the committee. Thank you very much for inviting me to appear before the committee to address the trade enforcement provisions of S. 662.

I am Clark Silcox, general counsel at the National Electrical Manufacturer's Association, NEMA. I am speaking today primarily to section 241 of the bill, but I noticed that sections 231 and 242 through 258 are intended to enhance IPR enforcement, and we endorse and support those provisions as well, particularly the provision in section 231 about the IPR Center in Crystal City that Senator Hatch mentioned in his remarks.

NEMA represents approximately 430 North American manufacturers of electrical equipment used in the generation, distribution, and control of electricity. The product scope of our organization is quite broad, with over 50 product categories of electrical products. That includes electrical products used in factories, commercial buildings, apartments, and homes, as well as hospitals, schools, and government buildings.

It also includes some consumer products sold at retail as well. Our member companies have business operations and employees in all 50 States, and they have either headquarters or factories in the States of every member of this committee.

Of interest to the committee members, NEMA members that have been victims of electrical product counterfeiting have head-

quarters and/or plants in New York, Ohio, Pennsylvania, Georgia, North Carolina, Florida, and New Jersey.

Product safety is a major concern of our industry, and many electrical products are third-party tested to the standards of third-party independent labs. Counterfeit electrical products are frequently found to be substandard either in terms of their safety or their product performance characteristics.

One of our member companies, with headquarters and manufacturing in Illinois, a few years ago learned that it had a counterfeiting problem, when it was named a defendant in a product liability lawsuit in South Carolina because of a defective counterfeit product with its name on it.

Annual Customs data has routinely recognized our products in the top five seizure categories for health and safety products. The counterfeit electrical products that we have found in this country include, for example, residential circuit breakers, medium-voltage circuit breakers, extension cords, batteries, ground rods, light bulbs, receptacles, ground fault circuit interrupters, electrical connectors, and adapters; and outside the United States there are a number of other electrical products we have seen that are counterfeit.

Members of our industry along with the testing and certification industry, whose certification marks have been counterfeited as well, have worked diligently with U.S. Customs at the ports to help them identify suspect counterfeit products, educating them where the genuine products are made and where the counterfeit products come from.

I have been personally involved in several of those training programs, and we appreciate the public/private partnership that has combined our resources to achieve some very good results in the past.

I hold, today, in my hand a counterfeit circuit breaker and counterfeit packaging that that circuit breaker came to the United States in. The genuine product is made here in the United States; it is made in Nebraska.

Knowing that fact, which is something that we inform the ports officials about, a port official seeing that product come off a ship or an airplane from China ought to be able to make the determination that the product is counterfeit and take action. That decision is reinforced when the packaging that comes in from China says "Made in the USA" on it, as this counterfeit package does. If there is any doubt though, brand owners are in the best position to determine quickly if the product is genuine or a fake.

In the civil litigation that ensued over the counterfeit circuit breakers in this country, the typical defense asserted by the importers was—despite the fact that it said "Made in the USA" on the packaging—we were fooled, we could not tell.

So, in terms of trade facilitation and timeliness, if Customs is in any doubt as to the authenticity of the product, the manufacturer is in the best position to evaluate. Customs should give them a deadline to respond, and both trade facilitation and trade enforcement are served and supported at the same time.

NEMA battery manufacturers, for example, make batteries for the domestic market here, but they make batteries for the Asian, European, and African markets overseas.

The labeling of the counterfeit batteries can successfully simulate—and I provided an example to you—the genuine label, so it can be very difficult to tell the difference by visual inspection.

A look under the hood, so to speak, is sometimes required to make the ultimate determination of whether the battery is genuine or counterfeit, and it can be secured by an X-ray of the battery cell. And you can see the structural differences between a genuine battery and a fake battery by looking under the hood with an X-ray. But the manufacturer is in the best position to do that and work with Customs to facilitate trade.

Historically, as part of their port training programs, NEMA battery manufacturers have told the ports, if you need our assistance, send us a product for study and we will have a response for you within 48 hours, and we did. Customs has 30 days to make a determination whether the goods it is holding are genuine or counterfeit.

Customs officers were forced to suspend that part of the public/private partnership a few years ago, when they were reminded of an agency legal opinion that port officials violated the Trade Secrets Act if they disclosed unredacted images or samples of the product to trademark owners whose marks were on the suspect product.

This was a curious interpretation of trade secrets because, if the product is counterfeit, the importer has no legal right to sell the product, and a claim of trade secrets makes absolutely no policy sense. If the product is genuine, the trade secrets inherent in the product belong to the trademark owner, the manufacturer who made it.

So I have outlined in my written remarks the legal background and the history of the problem that section 241 is intended to affect. The intent of section 241 is to restore that relationship between ports and trademark owners so that the ports can reach out to brand owners quickly to ascertain if the product is genuine or counterfeit, to both facilitate and enforce trade laws. Thank you very much.

The CHAIRMAN. Thank you, Mr. Silcox. Very interesting.

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

The CHAIRMAN. Ms. Comstock?

**STATEMENT OF MARY ANN COMSTOCK, BROKERAGE COMPLIANCE MANAGER, UPS SUPPLY CHAIN SOLUTIONS, SWEET GRASS, MT**

Ms. COMSTOCK. Chairman Baucus, Ranking Member Hatch, and members of the Finance Committee, on behalf of UPS, I appreciate the opportunity to discuss the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

My name is Mary Ann Comstock. I am a native Montanan who has been involved in the Customs brokerage business since 1971. I live and work in Sweet Grass, MT, and I obtained my broker's license in 1978. I am currently a Trade Compliance Manager for UPS Supply Chain Solutions.

In today's trade environment, UPS deals with complex, divergent processes when we move goods across international borders. These border barriers raise costs and slow down trade. An efficient, innovative Customs clearance process coordinated between the U.S. Government and its agencies, along with its global trading partners, would remove many of the bottlenecks found in global supply chains.

I would like to focus on four topics today, the first of which is the most important to UPS. UPS strongly supports the increase in the de minimis threshold of section 321. The current de minimis value was set at $200 in 1993, and the Trade Act of 2002 set the personal exemption for travelers returning to the United States at $800.

This is an appropriate benchmark for increasing the de minimis value, and we believe the increase offers significant benefits to CBP, the trade community, and the importing public. We also applaud CBP for the increase in the informal entry value to $2,500, as this provides benefits to all importers, small and large.

The Automated Commercial Environment, or ACE, has allowed CBP to focus their efforts on security and high-risk targeting, and this value simplifies the entry release process and lowers the cost of importing goods.

The second topic relates to the establishment of a Certified Importer Program, a trusted trader program that would be recognized by all U.S. agencies with border clearance responsibilities. A well-balanced CIP will simplify the clearance process and reduce border holds for highly compliant importers. It is critical to ensure that any CIP provide concrete benefits and incentives to those certified entities, including fast-track processing through Customs.

The account-based management concept was developed by CBP in 1994 to work with importers and brokers handling significant entry volumes to achieve a high level of compliance, better managing trade. The program should be revitalized to include commercial, security, inter-agency, and information technology account components. The new Centers of Excellence and Expertise should be well-positioned to support a CIP program.

The third topic focuses on the need for a "single window" (one government at the border) program. We encourage the U.S. to finalize the development and implementation of the International Trade Data System, creating a single window for processing goods inbound to the U.S.

The ITDS process will provide trade data to partner government agencies, hopefully well in advance of arrival. The PGA's must have funding resources to update their internal systems, to effectively communicate in the ACE environment.

ITDS will provide paperless processing to streamline the admission of those goods. It allows the PGA's to work from centralized locations where they can receive, review, and maintain data on imported goods while providing trade facilitation, safety, and security oversight.

We hope the PGA's will provide speedy data responses just as CBP does today, 24 hours a day.

The final topic regards the 24-hour land border commercial port pilot program. I believe this proposal would benefit Montana and

other border States. State and local governments must be willing to commit resources and infrastructure improvements to support the commercial designation of the port of entry.

This is a trade facilitation opportunity that would benefit importers by cutting down on transit times and provide local economies a boost from increased traffic. The proposal also fosters dialogue with Canada and Mexico, our closest trading partners.

UPS thanks the committee for your continued support and firm deadlines imposed for the ACE project. CBP is challenged to meet mission responsibilities, and a key component is information technology. It is imperative that the ACE project is completed.

In closing, UPS commends the committee for their renewed focus on trade. Limiting cross-border friction in the supply chain will boost global competitiveness to U.S. businesses and reduce operational costs.

This bill provides CBP the tools to facilitate legitimate trade while enforcing our Nation's trade laws. Security and trade facilitation should be of equal concern. Thank you again for allowing me the opportunity to testify on this critical issue.

The CHAIRMAN. Thank you, everybody, very much.

[The prepared statement of Ms. Comstock appears in the appendix.]

The CHAIRMAN. The question that comes across my mind is—I appreciate the various comments that you have all made about provisions in this legislation you think help facilitate trade, and all four of you have a lot of experience in this area.

Among either the provisions you talked about or other provisions in the bill designed to help facilitate trade, which ones are you kind of most worried may not happen as we would like them to happen or proceed?

You know the agencies, you know your business, you know the practicalities, and you know the provisions that are in this legislation. Obviously, we are trying to help facilitate trade here.

But just based on your experience and your thoughts, which ones of these might you just kind of highlight a little bit and say, this is going to need a little extra help; you are going to have to provide a little more oversight, whether it is CBP or whomever, to make sure this works as well as intended? I would just be curious of which ones might cross anybody's mind.

I will start with you, Mr. Cook.

Mr. COOK. Okay.

The CHAIRMAN. Or it can be a little softer, ordered by what is really, really important and prioritized a little bit.

Mr. COOK. Well, I think that what I pointed out was the full implementation of the Automated Commercial Environment.

The CHAIRMAN. Right, and most of you have.

Mr. COOK. And I think that that, as with any massive system and business process implementation, is a huge undertaking. But I think that that is, in our view, a very key and critical area to complete, to adequately fund, to make sure that it achieves what objectives have been stated all the way along.

The CHAIRMAN. Could you focus a bit on that, because you think it is so important that it be up and running and fully implemented. That is why you are focusing on that.

Mr. COOK. Yes, because today—and I pointed out in my oral statement—we are operating in two environments. We have been very engaged in all of the pilots on ACE, and so I think we are a very big participant, but we still have things we have to do in the old environment. And, from a business process perspective, it exposes us to different types of risks to try to operate in both environments.

The CHAIRMAN. Right. Mr. Cooper?

Mr. COOPER. I think the two most important aspects of the bill to Procter and Gamble focus around the trade facilitation having measurable benefits from participating in the government programs and CBP programs. So we believe those programs are well-intended and have the right interest at heart, but we need to make sure that it is a measurable benefit for doing the work that is required to participate in it.

The other section of the bill that we believe is equally important is the quick facilitation/resolution of IPR issues and counterfeit products as they cross the border, to enable CBP to quickly engage with the rights holders to understand if it is a legitimate product or not.

The CHAIRMAN. So, you think the provisions are pretty good as long as they are well-implemented?

Mr. COOPER. Yes, exactly.

The CHAIRMAN. All right. Mr. Silcox?

Mr. SILCOX. I spoke directly to the IPR provisions, which are obviously of extreme importance to us for the health and safety reasons I alluded to.

The CHAIRMAN. You talked about section 241 and using manufacturers——

Mr. SILCOX. Right.

The CHAIRMAN. I am sorry. Go ahead.

Mr. SILCOX. And, in the case of 241, I just would like to see that that is, in a sense, self-executing at the ports so that it is not a matter of interpretation anymore. It seems like a very commonsense, practical policy solution to a problem that has arisen.

I would also mention that, as it became known that I was going to be here today, I had calls from a number of companies saying to me that they support the ENFORCE Act part. I did not address that, but I do not want to leave it unspoken that there is nothing else that we are interested in.

We had our entire trade staff—we have two trade people on our staff at NEMA who took a look at the bill and basically said, this is a good bill, the whole package is a good bill.

The CHAIRMAN. Okay. Good. Ms. Comstock?

Ms. COMSTOCK. Thank you, Senator. I think the International Trade Data System and bringing the partner government agencies on so that they can provide clearance in advance of goods arriving at the border is critical.

In order to get to the ITDS process, we have to have ACE complete, we have to have entry release done in the ACE system. And I think, if you can get those two things done and worked out in a couple of years—because CBP is enforcing 47 other government agency requirements, they have to rely on those other government

agencies to provide feedback to admissibility. It is going to be very important to have that taken care of properly.

The CHAIRMAN. A quick question, Mr. Silcox: where are all these counterfeit products coming from?

Mr. SILCOX. I know in the case of my industry, I would say pretty close to 100 percent are coming from China.

The CHAIRMAN. And it is electrical?

Mr. SILCOX. Yes. The manufacturing skill set exists there that does not exist in a lot of other parts of the world.

The CHAIRMAN. Do you know where in China?

Mr. SILCOX. It is primarily in the coastal and the southern region, but what we are witnessing is that a lot of the production is starting to move further and further from the coast.

The CHAIRMAN. Further west?

Mr. SILCOX. Yes, as we try to track it down. That has occurred over about a 10-year period, that transition.

The CHAIRMAN. Any estimate as to what the volume might be?

Mr. SILCOX. It is going to vary from year to year. One of the things that I like to tell my CEO and others in our industry is that we have actually had some success here in the United States, and part of that has been working with Customs, but also part of it is working with our distribution channel to tell them not to buy these products and to explain it to them.

We have had some success, I think, at least domestically, in reducing the demand. But in our industry we know, globally, it is in the probably hundreds of millions of dollars a year if not a billion. It is difficult to come up with numbers on something like that.

The CHAIRMAN. Well, my time has expired, and I would like to ask Mr. Cooper the same question about his company, but I will get to that later. Thank you.

Senator Hatch?

Senator HATCH. Go ahead.

The CHAIRMAN. Mr. Cooper, where do the products that you are most worried about come from?

Mr. COOPER. P&G is a fast-moving consumer goods product company, and, as with any company in this industry, we experience counterfeits. They come from a variety of places. There is no specific expertise that is coming from one part of the world.

We have a broad variety of products that we manufacture, and those counterfeits can come from literally anywhere.

The CHAIRMAN. Are there certain products you are most concerned about?

Mr. COOPER. If we could, we would like to take that discussion outside of the hearing. We do not like to discuss specific counterfeit products and efforts in a public forum. We would be happy to follow up with your office.

The CHAIRMAN. I would appreciate that. Okay. Thank you very much.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman. Mr. Cooper, we are very pleased that you chose Utah as the home for the first new U.S. plant in over 40 years. It means a lot to us. I understand the plant is a major distribution center and there are plans to continue to grow the plant for years to come.

Now, even though the plant in Box Elder is not specifically linked to international trade, in my opinion its future success is. How important is international trade to your company's ability to maintain and grow jobs in Utah and in your other plants across the country? Speak for other manufacturers as well.

Mr. COOPER. Senator, trade is a critical part of P&G's operations, and it does support all of our manufacturing in the U.S., including in Utah. So some of the equipment we have in Utah and some of the raw materials that come into the Utah plant are coming across borders.

The trade—or crossing a border, imports and exports—is just one aspect of how important trade is to P&G. In the U.S., one out of every five jobs that we have in the U.S. supports our global businesses. In Ohio, it is two out of every five.

My job is a perfect example. I am the global Customs compliance manager for Procter and Gamble. I have a team of 12 people whom I work with in Cincinnati, OH, and we are specifically supporting our global operations, which involves all of the import and export of our company.

Senator HATCH. Well, Mr. Cook, as you know, many counterfeits are produced and distributed by criminal organizations. They use the profits from these activities for other illegal ventures. One of the key factors in successfully stopping these organizations is the close collaboration between the CBP Commissioner and the Director of Immigration and Customs Enforcement.

Now, do you think the development of a biannual joint strategic plan as mandated by this Act will be of assistance to these two agencies in fulfilling this particular mission?

Mr. COOK. Yes, I do. We stated in my written statement that we believe that the strategy developed will help and will provide the work plan between the agencies, so we look forward to that.

Senator HATCH. All right. Mr. Silcox, the National Intellectual Property Rights Coordination Center was created to coordinate the Federal Government's efforts on intellectual property rights enforcement and to provide a centralized resource for the private sector to exchange information with the government.

Can you please discuss your association's experience in working with the IPR Coordination Center?

Mr. SILCOX. It has been very good, Senator Hatch. I will say our view is that the IPR center has been one of the best things, particularly in the IPR space, that the Federal Government has done.

We participate in seminars and educational programs at the IPR center. Our member companies come in and, when they believe they have counterfeiting problems with their products, they will come to the IPR center as that centralized resource where information sharing occurs among the multiple agencies that are there and present, and it helps facilitate building a coordinated enforcement plan with respect to that product and a strategy for enforcement because that group is there in Crystal City.

Senator HATCH. Thank you. Ms. Comstock, just a question for you. As you note in your testimony, it is critical for the United States to lead by example in the area of trade facilitation and enforcement. I certainly agree with you.

As we continue our efforts to improve trade facilitation through negotiations at the World Trade Organization, negotiations with the European Union, and of course negotiations to create the Trans-Pacific Partnership, it is even more important that the United States sets the standard worldwide and lives up to it.

Can you describe how quick enactment of this bill will help us to achieve that goal?

Ms. COMSTOCK. Well, as you know, my company is a global company, and I believe that leading by example and having good quality trade facilitation at home helps us to be able to provide to our global trading partners the incentive, if you will, to quickly build trade in their corridors as well.

Again, if you have good trade facilitation, your economies grow, and I think that the most important thing here is that we are globally competitive. And having this bill push that agenda is going to be very important, not only for UPS, but for CBP, and it provides a good standard framework for the SAFE Port Act and other global initiatives.

Senator HATCH. Thank you. Mr. Cooper, as you know, we included provisions in this bill to make sure that the partnership programs provide real and meaningful benefits to company participants.

Of course, one of the reasons why we included these provisions is to encourage companies like yours to join these partnerships and be active participants in government efforts to stop illegal and dangerous imports from coming into our country, into the United States.

You note that you have not always seen measurable benefits from these programs to date. Let me just ask you, what type of benefits would your company like to see from these programs going forward?

Mr. COOPER. Thank you. I think there are three primary benefits that we would like to see. Faster clearance time, fewer inspections for trusted traders, and expedited inspections for when that does occur.

To date, we believe those principles are in place, but there is no specific way to measure them, and that is really the piece that we would like to get to, is to understand how the effort that goes into joining these programs then pays off.

Senator HATCH [presiding]. All right. Well, I have a lot of other questions, but I will submit them.

Senator Wyden, we will call on you. Excuse me, Senator Thune was here first. I did not notice you came back in.

Senator THUNE. Thank you, Mr. Chairman. Thank you for holding the hearing today, and I want to thank our witnesses for their willingness to testify.

Today, this is a hearing that recognizes that trade is not only about bilateral and multi-lateral agreements, it is also about ensuring that our laws allow for the easiest possible movement of goods and agricultural products, while at the same time enforcing international trade commitments. That is why the bill that we are discussing today is aptly entitled the Trade Facilitation and Trade Enforcement Reauthorization Act.

This is legislation that is designed to expedite trade flows, while also improving enforcement of our trade laws. I want to thank you, Mr. Chairman, and Chairman Baucus, for including in this legislation two provisions that are of importance to me.

First, the bill includes a provision designed to stop the evasion of anti-dumping duties by importers of Chinese honey. Specifically, the bill includes safeguards to stop the trans-shipment of honey, Chinese honey, through other nations, which some have labeled "honey laundering."

Senator Wyden, who is here, and I actually held a hearing on evasion of our trade laws in May of 2011, at which Richard Adee of Adee Honey Farms in South Dakota and others testified regarding the difficulties that Customs and Border Protection faces when attempting to enforce our trade laws.

While more needs to be done in this area, I am hopeful the provisions in the bill will give CBP the additional tools that they need to stop the circumvention, I should say, of our trade laws.

Secondly, I appreciate that the bill we are discussing today includes an increase in the de minimis threshold from $200 to $800. This provision mirrors legislation I introduced earlier this year along with Senator Wyden and is supported by a broad range of businesses and trade associations including, as we heard earlier, UPS.

It is a provision that I believe will do a great deal to facilitate trade, and I am glad it is included in the bill. So I want to, again, thank Chairman Baucus and you, Ranking Member Hatch, for your work on this bipartisan legislation. I look forward to marking it up in committee later this year.

I just wanted to, if I might, ask a couple of questions about some of those provisions.

Ms. Comstock, in your testimony you discuss four issues of interest to UPS in this bill, but you note that one issue is of utmost importance to UPS, and that issue is the increase in the de minimis threshold from $200 to $800.

For those who may be unfamiliar with this provision, could you elaborate on why it is so important to express delivery companies such as UPS and how it would facilitate trade?

Ms. COMSTOCK. Sure. The current $200 was put into place in 1994, and that $200 amount for section 321 allows for goods to cross the border without a formal entry or even an informal entry. It has to be manifested, it has to meet all of the FDA or EPA or any other standards, any other government standards, but it moves the goods through the process very quickly.

For an express courier, as UPS is and a number of my competitor colleagues, that is one way to shrink the haystack, if you will, to get the very small shipments out of the way so that we can concentrate on the larger shipments.

I also think it benefits the U.S. consumer. Our economies are becoming more and more global. People are ordering off the Internet. I know that I have ordered off the Internet. I am not always sure where it comes from. I have a feeling other people feel that way too.

But if I am buying something within my price range, it might be $200 or $300. If I do not have to make an entry on it, I think that

is a good thing for the small and medium businesses as well as the individual consumer.

So I think it is going to simplify trade, and it will expedite trade.

Senator THUNE. Just as a follow-up regarding that provision, your testimony calls for the de minimis level to be indexed to inflation going forward, a provision that we include in the bill that I have introduced with Senator Wyden, but it is not included in the bill that we are discussing today.

Ms. COMSTOCK. I am familiar with that.

Senator THUNE. Our bill also includes a sense of Congress calling on USTR to encourage other nations to follow our example by also improving their de minimis thresholds.

Ms. COMSTOCK. Absolutely.

Senator THUNE. Would you support these additional provisions, the inflation adjustment and the sense of Congress, being added to the bill that we are discussing, and, in your view, would they make the bill better?

Ms. COMSTOCK. Yes, they absolutely would, and I think my written testimony does suggest an indexing of that value, and I certainly support having our trade partners have similar thresholds.

Senator THUNE. I just want to ask one other question, if I can, on the other subject, and that is that the GAO has reported that duties related to anti-dumping and countervailing duties sometimes go uncollected, in large part because, unlike other countries, we do not assess these duties at the time of import.

Under our retrospective system, it can take years before the Commerce Committee tells CBP how much to collect. As I mentioned earlier, I am acutely aware of this problem because my State of South Dakota is a top honey-producing State, and duties imposed to stop the dumping of Chinese honey have too often gone uncollected.

To address the problem, the GAO and others have recommended that we change to a perspective duty assessment system that would enable CBP to collect these duties upon import like we do for regular duties.

You do serve on the Advisory Committee on Commercial Operations which advises CBP on these matters, and I would appreciate your view as to whether a prospective system would improve CBP's ability to enforce our trade laws. What are the problems with the current retrospective system, and do you believe a prospective system would make it easier to get these duties collected?

Ms. COMSTOCK. I would be glad to state that the 12th term of the COAC, the advisory committee, did recommend to CBP that we should move away from a retrospective system to a prospective system, simply because there is difficulty in being able to manage the costs.

On average, it takes 3½ years for the Department of Commerce to determine what dumping duties should be collected, and that is just not quick enough for any average business.

The prospective system, which means you are going to set a duty rate when the goods start coming in and you are going to change and modify that duty rate in a prospective way, that allows you to collect the duty right then and there.

It does not wait 3½ years for you to determine what the duty is. It is going to give CBP the ability to collect the duty right then and there.

One of the issues that I think they have in the evasion of duties is that, because duties are not known for so long, it is almost an incentive to evade. I think if we can provide predictability in our global supply chain, that will be helpful.

We do not have predictability for U.S. businesses today. I do not see how you could build a business model not knowing what your duties are going to be for 3½ years.

Senator THUNE. A lot of it goes uncollected, and if we could get that change made, we would have a lot of happy honey producers in South Dakota.

Ms. COMSTOCK. Having been a honey producer myself, I would support that.

Senator THUNE. All right. Thank you. Thank you, Mr. Chairman. My time has expired. Thanks.

Senator HATCH. That is good.

Senator Wyden?

Senator WYDEN. Thank you very much, Senator Hatch. While he is here, I just want to tell Senator Thune how much I have enjoyed working with him on the ENFORCE legislation and also the legislation, what we call the de minimis legislation, the threshold for imports that are not subject to tariff. Clearly both of those bills are going to be of real value in the effort to create more good-paying jobs in South Dakota, Oregon, and across the country, and I appreciate it.

I also want to thank Senator Hatch for his help. He and Senator Baucus have been very helpful as we move, particularly, to look at the ENFORCE Act and to deal with the variety of issues that have come up as the debate goes forward, and I am very grateful, Senator Hatch, to you and Senator Baucus for including it in this legislation we consider today.

I think for our panel members, what you are getting is a sense of how importantly this committee regards international trade. This is one of the economic engines of our country that allows us to, in effect, make things here, grow things here, add value to them here, and then ship them somewhere. That is in a sense a summary of what the potential is in terms of the American economy and global trade.

When we look at some of the challenges, for example Customs and Border Protection, they are doing extremely important work as it relates to security, but we are concerned that some of the other functions, particularly in terms of their trade-related obligations where they can really play a key role in facilitating commerce, we are concerned that that is really getting short shrift.

So I think that is what I would like to do in this kind of debate about how we facilitate commerce and Americans looking to the future, particularly to these growth markets in Asia and Brazil and elsewhere, while we combat unfair commerce. And I noticed, Mr. Silcox, you held up that circuit breaker, the phony circuit breaker, which is not really different from the kind of phony goods that Oregon companies, whether Nike or a whole host of companies, are holding up.

You all have kind of spotlighted the problem for us today, and of course it relates to this potential for expanded trade and commerce, which in my State is responsible for about one out of six jobs. We are traders in Oregon. The trade jobs pay better than do the non-trade jobs.

I just have a couple of questions for you four that kind of relate to this function.

On the question of Customs and Border Protection, the real question is how we reinvigorate this commitment to the trade side of CBP. Now some people, I think, basically say that we can just politely ask the agency to do a better job.

To tell you the truth, we have done that. We have gone that route. We have essentially, through letters and even at hearings, we basically said, look, we would like to see you go about your business; you have extensive authority in this area, and we need you to do a better job, for the reasons I have outlined. Facilitate the commerce where so many American businesses have great stakes and combat unfair commerce.

That has not worked. So that is why we felt that we needed to have an actual piece of legislation, an actual piece of legislation which would ensure accountability, facilitate the movement of goods through ports and the collecting of the appropriate tariffs that are assigned to imports, stopping imports of goods that in effect infringe on intellectual property. We have to get those things done.

So my question is, do you all feel that legislation is warranted at this point to deal with these issues? You can choose, by the way, to say, hey, you do not have to go the legislative route. Maybe it is going to get done just by posing requests.

We felt, on a bipartisan basis, that at this point we think legislation is needed to get a reinvigorated focus at Customs on this trade function. So, if you would, we will just go right down the row. We will start with you, Ms. Comstock. I know you are from the West, our part of the world, and we welcome you.

Ms. COMSTOCK. Thank you very much. Senator, I do feel that the bill is important. I know that in 2009 there was a similar bill, and I believe that CBP has made an awful lot of progress between 2009 and now.

This bill codifies some of the things that they are doing, the Centers of Excellence and Expertise. I think it is pushing them further forward, so I do really support this bill at this time.

Senator WYDEN. Very good. And I think that is always the hope, that, as you spotlight the problems, make it clear that you do feel that you are going to, I characterize it, reinvigorate the trade function there, as much headway as can be made administratively is always on the good side. I think we need to go further, and frankly I think, without the kind of glare that this committee has put on this issue in a bipartisan way, I am not sure we would have even gotten this far.

Mr. Silcox, your thoughts on the idea that legislation would be useful at this point.

Mr. SILCOX. We support this legislation, but I think it is worth taking a step back and looking at what both the Congress and the

administrations, I say that plural, have done for the past 7, 8, 9 years.

A few years ago there was an incremental change with the Stop Counterfeiting in Manufactured Goods Act—which dealt with a couple of little points that related to enforcement. A few years later there was the PRO–IP Act which passed Congress that created, at least in the executive branch, a more coordinated enforcement program involving the administration at the highest levels in the White House, the Justice Department, and other relevant agencies.

As a result of that legislation, the administrations, again plural, started building a little bit of the structure that is now going to be codified in this Act.

So a key portion again, and this was part of the PRO–IP Act, but it is in this bill as well, is the accountability to Congress and the ability to come back to this committee and report on, this is what we have been doing, this is how our resources have been allocated, so that there is some oversight. That is what I know industry has been looking for for a number of years in the IP area: periodic oversight to just ensure that the resources are adequate and the program is on track to get what Congress wants and what the people want.

Senator WYDEN. Our Chairman, Senator Baucus, has returned. Let us just see if we can wrap up with the two other witnesses on the question of the value of actually having legislation here. I thank the chair for the courtesy.

While you were gone also, Chairman Baucus, I just wanted to reiterate how much I appreciate your working with me on this legislation. We have been toiling on ENFORCE in a bipartisan way for some time, and I think now, with the excellent bill that you and Senator Hatch are sponsoring, we are ready to go, and I appreciate it.

So let us just wrap up your comments. Mr. Cooper, if you would.

Mr. COOPER. We will do it quickly. First, I would echo the comments that Ms. Comstock and Mr. Silcox made about the codification of some of these components into legislation versus just an informal request to CBP.

Again, while we have been making progress, really defining them and having them in the legislation is important. Additionally, the creation of the high-level positions within CBP to focus on trade facilitation will really ensure that that part of CBP's mission gets the focus that it deserves, and I believe that that is an important reason to pass this.

Senator WYDEN. Very good. We will wrap up with Mr. Cook.

Mr. COOK. I will reiterate everything that was previously said. But again, the importance of the dual mission that CBP has of security and trade facilitation, this proposed legislation codifies all the pieces that will allow them to keep at the forefront that mission of trade facilitation, which is very important.

Senator WYDEN. Very good. Thank you all. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. I have heard rumblings that the community is a little concerned about inadequate consultation between CBP and the industry community, that sometimes CBP goes off and does something not thought through that causes prob-

lems, and then various American companies say, whoa, whoa, that is causing more problems than it is trying to solve.

You can be specific if you want, but if you could comment on that and indicate the degree to which you think the provisions in this bill will help, say the trade advocate, for example, will help, do we need to go farther?

How do we know this language which basically says, you have to consult, is going to work? But if you could just talk about that main issue, which is the degree to which CBP could consult more and maybe ICE too, with the trade community.

Does anybody have any thoughts about that? I have heard it has been a problem. If somebody wants to.

Ms. COMSTOCK. Senator, my experience in dealing with CBP has been very good. I believe, especially through the Advisory Council on Customs Operations or COAC, they have been extremely forthcoming in listening to what the COAC has to say, and I believe that the engagement they have with other trade communities has been very good.

I see great initiative there to try to do the right thing and consult with the trade.

The CHAIRMAN. But there are provisions here to try to help COAC.

Ms. COMSTOCK. Absolutely. I agree that the focus on this bill is trade facilitation, and I think that that is very important.

I am not so much of an insider knowing how Customs works to be able to say whether or not having a Deputy Commissioner for Trade is really going to solve any problems. However, I do support that they are trying to do everything they can to facilitate trade. I really firmly believe that.

The CHAIRMAN. Mr. Silcox, your views?

Mr. SILCOX. Yes. Industry, and my industry in particular, has had very good dialogue with CBP. I think the problem that I alluded to that section 241 is intended to address was an "oops, we went off the reservation" kind of problem.

However, their outreach to us, and I think our responsiveness back, has been reasonably good. I think one of the things we have advocated for in the past, and we have tried to deal with this sometimes in the appropriations process, is to look for dedicated resources on the intellectual property rights enforcement issue.

One of the debates that has gone on between industry and the agency in the past is, because of their dual function for both security and for trade facilitation and enforcement, they will say, our resources have to be flexible and capable of dealing with all these issues as they arise at the time.

Okay, that is one point of view, but, as Senator Wyden said, sometimes we do not always focus on these issues of intellectual property rights enforcement, and that has been one of our little gripes over the years, that there just was not, in the past, a small group of people that was dedicated to intellectual property rights enforcement.

Some legislation in recent years has tried to improve that by appropriating to various agencies dedicated resources. But that is one thing we are interested in seeing.

The CHAIRMAN. Mr. Cooper?

Mr. COOPER. Procter and Gamble has enjoyed a strong partnership with CBP over the years. What we see this legislation providing us, though, is a little more focus on the facilitation piece of it as CBP's mission has shifted over the years to focus more on enforcement and national security.

This provides us with the opportunity to work more closely with them and understand what the benefits of different programs will be and, again, to help against counterfeiting.

The CHAIRMAN. Mr. Cook?

Mr. COOK. We have also been engaged and have participated in the pilot programs, which we think are beneficial and should be enhanced. On any new initiatives, as far as COAC, my personal involvement, I found it to be great engagement.

There are subcommittees within the COAC that oftentimes could be expanded, or the use of subcommittees to provide a broader base of participants might be one area, but that is within the structure of COAC which this——

The CHAIRMAN. Do you see the benefits of greater consultation? It is one thing to consult, but do you see the benefits of consultation, any of you?

Mr. COOK. Yes, we have.

The CHAIRMAN. All of you?

Mr. COOPER. Certainly with our training with CBP.

The CHAIRMAN. Okay. That is what we are trying to do here is get benefits.

The border pilot programs here, I think the bill provides three at the northern border and three in the southern. You mentioned, Mr. Cook, the importance of flow back and forth to Canada.

Ms. Comstock, could you just address a little bit some of the concerns that you see with inadequate hours on the border?

Ms. COMSTOCK. Sure, and I will try to address it within the concept of Montana, which obviously I know best, since I live there.

Right now in Montana, we have a 550-mile northern border, and it is a big stretch of territory. There are only two commercial ports on that northern border that support a 24-hour operation. Yet it does not always give us the opportunity, in driving those long distances, to be able to get the goods where they need to go.

So in that expanse of northern border, if there were a third port halfway in between the two we have, that would allow goods to funnel through there. Particularly in support of the Bakken Oil Field now, I think that would be very, very helpful.

I think that I could see similar situations occurring on the southern border. Having spoken with a number of colleagues, I believe that there is great opportunity there as well.

The CHAIRMAN. That is a good point with the Bakken, in addition to tar sands, because there are a couple of companies, some very significant, developing, as you know, in Montana, especially north of Great Falls, where there is going to be a lot of traffic up to Canada and back, and in eastern Montana up and back around——

Ms. COMSTOCK. And there already is today. There are regular routes established by carriers going to and from Edmonton, Nisku, Calgary, down to Houston, back up again over to Williston, and so this would really support them.

The CHAIRMAN. Does anybody have any other comments or thoughts about anything? Did anybody say anything so outrageous it has to be addressed? Any thoughts in the back of your mind, a little something that you want to share? Now is your chance.

Okay. We are dedicated to make trade better. It is good now, but we want to still work to improve it and get this bill passed. Thank you very much for your testimony. It all helps. It helps to energize us to help get this enacted. Thank you very much for your testimony. I appreciate it. The hearing is adjourned.

[Whereupon, at 11:16 a.m., the hearing was concluded.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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**Hearing Statement of Senator Max Baucus (D-Mont.)**
**Regarding the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013**
*As prepared for delivery*

The American composer, Aaron Copland, once said, "To stop the flow of music would be like the stopping of time itself, incredible and inconceivable."

Like the flow of music, international trade must be orchestrated and properly executed. If trade were stopped, it could cripple the U.S. economy and cause a ripple effect around the world.

Today, we are focusing on critical legislation to reauthorize U.S. Customs and Border Protection, or CBP, and Immigration and Customs Enforcement, or ICE. These two agencies orchestrate the flow of trade and ensure shipments move smoothly through U.S. ports.

In 1979, when I joined the Senate Finance Committee, total U.S. trade in goods and services was $472 billion. Last year, it was $4.9 trillion. That is a 942 percent increase. Times have changed, and CBP and ICE must modernize to meet the challenges of the 21st century.

On a typical day, 365,000 entries move through U.S. ports, including more than 3,000 express entries. These goods arrive in more than 66,000 truck, rail and sea containers, as well as hundreds of aircraft carrying express cargo shipments. This is just an average. On a busy day, CBP must manage almost half a million entries.

American businesses, ranchers, farmers and consumers depend on the timely movement of all these goods across borders to remain competitive. In business, time is money. So CBP and ICE must facilitate trade expeditiously.

At the same time, CBP and ICE must ensure that our borders are secure. This is the challenge that CBP faces given the volume of today's trade.

CBP must fulfill its historic mission of collecting duties owed to the U.S. Treasury. CBP and ICE also enforce U.S. antidumping and countervailing duty laws and ensure that foreign companies don't undercut American jobs by circumventing those laws. And CBP and ICE stop counterfeit goods from entering the U.S. market.

In 2002, Congress gave CBP and ICE yet another mandate — to keep terrorists and illegal weapons out of the United States. Since then, CBP and ICE's trade missions have been put on the back burner as they have pursued their new security and law enforcement missions.

But trade and security are not mutually exclusive. CBP and ICE must effectively facilitate the flow of trade and ensure our national security.

To do this, Senator Hatch and I introduced the "Trade Facilitation and Trade Enforcement Reauthorization Act of 2013."

The bill, which we introduced in March, gives CBP the tools and authority it needs to refocus on its trade mission.

This bill creates new high-level positions within CBP solely dedicated to trade facilitation and trade enforcement. It allows CBP to target the imports that are most likely to violate U.S. intellectual property, import safety and other laws. And it provides speedy customs clearance and other commercial benefits for importers with a strong record of compliance.

This bill also includes the ENFORCE Act, as marked up by this committee last year. The ENFORCE Act gives CBP and the private sector tools to combat the evasion of antidumping and countervailing duties. I want to commend Senator Wyden and all of the bill's co-sponsors for working with us to mark up that bill last year, and I'm glad that we were able to include it here.

The Trade Facilitation and Trade Enforcement Reauthorization Act also provides important benefits for states like Montana. On an average day, CBP processes more than 1,000 entries through Montana ports.

This bill establishes a pilot program for 24-hour port operations. The 24-hour pilot program will help CBP determine whether round the clock operation can help manage the flow of goods across the northern border. And the bill helps Montana's honey producers by ensuring their foreign competitors pay the required duties on their imports.

Finally, the bill requires CBP and ICE to do a better job consulting with U.S. businesses that are affected by its policies, as well as with this committee and Congress as a whole.

This bill, in short, gives CBP and ICE the tools and resources they need to refocus on their trade missions. Or, as Aaron Copland might say, it ensures that international trade is properly orchestrated, executed and continues to flow.

###

**Senate Finance Committee Hearing on May, 22, 2013 regarding**
**S. 662, the Trade Facilitation and Trade Enforcement Act of 2013**

**Statement for the Record – Senator Sherrod Brown**

Thank you, Chairman Baucus, for convening this hearing on important legislation involving trade facilitation and enforcement.

America needs a pro-growth, jobs-focused, trade and manufacturing agenda to strengthen American competitiveness and offer everyone the chance to benefit from the opportunities of the global economy.

U.S. Customs and Border Protection (CBP) plays a vital role in achieving this goal.

Enforcement of our trade agreements and trade laws is an essential part of safeguarding the competitiveness of American workers, businesses and farmers and ensuring the playing field on which they compete is level.

Much work has gone into putting together this bill, and I thank the Committee Members and staff for their efforts in drafting this legislation.

This legislation aims to provide a framework for enhancing the work of CBP and U.S. Immigration and Customs Enforcement on trade facilitation and enforcement activities as well as providing a much-needed increased focus and coordination on import safety issues to protect the health and safety of all Americans.

A very important area of this bill is the ENFORCE Act, which focuses on improving trade enforcement at our borders.

Attempts to evade America's trade laws harm the competitiveness of U.S. manufacturers and eviscerate the legal protections that we have given to American businesses and workers.

Trade remedy laws are vitally important to our nation's economy. American manufacturers and workers use the trade remedy laws to obtain remedies against unfair trade practices. Often, this relief is the difference between a steel or paper plant keeping its doors open or shutting down.

And too often, the relief can be short-lived, as foreign parties evade the duties applied to their unfairly traded imports.

This bill provides an important mechanism to strengthen the procedures for fraud and evasion investigations through a transparent and timely process.

As we work to finalize this legislation, I hope the necessary changes are included to ensure American manufacturers and workers alike are able to petition for investigations into fraud and evasion.

American businesses and workers can successfully compete provided the playing field is level and unfair trade practices and fraud and evasion are not allowed to harm their competitiveness.

This legislation will help accomplish this goal.

Thank you, Mr. Chairman.

**WRITTEN TESTIMONY OF MARY ANN COMSTOCK**

**UPS Supply Chain Solutions, Inc.**

**Sweet Grass, Montana**

**Before the Senate Finance Committee**

**"Trade Facilitation and Trade Enforcement Reauthorization Act of 2013" (S.662)**

**May 22, 2013**

Chairman Baucus, Ranking Member Hatch, and Members of the Finance Committee, on behalf of the almost 400,000 UPS employees worldwide, I appreciate the opportunity to appear before you today to discuss components of the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. My name is Mary Ann Comstock, and I am a native Montanan who has been involved in the Customs brokerage business on the northern border since 1971. I live and work in Sweet Grass, Montana which is by volume, the 8th busiest port of entry on the northern border. I've been a licensed Customs broker since 1978 and bring a unique perspective having owned my own small brokerage firm. I am currently a compliance manager for UPS. As you are probably aware, UPS operates one of the world's largest, most sophisticated, intermodal transportation service networks and is one of the world's largest customs brokerage firms. On a daily basis, UPS delivers more than 16.3 million packages and documents to 8.8 million customers in more than 220 countries and territories around the globe. UPS handles more than 6% of the U.S. GDP and 2% of the global GDP every day. In Montana, UPS has 854 employees, 195 retirees, 16 operating facilities, 18 UPS Stores, and one UPS Supply Chain Solutions location.

UPS would like to thank the Committee for its work on this significant piece of legislation. We appreciate the services provided by U.S. Customs and Border Protection (CBP), and view this bill as a way to enhance the relationship between the public and private sector through increased trade facilitation and customs modernization. Customs issues can be arcane, and perhaps not as exciting as trade negotiations to many, but customs rules and regulations are the essential machinery of trade. The best external trade policy in the world cannot be effective without the safe and efficient movement of cargo in and out of our ports. UPS applauds the Committee for its attention to this critical and overarching portion of its trade jurisdiction.

UPS continues to encounter an increasingly complex and divergent web of international trade infrastructure, most notably "at and behind the border barriers to trade," such as inefficient and uncoordinated customs clearance and security procedures. These barriers raise costs and slow down trade at the border. Efficient and speedy customs processes, coordinated between the U.S. and its global trading partners, will constitute a huge step towards removing the bottlenecks found in global supply chains. By embracing the opportunities of e-commerce and meeting the growing demands of international trade flows through effective trade facilitation, the global economy stands to gain immensely. Chokepoints at the border, such as costly customs procedures, inefficient facilitation programs, and burdensome regulations, reduce the critical predictability of the supply chain, and as a result can have the same stifling impact on trade as tariffs. Reducing supply chain barriers to trade could increase global GDP by nearly 5% and trade by nearly 15%, according to a recent World Economic Forum study. Cutting red tape at the border through trade facilitation reforms could boost the world economy by as much as $1 trillion and generate more than 20 million jobs, according to the Peterson Institute for International Economics. We are confident that the resolution of one of these global trade challenges will have a positive impact towards the resolution of others e.g. simplifying customs processes will lower input costs, and enable more small and medium-sized enterprises (SMEs) from the U.S. to establish export to other international markets. These changes in turn will

contribute to a more level playing field for businesses and greater choice for consumers. Furthermore, it is critical that the U.S. shows leadership at home in improved customs and trade facilitation initiatives as these key elements are essential in our trade negotiations, particularly the Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TISA).

I would like to focus on **four** topics today, the **first** of which is of utmost importance to UPS. UPS, along with other express carriers, diverse trade associations, and numerous supply chain partners, strongly support the increase in the de minimis threshold. We commend the Committee for recognizing the importance of this issue. In order to meet the demands of inflation and the global economy, we strongly support the language in Section 410 to raise the de minimis amount from $200 to $800, which has not been changed since 1993. An increase in de minimis for low value shipments allows for better allocation of resources as the costs of customs processing can outweigh the value of the duty collected. We believe the Trade Act of 2002, which provided for an increase in the personal exemption of goods from $400 to $800 for those travelers returning to the U.S., is an appropriate benchmark for increasing the de minimis value. In addition, we recommend that the Secretary of Treasury periodically consider adjusting these values to ensure the limits are consistent with the rate of inflation as measured by the Consumer Price Index. We were pleased to see this language in Senators Thune and Wyden's legislation on de minimis values, S. 489. Increasing the value thresholds offers significant benefits to the exporting and importing public. We applaud CBP for its work to increase the informal entry value to $2500 and believe this provides the framework and opportunities for further growth. The Automated Commercial Environment (ACE) program has allowed CBP to focus their efforts on security and high risk targeting, and this value change offers all levels of business, particularly SMEs, the opportunity to reduce brokerage expenses and provide for simplified procedures for entry and release. Security is not affected by this legislation, as manifest information on all shipments, regardless of value, is analyzed for security threats and

subject to CBP risk assessment processes prior to arrival. By increasing de minimis and informal values, the U.S. will act as a role model to other countries, such as Canada and Mexico, to increase their values, and thereby promote trade. We need to reinforce efforts to raise de minimis levels globally, which is particularly timely with the TPP negotiations occurring this week in Lima, Peru. The wide variety of customs policies and practices around the globe often create bottlenecks at the borders, creating barriers to trade facilitation and international trade growth.

The **second** topic relates to establishing a Certified Importer Program (CIP), a trusted trader program that would be recognized by all U.S. agencies with border clearance responsibilities. For UPS, this will simplify the clearance process and reduce border holds for highly compliant importers. It is critically important to ensure that CIP is implemented in a manner that provides concrete benefits and incentives to certified entities, such as automatic known consignor status for cargo security, fast track processing through customs, permission to provide required documentation post-release, and an incentive structure of fewer inspections for fully compliant traders. Current requirements of these programs make them prohibitively costly for many SMEs. Simplifying the requirements and reducing costs will encourage SMEs to join Trusted Trader Programs. In addition, the U.S. should establish account-based customs processing for Trusted Traders, as opposed to transaction-based collection of customs duties. This includes Account Based Management, which is an existing CBP program. UPS strongly supports the concept of an integrated comprehensive account based processing program. The concept of Account Management was developed by CBP in 1994, with the idea of creating a platform for CBP to work with importers and brokers handling significant volume of imports into the U.S. The goal of the public-private partnership between CBP, importers and brokers was to achieve a high level of compliance and focus on trade issues. Revitalizing the existing program would be an immense step forward in trade facilitation without hindering security, and would bring cohesion between the government and the trade community by establishing multiple

components, including the enhanced role of National Account Managers. The program would include commercial, security, interagency and information technology account components. This should include periodic summaries of entry filings that would maximize efficiencies and improve compliance. UPS supports the language in Section 203 and believes the new Agency-wide Centers of Excellence and Expertise (CEEs) are well-positioned to support a CIP program.

The **third** topic is to focus on the need for a Single Window (one government at the border) program. Of particular importance to express delivery service (EDS) companies is the centralized clearance and release of goods. The use of national clearance agents with different computerized systems provides an extremely inefficient and administratively burdensome business landscape. We support the language in Section 207 and encourage the U.S. to finalize the development and proceed with the implementation of the International Trade Data System (ITDS) which creates a single window for processing goods inbound to the U.S. The ITDS process could prove extremely beneficial in providing trade data to Participating Government Agencies (PGAs) in advance of the arrival of the goods. The PGAs must have funding resources to update their internal systems to effectively communicate in the ACE environment. ITDS will provide paperless processing to streamline the admission of goods. It allows PGAs to work from centralized locations where they can receive, review and maintain data on imported goods, while providing trade facilitation and security oversight. ITDS through ACE provides a single platform to be utilized by multiple agencies, and sharing the cost of development and implementation makes sense from a business perspective. The implementation of ITDS will benefit the movement and release of goods exponentially. We stress the need for this to be completed by the June 30, 2014 deadline as any further delays would prevent effectively harnessing these benefits. By having a system that provides for a multi-government agency single release, commerce will flow allowing goods to reach the marketplace at a faster pace. We hope the PGAs will provide speedy data responses as CBP does, 24 hours a day.

The final topic regards the pilot program for establishing 24-hour land border ports of entry and UPS supports the language in Section 406. Coming from the 4th largest state in the Union that has only two commercial ports of entry on our 550 mile long northern border, I believe this proposal will benefit the borders. State and local governments eligible for a new 24 hour land border port must be willing to commit resources and infrastructure improvements to support the commercial designation of a port. This is a trade facilitation opportunity that could benefit importers by cutting down on transit times, and provide local economies a boost from increased traffic. The proposal also fosters dialogue with Canada and Mexico, our closest trading partners.

UPS would like to thank the Committee for your continued support and the firm deadlines imposed for the ACE project. We ask the Committee to continue to urge CBP to meet its mission responsibilities, particularly the key component of improved information technology. It is imperative that this project is completed.

In closing, UPS would like to applaud the Committee for their renewed focus on trade. In today's global economy, businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world to create products with the greatest value for the consumer. Limiting cross-border friction will boost the global competitiveness of U.S. businesses and reduce costs across our highly-integrated operations. By providing CBP the tools to facilitate legitimate trade and reorganizing their structure to emphasize trade's importance to the United States economy, you have taken a huge step to strengthening U.S. competitiveness and growing our exports. Security and trade facilitation should be of equal concern. Thank you again for allowing me the opportunity to testify in front of this Committee on this critical issue.

**FINANCE COMMITTEE QUESTIONS FOR THE RECORD**

**United States Senate**
**Committee on Finance**

**Hearing on**
**S.662, The Trade Facilitation & Trade Enforcement Act of 2013**
**June 11, 2013**

**Questions to Ms. Mary Ann Comstock, Brokerage Compliance Manager, UPS Supply Chain Solutions, Sweet Grass, MT**

**Questions from Chairman Baucus**

**Question 1:**

**The creation of the Office of Trade (OT) consolidated CBP trade policy, program development, and compliance measurement functions into one office. Some of the revenue-related positions, including import specialists and entry specialists, remained under the Office of Field Operations (OFO). What effect has this had on your interactions with CBP, especially in terms of communication and policy implementation? Some have proposed moving these positions from OFO to OT. What are your thoughts on this proposal?**

**Answer:**

While I support the creation of the Office of Trade (OT), consolidating CBP trade policy, program development and compliance measurement functions into one office, I hesitate to endorse the movement of import specialists and entry specialists from the Office of Field Operations (OFO). While we do experience tensions between these functions today, the separation of functions may actually benefit the trade community. With the Office of Trade having the National Import Specialists (NIS) and the Office of Regulations and Rulings (ORR), they provide effective guidance to import specialists and entry specialists today. Would the NIS and ORR simply rubber stamp what the Import Specialists propose on internal advice requests? Hopefully not, and having that separate reporting structure is helpful to ensure due process for trade issues. Having the import specialists (IS) and entry specialists (ES) under the Office of Field Operations gives them the ability to train and coach the customs inspectors on the front lines, so they do a better job. The IS and ES personnel are already located at the ports of entry where there is a management reporting structure in place. Moving them to OT causes an administrative burden on the existing field structure.

Yes, the trade has experienced issues when the current Office of International Trade (OIT) establishes trade policy and the Office of Field Operations (OFO) fails to implement or interpret it correctly. I think this falls upon the Commissioner of Customs to ensure all parties work together in a level playing field, meeting both enforcement and trade facilitation needs at the same time. I am not certain that creating individual deputy commissioners with specific focus will solve this issue, and it may cause more division than we have today. Previously the

Deputy Commissioner had no affiliation to any particular Assistant Commissioner office, but often came up in the ranks through OFO. Former Deputy Commissioner Aguilar is a great example of an individual who came up through the enforcement ranks (Border Patrol) and understood the importance of Trade. Selecting the right Deputy Commissioner who can balance the needs of OT, BP, OFO etc. is ideal. If CBP moves to a multiple Deputy Commissioner structure, it is imperative that those individuals selected for those positions understand the balancing act between enforcement and trade facilitation and can work together.

**Question 2:**

**The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is a forum for the Secretaries of the Department of Treasury and the Department of Homeland Security to discuss the commercial operations of U.S. Customs and Border Protection and related DHS functions with the trade community. Do you see benefits in including a representative, either formally or informally, from U.S. Immigration and Customs Enforcement (ICE)? Also, current COAC meetings are open to the public and must follow the rules under the Federal Advisory Committee Act (FACA). What benefits do you see in allowing the COAC to hold closed meetings in order to address specific issues for which disclosure would compromise CBP operations or ICE investigations?**

**Answer:**

I believe there are benefits for informal representation from US Immigration and Customs Enforcement (ICE) which I think is now known as Homeland Security Investigations (HSI). We currently have interaction and dialogue with the IPR Center and those interactions and dialogue have strengthened government's understanding of the supply chain, and allowed the trade to provide ideas and feedback on what can be further done in the important work they do. I believe we currently have the right balance between the Department of Treasury, Department of Homeland Security, and the Commissioner of U.S. Customs & Border Protection at our meetings. Allowing ICE/HIS to consult with COAC on an as needed basis on topics that impact commercial trade makes very good sense.

Yes, current COAC meetings are open to the public and must follow the FACA rules. I believe there are benefits in allowing COAC to hold closed door meetings in order to address specific issues for which disclosure would compromise CBP operations or an ICE/HSI Investigation. It will be important that the trade public understand that most of the work that COAC does is in the public eye, and that COAC members may receive information in closed door sessions that require a DHS security clearance, therefore are not fit for public consumption.

I would recommend there be clear guidelines on how to conduct open versus closed COAC sessions. I presume the closed door sessions would be carefully limited in use to situations truly beneficial to both sides. COAC has been very engaged in the 12th and 13th terms and I'm not sure how much additional bandwidth we have for meaningful tasks and subcommittee work – again, the work would need to impact commercial trade for COAC to engage.

**Question 3:**

**The President's FY14 budget proposed providing funds for the Department of Homeland Security to conduct a study on the feasibility and cost related to imposing a crossing fee on pedestrians and passenger vehicles along the northern and southern borders. Today, these travelers enjoy free movement across our borders. As a border state, Montana's economy is dependent upon cross-border trade and tourism. Businesses rely on the free flow of people across our northern border to export world class Montana products. And for Montanans, crossing the border is a way of life in order to access essential services, travel to their jobs, to shop and dine, to attend church, and to visit family and friends. I'm concerned about the impact this would have for Montanans. In your opinion, what would be the impact of imposing such a fee in other states or on your businesses?**

**Answer:**

The impact of a crossing fee on pedestrians and passenger vehicles along the northern and southern borders would (in my opinion) be devastating to local economies. While some affluent travelers would not hesitate to pay a fee to expedite their border crossing experience, for the average traveler or pedestrian (particularly those who cross frequently for work/school/family visits or other services), a user fee would be a significant financial burden and barrier. I believe user fee collections would further slow down the border crossing experience travelers have today. We certainly saw significant slow down in border crossing times when the WHTI documentation requirements were implemented, and this requirement continues to contributes to the slower passenger clearances we see today.

For Montanans living within an hour's drive of the border, we often travel to Canada to visit friends and family or they come to visit us. I've been known to travel to Lethbridge, Alberta (AB) to see a new movie that isn't yet playing in Shelby or Cut Bank, MT. I go to Milk River, AB frequently to have dinner with friends. Some folks from Coutts, AB attend my church in Sunburst, MT (just as I used to attend church in Coutts, AB when the church was still open). Our Lions Club organization consists of members from Shelby, MT up to Milk River, AB. The fire department in Coutts, AB has volunteers from Sweet Grass, MT since our communities sit side by side, barely separated by "No Man's Land" between the two countries. Many southern Alberta residents have post office boxes in Sweet Grass, MT to facilitate mail services/parcel shipping or delivery. The Sweet Grass brokerage community has employed several US citizens who married and lived in Canada, so they crossed the border daily for work. There are numerous examples of the symbiotic relationship between the communities just north or just south of the border.

With regard to border crossings in other states, I was interested to read the study on the El Paso Regional Ports and Entry Operations Plan, commissioned by the Texas Department of Transportation. While the study is 2 years old, the impact of border wait times on local economies is significant, indicating the economy would contract by $54 billion (21.8%) and cause a net job loss of 850,000 (17.4%). The study can be found at: http://www.camsys.com/pubs/EPOperations.pdf While I have no direct knowledge of other studies that spell out the impact of border wait times on the local economies, I am certain the impact is felt in the major border crossings like Blaine, WA, Detroit, MI, Champlain and Buffalo, NY as well as Otay Mesa, CA and Laredo, TX.

**Question 4:**

**The President's FY14 budget also included a proposal to increase certain customs user fees. As you know, customs user fees are paid by the trade community in return for customs services, such as the inspection and processing of imported merchandise. The budget proposes a $2 increase to the fee on commercial trucks, commercial aircraft, commercial vessel passenger, and international mail subject to duties, COBRA user fees, and a proportionate increase for all other COBRA user fees. This funding from increased fees would fund an additional 1,877 Customs and Border Protection Officers, which would help to address long wait times and speed processing of goods across our borders. In fact, wait times at most U.S. ports of entry would be reduced by 30 minutes. What are your views on the proposal to increase these customs user fees? How can the trade community be a partner in ensuring CBP has sufficient funding to facilitate the movement of goods across our borders?**

**Answer:**

I support a reasonable increase in the COBRA user fees, provided the funds are used to improve the movement of cargo and people across our international borders, regardless of their mode of transportation. I believe the trade community would welcome the increase in services provided from the COBRA user fees. I do not recommend the COBRA user fee rate be tied to something like the Consumer Price Index to increase the fee and keep up with demand, as it may dampen trade because the increases would be unpredictable. In this global economy, much effort is put into controlling and predicting costs as far out as a year or two in advance. Predictability is important, so suggest any increase to COBRA user fees should be handled as they are today: through legislation.

One added thought, if user fees are indeed raised to hire more inspectors, the trade community would like assurance that the additional funds collected will in fact be used for their intended purpose: to hire more inspectors at key ports of entry. User fees should not be diverted to the general fund or to pay for other programs.

**Question from Senator Hatch**

**Question 1:**

**A recent letter we received from the U.S. Chamber of Commerce in support of this bill stated that this legislation "would facilitate trade, improve enforcement of customs and trade laws, advance cooperation among government agencies, and set the global standard for border management." The letter goes on to state that "implementing such improvements would increase the competitiveness of U.S. businesses and would unleash the potential for small-and medium-sized businesses to access foreign markets."**

**Given, your breadth of experience, do you agree this bill will be beneficial to small- and medium-sized business?**

**Answer:**

Yes, I believe the bill will be beneficial to small and medium sized businesses. For example, the Centers for Excellence and Expertise will blossom and encompass all entries for a particular industry section. This structure provides one stop shopping to a small/medium sized importer and they will receive a consistent message regarding classification, valuation, requirements from partner government agencies, etc. This is a sea change for CBP, and it will take some time to fully implement the program.

Another benefit will come through the ACE Export program, allowing small/medium sized enterprises to utilize one system to report exports instead of the numerous systems we have today. I believe the agencies involved are making a real effort to streamline the export requirements, removing any roadblocks along the way. Small and medium sized enterprises would benefit from an export system that helps them easily identify any licensable goods so they do not unknowingly violate federal law, thus removing one more 'unknown fear' they have about exporting their products.

The opportunity for small/medium sized businesses to join a partner "Trusted Trader" program is another benefit, particularly if CBP secures agreement with their international counterparts through mutual recognition programs. This could be a big incentive to participate in the import program so their exports receive the same benefits.

**Question from Senator Brown**

**Question 1:**

**You indicated that a prospective system eliminates the under collection problem because importers pay the duties owed at the time of importation. However, in a November 2010 report to Congress, Commerce is cited as explaining that "the main difference between the two types of systems is that prospective systems will never collect additional duties when dumping, pursuant to a review, is found to increase." By contrast, under the retrospective system, the U.S. government collects additional duties when final dumping margins are higher than initially estimated because of increased dumping over time.**

**As certain parties noted in comments submitted to Commerce related to the November 2010 report, is it not true that "[s]witching to a prospective system does not solve the problem of uncollected duties, it simply defines it away"?**

**Answer:**

While there are drawbacks to both the prospective and retrospective system for collection of dumping duties, I believe the retrospective system causes more harm to American businesses than the protection offered to American business who filed the dumping claims.

We live in a global economy, and business is challenged to purchase finished goods and component parts at the best price they can obtain. In order to price those goods, they need certainty as to their costs. Waiting 3+ years for Commerce to finalize the amount of dumping duties owed on an imported goods does not allow any business (small, medium or large) to price their goods for sale. Predictability is key for American businesses to successfully operate in the global economy. This is the clear standard for fair trade.

The United States (to the best of my knowledge) is the only country with a retrospective dumping system. I believe it undermines our competitiveness because business does not have predictable pricing or full knowledge of the costs associated with an international transaction.

I do not believe a prospective system solves all problems. There will still be those who evade legitimate duty by altering documents or providing false certificates. The prospective system allows CBP to collect dumping duties based on the best information available to Commerce at the time the antidumping case is initiated. Adjustments to the dumping duties should occur systematically, just as they do today. This gives reasonable predictability to the importer who can make a rational decision whether to continue to import at the dumping rates set or to find another supplier for their imported goods or materials.

Under the retrospective system, it is a risky enterprise to estimate what the duties will be in 3+ year's time, so the importer can set pricing for their product. This system is resource intensive for Commerce to determine the 'fair' price for dumping purposes. While it may be the most 'fair', it is not the most efficient. CBP is unable to collect antidumping duties for numerous reasons, such as:

- ◊ Importer has gone out of business
- ◊ CBP has no jurisdiction over the Non-Resident Importer of Record.

◊ CBP is in no better position to predict what the dumping duties will be in 3+ years time, therefore they are challenged to set a surety bond amount that will be adequate.

The significant lag time between entry and the attempted collection of any dumping increase contributes heavily to CBP's collection issues.

I wish to point out that small businesses often face the greatest impact from the retrospective rate increases. They are less experienced importers (not understanding the potential impact of importing goods subject to dumping duty), and far less likely to financially recover or survive a significant increase in dumping duties 3+ years after goods are imported.

There are specific examples of small and medium sized U.S. companies literally forced into bankruptcy because of the retrospective nature of our ADD system. . No small or medium sized company can handle a 200% rate increase 3+ years after import and stay in business. Sometimes the rate increases are tied to changes in methodology which the importer has no control over. We are aware of numerous cases where Commerce makes a change to a complicated formula and surrogate value inputs to construct the retrospective "fair market value" determinations. The results have meant millions of dollars in liability that no one could have predicted and are not based on any kind of improper importer or exporter activity. The result: US owned and operated companies are thrown into turmoil, trade flows for goods often needed by downstream U.S. manufacturing become chaotic and in the end, CBP spends a tremendous amount of resources trying to chase duties that can never be collected and no one's interests (not even those plaintiffs in the original ADD complaint) are served.

The International Trade Administration, Department of Commerce Report to Congress in November 2010 lays out an overview of several prospective systems:

1. Prospective *ad valorem* system –
2. Prospective *per unit* system –
3. Prospective "normal value" system – in this system a normal value is established for each of the types or models of merchandise subject to an order and as merchandise is imported, the normal value is compared to the merchandise's export price. If the normal value is greater than the export price, an antidumping duty is assessed on the difference in price. (this is actually an improvement over today's retrospective system as companies are forced to pay dumping even if the value of the imported goods is well above the normal value price – to receive a lower rate of duty, Commerce must perform a new shipper review and these are quite costly to obtain, not to mention the strain on Commerce's resources to produce the new shipper review)
4. There can also be a two part approach to assessment of dumping margins based on the original investigation and also on the ascertained export price.

The report also noted that Commerce believed that certain administrative functions would be less burdensome under a prospective system, including instructing CBP to take action on a particular case.

The GAO Report issued in 2008 indicates the final duty rates increased 16 percent of the time, based on their analysis of data over a six year period. The median rate increase was less than 4 percentage points. If there are the differences in duty between a prospective and

retrospective system, it occurs to me that 4% is certainly manageable for any business enterprise to build that into their pricing., The challenge is with some very large increases in certain sectors where median rates increased 200 percentage points or more. Under the prospective system you may think it 'defines it away' but I believe it allows importers to make a rational decision whether to continue to import or not, unlike the retrospective system where they are gambling that they can afford the final dumping rate established 3+ years later.

I believe the important question that needs answering is the overall purpose of our AD/CVD system. Is it to set and collect duties under a very complicated system or is it to create an 'even playing field' in specific cases where it is determined that no level playing field exists. A prospective system operates differently than a retrospective system, and duties absolutely still exist so they are not being "defined away" in some sweeping manner. Real dumping duties will still be collected, and adjusted prospectively, so that CBP can enforce the requirements and collect the duty NOW, not 3+ years later. I believe a prospective system serves the higher goal of actually creating a more normal playing field NOW. Our trade partners around the world seem to agree as every other country has chosen to adopt some form of a prospective dumping system.

**Committee on Finance**

**United States Senate**

*Statement of*

**William A. Cook**
**Director, Worldwide Logistics and Customs,**
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May 22, 2013


1000 Chrysler Drive
Auburn Hills, MI 48326

## I. INTRODUCTION

Chairman Baucus, Ranking Member Hatch and Finance Committee members, I want to begin by thanking you for inviting Chrysler Group LLC (hereinafter "Chrysler") to testify today. Chrysler appreciates being given the opportunity to share its views on S.662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

My name is William Cook. I am the Director, Worldwide Logistics and Customs, for Chrysler. In this capacity, I lead the team responsible for developing logistics strategy, purchasing transportation services, Customs and export compliance, operating Chrysler Group Transport and controlling logistics operations. I am also a licensed Customs broker and served on the Advisory Committee for Commercial Operations (COAC) of U.S. Customs and Border Protection (CBP) from 2007 until 2010.

## II. BACKGROUND

Because of the significant volume of trade involved, coupled with the company's reliance on just-in-time inventory management practices, Chrysler's ability to import and export vehicles and parts in an efficient and timely fashion is critical.

In 2012, Chrysler handled almost 300,000 entries into the United States worth $24 billion. By volume, 70 percent of these entries were production parts and the remainder were vehicles. Chrysler also handled 1.2 million entries into Canada worth almost $12 billion and 55,000 entries into Mexico worth $5.5 billion.

Even minimal delays can have serious consequences for the company – if a shipment of parts destined for a manufacturing plant gets delayed at a border, operations may have to shut down until the shipment arrives. And now more than ever, with demand sky high for Chrysler products and fierce competition in the auto sector, we cannot afford any production delays.

As such, it has been Chrysler's practice to take advantage of every opportunity to reduce the time it takes for the company's shipments to cross the border and, more generally, to reduce our direct and indirect Customs-related costs. Therefore, Chrysler is a charter member of the Customs-Trade Partnership Against Terrorism (C-TPAT) program and participates in the Importer Self-Assessment (ISA) program. We take advantage of all border crossing privileges that these programs provide, including the Free and Secure Trade (FAST) program. We are a member of the Automotive & Aerospace Center of Excellence and Expertise (CEE) and have participated in a number of U.S. Customs and Border Protection Agency (CBP) pilots. Our participation in such programs is not limited to the United States. For instance, in Canada, Chrysler participates in the Partners in Protection program, the Partners in Compliance program, and the Customs Self-Assessment program.

Additionally, as a member of CBP's Trade Support Network (TSN), Chrysler provides direct input to the agency regarding the design and development of Customs modernization initiatives, including ACE. Chrysler also provides input as one of our employees is a CBP-designated Automated Commercial Environment (ACE) Trade Ambassador.

Moreover, we are a member of a number of groups that advocate for greater trade facilitation, including the Alliance of Automobile Manufacturers, the American Association of Exporters and Importers, the American Auto Policy Council, the Automotive Industry Action Group, the Business Alliance for Customs Modernization, the National Association of Manufacturers[1], and the U.S. Chamber of Commerce.

## III. DISCUSSION OF S.662, THE TRADE FACILITATION AND TRADE ENFORCEMENT REAUTHORIZATION ACT OF 2013

The remainder of my testimony will focus on provisions in S.662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, which are of particular interest and importance to Chrysler.

### A. Joint Strategic Plan on Trade Facilitation and Trade Enforcement

Chrysler applauds the inclusion of provisions in S.662 requiring the CBP Commissioner and Director of U.S. Immigration and Customs Enforcement (ICE) to develop a biennial "Joint Strategic Plan on Trade Facilitation and Trade Enforcement".

CBP and ICE are already dedicating time and resources to trade facilitation and trade enforcement, reflecting a commitment to both issues. The establishment of joint reporting requirements and metrics like those proposed in S.662 will help to ensure that the agencies' efforts are focused and give them, and the public, the ability to assess whether they are making progress in achieving their goals. Moreover, by making it a joint report, it will encourage improved communication and coordination between the two agencies.

Of particular interest to Chrysler is the provision requiring CBP and ICE to describe their "...efforts to improve consultation and coordination among Federal agencies regarding trade facilitation and trade enforcement". As discussed further below, some of the more serious Customs challenges that Chrysler faces are not necessarily attributable to CBP or ICE, but instead, to participating government agencies with a presence at the border. Anything that can be done to promote better collaboration between these participating government agencies and CBP and ICE is welcome and this reporting requirement is therefore helpful in this regard.

Additionally, Chrysler supports the language in S.662 requiring CBP and ICE to consult with the COAC and TSN when developing the Plan. Both entities can provide the perspective of industry and their trade facilitation and enforcement experiences, and it is important that their views be reflected in the report.

As mentioned previously, Chrysler's U.S. – Canada trade is significant. Steps that can improve trade facilitation between the two nations, like full implementation of the U.S. – Canada Beyond the Border Action Plan, would significantly benefit the company, as well as other U.S. companies with similar trade profiles.

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[1] Chrysler is the chair of the National Association of Manufacturers Customs and Border Task Force.

This winter, the National Association of Manufacturers sent a letter to then-Acting Commissioner Aguilar, thanking CBP for the progress made to date implementing the Beyond the Border Action Plan. The letter also urged CBP to prioritize the implementation of the following recommendations from the Businesses for a Better Border (B3) Coalition[2]:

- Complete the harmonization of C-TPAT and PIP,
- Align data requirements and submission timeframes,
- Implement identical technology for the transmission of advance data,
- Dedicate primary inspection lanes at all border crossings for C-TPAT/PIP certified companies, and
- Eliminate burdensome visa requirements for Canadian and U.S. citizens and permanent residents traveling for business.

We hope to see these Beyond the Border priorities implemented before the first Joint Strategic Plan is released. If not, these priorities, as well as the other remaining elements of the Beyond the Border initiative, should be included in the Plan, along with firm commitments from CBP and ICE that they will be swiftly implemented.

**B. The Automated Commercial Environment**

Like the Committee, Chrysler looks forward to the day when ACE is fully up and running and appreciates the support for the development of ACE reflected in S.662. Based on our discussions with CBP, it appears that the Agency is making real progress in rolling out the ACE system. However, the inclusion of ACE-related provisions (as well as International Trade Data System-related provisions) in the reauthorization legislation, and the Committee's exercise of its oversight responsibilities, will help ensure that CBP completes the roll out in a timely fashion.

Chrysler was one of the original 41 participants in the 2004 ACE pilot. Despite the fact that it has yet to be fully implemented, Chrysler is already seeing tremendous benefits from the ACE system, and expects those benefits to increase as additional elements of ACE are rolled out. Of particular interest to Chrysler is the "single window" concept, which will allow Chrysler to use ACE for all of its entries.

Currently, for shipments released using a border release program such as FAST, Department of Transportation and the Food and Drug Administration entry documentation relating to imports of vehicles and some parts cannot be filed through ACE. Chrysler is obligated to use the Automated Commercial System (ACS) for these entry transactions.

Having to file entries in both systems is administratively burdensome, and requires careful monitoring of Chrysler's post-entry work to ensure that it is done properly. ACE entries are filed electronically as Post Summary Corrections (PSC) and ACS entries are filed manually as Post Entry Adjustments (PEA). Moreover, while refund requests filed in ACE are fulfilled in about four to six weeks, it takes CBP six to eight months to fulfill a refund request filed in ACS, a

[2] Businesses for a Better Border Coalition members include the National Association of Manufacturers, the American Auto Policy Council, Canadian Manufacturers and Exporters (CME) and the Canadian Vehicle Manufacturers Association (CVMA). Chrysler Canada is a member of CME and CVMA.

significant delay of time. Usage of the ACS system has a number of other drawbacks, including the fact that unlike ACE, if a non-ISA importer needs to obtain data concerning past entries for measurement reporting and compliance monitoring, the importer must file a Freedom of Information Act (FOIA) request.

The most recent ACE roll out – Simplified Entry – adds greater certainty to the air freight environment for Chrysler, one of two importers to participate in the 2012 Simplified Entry pilot program. Simplified Entry allows for the release of air cargo prior to the arrival of the aircraft in the United States and eliminates the need for a broker to file a Customs Release Form 3461, which is especially important when cargo is arriving after hours. As a result, a potential delay in the delivery of parts to Chrysler's plants is eliminated.

We understand that the next ACE roll out will relate to export reporting, which could improve the company's ability to manage its exports and duty drawback filings, and Chrysler will seek to participate in any export reporting pilot program.

**C. The Centers of Excellence and Expertise**

Chrysler was pleased to see that S.662 includes language authorizing the creation of the Centers of Excellence and Expertise (CEE). As mentioned above, Chrysler is a member of the Automotive and Aerospace CEE and has had a very positive experience. Chrysler's import entries are now reviewed by a centralized team within the CEE that is familiar with automotive products. The Chrysler Customs Department meets with the CEE management on a regular basis to discuss ways to process Chrysler entries in the most efficient manner possible, which saves time and money for both Chrysler and CBP.

Chrysler also works with the CEE when other ports make requests that do not appear to align with Customs policies and procedures. Through these types of efforts, the CEE is driving improved consistency between different ports of entry, which has been a longstanding concern for importers.

**D. The Advisory Committee for Commercial Operations**

From 2007-2010, I served as a COAC member and can attest to the important role that the Advisory Committee can play in driving policy improvements. Reviewing the provisions in S.662 authorizing COAC, it is apparent that many of the proposed requirements for the COAC are already the norm. Nevertheless, the codification of these practices is important and will ensure that the Advisory Committee continues to play an important role in the development and implementation of U.S. Customs policy.

Chrysler respectfully suggests that S.662 should explicitly allow non-COAC advisors to participate on the COAC subcommittees. This practice has worked well in the past, and allows the COAC to access broad, technical expertise and a wider range of perspectives.

**E. Intellectual Property Rights Enforcement**

For Chrysler, intellectual property rights enforcement is about safety. If subpar, counterfeit parts end up on a Chrysler vehicle, it could put the driver, their passengers and others at risk. The

company therefore takes combatting counterfeits very seriously and welcomes the attention that S.662 gives to this important issue.

To date, working with CBP, we have had some success in combatting counterfeit parts. For instance, in March 2013, CBP notified Chrysler Brand Protection of a suspect shipment of 198 Dodge Charger wheels from China entering at the Port of Tampa. Working with our Brampton Plant, Brand Protection confirmed that the wheels were counterfeit.

Building off of successes like these, Chrysler is seeking to make its collaboration with CBP to combat the import of counterfeit goods more efficient and effective.

Chrysler is striving for improved and more streamlined information sharing between CBP and the company concerning a suspect entry. We suggest that CBP should simultaneously share electronically as much information as possible, including photos, regarding suspect goods with all the Chrysler business units with counterfeit goods responsibilities. Right now, CBP only provides Chrysler with a limited amount of information about a suspect shipment, despite the fact that we have an IPR bond. Moreover, initial contact with Chrysler is typically by certified mail or phone. These interactions could be made much more efficient, reducing the time and effort spent by both CBP and Chrysler vetting suspect shipments.

Chrysler is also seeking to ensure that CBP's counterfeit targeting better reflects its priorities (e.g., not t-shirts and trinkets) and takes into greater consideration Chrysler's Customs practices. For instance, in all but a very few instances, Chrysler should always be the importer of record on an entry of parts. If that is not the case, there is a very high likelihood that the shipment is counterfeit and as such, CBP should alert the company.

This year, CBP and the Automotive & Aerospace CEE have proactively reached out to Chrysler expressing an interest in working with the company on counterfeiting issues. We are taking full advantage of the Agency's interest and engagement. Our discussions with CBP on ways to improve our collaboration are still in the preliminary stages, and the Agency's ability to accommodate our requests remains unclear. However, what is apparent is that the IPR provisions reflected in S.662 would give CBP an enhanced mandate to work with Chrysler, as well as other companies, to combat counterfeit goods.

**F. Pilot Program to Designate 24-Hour Commercial Ports of Entry**

Chrysler was pleased to see language in S.662 requiring CBP to launch a pilot program to designate more 24-hour commercial ports of entry. As discussed above, Chrysler relies on just-in-time inventory management practices and as such, even minimal delays can have serious consequences for the company. Moreover, reflecting the integration of the North American auto sector, the volume of trade in Chrysler vehicles and parts between the United States, Canada and Mexico is considerable. Thus, keeping more of these U.S. – Canada and U.S. – Mexico land border commercial ports of entry open 24 hours a day to accept merchandise entries would help to reduce wait times at the border, facilitate increased trade and significantly benefit Chrysler and many other U.S. companies.

### G. De Minimis and Informal Entry

While not a priority issue for Chrysler, we were pleased to see that S.662 increases the de minimis threshold to $800 and the informal entry threshold to $2500. As CBP increased the informal entry value to $2500 last year, the legislation would codify the existing regulation. But the increase in the de minimis would be a new, significant development, allowing CBP to allocate more resources to enhance trade facilitation and combat counterfeit goods.

## IV. CONCLUSION

Chrysler welcomes the introduction of S.662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 and hope that it is taken up for consideration by the Committee and on the Senate floor as soon as possible. Like many industries, the auto sector is extremely competitive. Many of the measures included in this legislation will help to streamline and make more efficient Customs processes and procedures. And while the savings on a single entry associated with these proposed improvements may not necessarily be large, for companies like Chrysler, which had almost 300,000 import entries in 2012 and over 100,000 export filings, the total savings, and corresponding increased competiveness, would certainly be significant.

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

United States Senate
Committee on Finance

Hearing on
S.662, The Trade Facilitation & Trade Enforcement Act of 2013
June 11, 2013

Questions to Mr. William A. Cook, Director of Worldwide Logistics and Customs, Chrysler Group, LLC, Auburn Hills, MI

Questions from Chairman Baucus

Question 1:

**The creation of the Office of Trade (OT) consolidated CBP trade policy, program development, and compliance measurement functions into one office. Some of the revenue-related positions, including import specialists and entry specialists, remained under the Office of Field Operations (OFO). What effect has this had on your interactions with CBP, especially in terms of communication and policy implementation? Some have proposed moving these positions from OFO to OT. What are your thoughts on this proposal?**

Answer: *Given Chrysler's involvement in the Automotive & Aerospace Center of Excellence and Expertise, its interactions with CBP primarily occur through the Center. The consolidation of OT and OFO, coupled with Chrysler's participation in the Center, has provided "one-stop shopping" opportunities for the company. Chrysler would therefore welcome additional OT-OFO consolidation, and its associated efficiency benefits.*

Question 2:

**The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is a forum for the Secretaries of the Department of Treasury and the Department of Homeland Security to discuss the commercial operations of U.S. Customs and Border Protection and related DHS functions with the trade community. Do you see benefits in including a representative, either formally or informally, from U.S. Immigration and Customs Enforcement (ICE)? Also, current COAC meetings are open to the public and must follow the rules under the Federal Advisory Committee Act (FACA). What benefits do you see in allowing the COAC to hold closed meetings in order to address specific issues for which disclosure would compromise CBP operations or ICE investigations?**

Answer: *Chrysler believes that there would be a real benefit in having ICE formally participate in the COAC. ICE's participation in the COAC would help ensure that ICE is apprised of issues affecting the Trade, including issues relating to counterfeit goods; that it is*

*aware of the policies being considered to address those issues; and that it plays a role in developing those policies. Giving ICE a formal role in the COAC will thus encourage ICE's investment in such policies, increasing the likelihood that it will implement them properly, and promote accountability.*

*Closed meetings may be appropriate under certain circumstances and could provide COAC members with insight on Customs' issues that they wouldn't otherwise be able to obtain because of the nature of the information involved. However, the fact that COAC meetings are public is of real benefit to COAC members and outside stakeholders alike. As such, closed meetings should be the rare exception to the norm. To ensure that this is the case, clear criteria setting a high threshold for closing a meeting should be established.*

Question 3:

**The President's FY14 budget proposed providing funds for the Department of Homeland Security to conduct a study on the feasibility and cost related to imposing a crossing fee on pedestrians and passenger vehicles along the northern and southern borders. Today, these travelers enjoy free movement across our borders. As a border state, Montana's economy is dependent upon cross-border trade and tourism. Businesses rely on the free flow of people across our northern border to export world class Montana products. And for Montanans, crossing the border is a way of life in order to access essential services, travel to their jobs, to shop and dine, to attend church, and to visit family and friends. I'm concerned about the impact this would have for Montanans. In your opinion, what would be the impact of imposing such a fee in other states or on your businesses?**

Answer: *Chrysler is very concerned about the costs associated with the imposition of a land border crossing fee. Chrysler has multiple facilities in close proximity to both sides of the United States-Canada border, and several hundred Chrysler employees cross the border every day to reach their jobs, or for other work-related reasons. As Chrysler would have to reimburse a large portion, if not all, of the crossing fees imposed on its employees, even a small fee would impose significant costs on the company.*

*Chrysler is also concerned that the collection of such fees could increase traffic congestion at the border, disrupting the smooth flow of goods. Even minimal delays can have serious consequences for the company – if a shipment of parts destined for a manufacturing plant gets delayed at a border, operations may have to shut down until the shipment arrives. And now more than ever, with demand sky high for Chrysler products and fierce competition in the auto sector, we cannot afford any production delays.*

*For these reasons, Chrysler opposes the imposition of a crossing fee and suggests that the funds requested by the Department of Homeland to conduct a feasibility/cost study should not be provided.*

**Question 4:**

**The President's FY14 budget also included a proposal to increase certain customs user fees. As you know, customs user fees are paid by the trade community in return for customs services, such as the inspection and processing of imported merchandise. The budget proposes a $2 increase to the fee on commercial trucks, commercial aircraft, commercial vessel passenger, and international mail subject to duties, COBRA user fees, and a proportionate increase for all other COBRA user fees. This funding from increased fees would fund an additional 1,877 Customs and Border Protection Officers, which would help to address long wait times and speed processing of goods across our borders. In fact, wait times at most U.S. ports of entry would be reduced by 30 minutes. What are your views on the proposal to increase these customs user fees? How can the trade community be a partner in ensuring CBP has sufficient funding to facilitate the movement of goods across our borders?**

Answer: *Because of its large entry volume – in 2012, Chrysler Customs handled almost 300,000 entries into the United States worth $24 billion – even a minimal fee increase can impose significant costs on the company. For instance, as a result of the recent .1364 percent Merchandise Processing Fee (MPF) increase, Chrysler incurred roughly $1.5 million in additional MPF fees in 2012. If the fee hikes being contemplated by CBP were imposed, Chrysler would incur significant additional costs, making it more difficult for the company to compete in the marketplace.*

*We support efforts to increase CBP staffing to address long wait times and speed the processing of goods across our borders. However, as every American consumer benefits from enhanced trade facilitation, we question whether importers should have to shoulder the additional costs associated with achieving this aim. Moreover, Chrysler, like many other importers, has made significant investments of time and money to become a Trusted Trader and participates in C-TPAT Tier 3, ISA, FAST and the Automotive & Aerospace Center of Excellence and Expertise. Being an active member of these programs guarantees that Chrysler has robust processes in place to ensure compliance and security, dramatically reducing CBP's costs of monitoring all aspects of Chrysler's import activity.*

Testimony of David Cooper

Global Customs Compliance Manager

The Procter & Gamble Company

Cincinnati, Ohio

United States Senate Finance Committee

Hearing on

"S. 662, the Trade Facilitation and Trade Enforcement Action of 2013"

Wednesday, May 22, 2013

Introduction

Chairman Baucus, Ranking Member Hatch, members of the Committee, thank you for inviting me to testify this morning on S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

My name is David Cooper. I am the Global Customs Compliance Manager at Procter & Gamble where I am responsible for developing and implementing P&G's global tools, standard practices and systems to ensure compliance with customs regulations. My function is part of P&G's international trade global center of excellence. I also work closely with P&G's Global Brand Protection team, which is responsible for protecting consumers, retailers and our brands from the threat of counterfeit goods.

P&G has 33 manufacturing facilities in 22 states (including Delaware, Maryland, Ohio, Utah, New Jersey, Georgia, Iowa, Kansas, North Carolina, and Pennsylvania) and approximately 126,000 global employees. Ninety-nine percent of American households contain at least one P&G product and over 90% of the products we sell in the U.S. are manufactured in the U.S. More than 4.6 billion times a day, our trusted brands—Pampers, Tide, Bounty, Pantene, Olay, Gillette, Crest and many others—touch the lives of consumers in virtually every country.

P&G's Supply Chain

P&G's supply chain reflects our business operations and indeed our consumer base. It is global, diverse and key to our success as a company. We have thousands of U.S. suppliers from which we purchase raw materials, equipment, packaging and other inputs that allow us to manufacture our brands at our 33 U.S. manufacturing facilities. We also import raw materials and equipment for our U.S. manufacturing operations, and we indirectly purchase other imports that are brought into the U.S. by our suppliers as part of their own supply chains.

Direct P&G imports amount to more than 35,000 entries each year, with a value of roughly $3 billion. These shipments come into the U.S. through more than 50 ports of entry by container

ship, rail and truck. On an average day, we manage almost 100 entries at a value of more than $8 million. The ability of these shipments to quickly and efficiently pass through the Customs and Border Protection (CBP) import process is critical to our U.S. operations.

In many cases, these products cannot be purchased in the U.S. Two brief examples illustrate this point. P&G imports a product not manufactured in the U.S. called pentammine cobalt dinitrate, which is the active ingredient in CoFlake, a proprietary cobalt catalyst used as a bleach activator in our Cascade dishwasher detergent. CoFlake is the ingredient in Cascade that helps prevent spotting and film on dishes. We also import a warp knit fabric that we use as fasteners on Pampers diapers. Again, this key component is not manufactured in the U.S. Keeping dishes spot-free and making disposable diapers more economical and easier to use are just two of the many cases where imports support P&G's U.S. manufacturing base and the performance of our brands. Timely CBP processing of P&G's imported inputs helps us ensure reliable U.S. manufacturing operations.

As important as efficiency is, our supply chain is more than a logistical or operational issue for us. Millions of times every day, imported materials are used by U.S. consumers as part of the Gillette blades we shave with, the Nyquil cold medicine we take or the Cover Girl make up we wear. The safety of these P&G products is our number one priority, and we build our supply chain around that fact. Our foreign suppliers are thoroughly vetted to ensure our products are safe. We have strict policies and standard operating procedures with our partners at all stages of our supply chain. Ensuring that raw materials we import are safe for consumers, and that finished products that cross into the U.S. are genuine P&G brands, are imperatives from both business and consumer protection standpoints.

Intellectual Property Protection

Protecting consumers against counterfeits is consistent with P&G's purpose to touch and improve the lives of consumers around the world. Counterfeit products are substandard, possibly harmful or dangerous and a form of consumer fraud. Counterfeit goods are inferior products and do not deliver on the high expectations and performance consumers expect and receive from

legitimate P&G products, undermining consumer trust in our brands. In fact, a rise in consumer complaints is one indication that P&G consumers may have purchased a counterfeit product. Counterfeit goods confuse consumers with artificially low price points which affect our legitimate sales and profits. This lower rate of return undermines the significant investments P&G makes in creating the intellectual property and developing products that delight U.S. consumers.

Our ability to grow as a company and meet consumer needs depends on successful product and operations innovation. This includes the successful development, introduction and marketing of new products and improvements to our equipment and manufacturing processes. The IP generated from these innovations is sometimes copied and imported into the U.S. by counterfeiters, making a strong intellectual property rights (IPR) enforcement regime at CBP critical to P&G's innovation efforts.

Despite P&G's best efforts, we cannot win the fight against counterfeits alone. A collaborative relationship between CBP and P&G demonstrates the "public-private partnership" that is a crucial element to an effective IPR enforcement regime. Anti-counterfeiting efforts undertaken by law enforcement agencies overlap and intersect with those undertaken by individual rights holders like P&G. P&G assists CBP with its aggressive IPR enforcement program by offering our expertise and cooperation to identify, investigate and seize counterfeit products at the manufacturing site or within the supply chain.

For example, each year we conduct many training sessions for up to 800 law enforcement officials and Customs' officers on how to distinguish genuine P&G products from counterfeits. P&G works in consultation with CBP on roughly 70 - 80 cases a year, from port seizures to full fledge undercover investigations with global sourcing. Also, P&G has an advisory role on CBP's Commercial Operations Advisory Committee (COAC) IPR Subcommittee, where P&G provides the voice of the consumer packaged goods industry on IP enforcement issues that rights holders face with CBP around the world.

While P&G has been incredibly impressed with CBP's efforts and its willingness to collaborate on IPR enforcement matters, there are several intellectual property provisions in the Bill that we believe would remove current impediments to CBP's and rights holders' IPR enforcement efforts.

P&G Views of S. 662

P&G applauds the efforts of Chairman Baucus, Ranking Member Hatch and others on this Committee in addressing trade facilitation, customs modernization and intellectual property protection in S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. Balancing the trade facilitation, trade enforcement and national security missions of CBP is not a simple task. We support the bill and find particular value in the following provisions:

- Section 201—Improving Partnership Programs: P&G is a Tier II company of the Customs-Trade Partnership Against Terrorism (C-TPAT) program and we have incorporated direct C-TPAT language into our existing standards and policies. To be clear, P&G's supply chain security is driven by consumer protection and operational considerations. Irrespective of our C-TPAT status, our internal and supplier policies would maintain a high level of import and supply chain security. However, having met or exceeded the security requirement for this program, we anticipated receiving in a measurable way the benefits highlighted by CBP for C-TPAT companies—lower inspection rates, expedited processing at ports of entry, expedited treatment when containers are selected for scanning or inspection, and others.

  To date, we have not seen these benefits apply in a measurable way to our entries. We support the requirement in this provision that the Commissioner of the CBP consult with private and public sector stakeholders to ensure that C-TPAT and other partnerships provide participating companies commercially meaningful and measurable benefits.

- Section 202—Trade Facilitation Program: The trusted importer program authorized in this section is powerful trade facilitation tool for CBP and participating stakeholders. The

prospect of preclearance for imports is a powerful incentive for companies to adopt or maintain the highest levels of compliance with U.S. trade and customs laws and regulations. We support the Committee's requirement that CBP work with private stakeholders to ensure that the benefits provided under this program facilitate trade in direct, measurable and specific ways.

- Sections 206—Automated Commercial Environment Computer System: Two decades have passed since the Automated Commercial Environment (ACE) was authorized in the 1993 Customs Modernization Act. Section 206 provides the resources and timeline required to fully implement the customs modernization requirements of ACE. If all 30 aspects of this program are fully implemented as intended in the 1993 Modernization Act, importers like P&G will benefit from a simpler, more transparent, more efficient customs experience, facilitating legitimate trade.

- Section 231—National IPR Center: P&G also supports the codification of the National Intellectual Property Rights Coordination Center (IPR Center). The IPR Center stands at the forefront in the global fight against intellectual property crime, as it seeks to coordinate investigation and interdiction efforts of key law enforcement agencies. The IPR Center provides an efficient, single point of contact for rights holders seeking assistance when their valued IP is under attack. P&G has worked closely with the IPR Center on a number of critical counterfeit investigations and has benefited greatly from coordinated enforcement efforts.

- Section 241 - Sharing Information with Rights Holders: P&G supports Section 241 because it gives CBP personnel the unequivocal authority to seek, and to receive assistance from experts in the private sector in determining whether a suspect shipment is genuine or counterfeit. The most qualified individuals to make such a determination are those who own the product's IP.

  For example, P&G can quickly identify if a suspect laundry detergent is legitimate or counterfeit in most cases if CBP provides us with a photo of its granules. In the case of

suspect shampoo, if CBP provides us with printed identifiers from the bottle, P&G can identify which of the hundreds of P&G shampoo formulas correspond to the genuine product, and give that information to CBP so the officer can run the appropriate field test to authenticate.

Prior to the implementation of provisions included in last year's National Defense Authorization Act (NDAA), CBP interpreted the law and its own policies as preventing its officers from providing suspect counterfeit product samples to rights holders and requiring officers remove various markings, including UPC codes and other preprinted codes. During this period, P&G has been presented with evidence of suspected counterfeit products that was so heavily redacted, or refused photos or samples, so as to make the authentication process impossible.

Upon implementation of these provisions last year's NDAA, CBP officers can now send un-redacted samples to rights holders but only after requesting proof of authentication from the importer and waiting a 7-day period. While an improvement, the communication process between CBP officers and rights holders is cumbersome and highly inefficient. It also creates a delay in identifying counterfeits that may pose a health and safety risk to consumers.

Section 241 is a legislative fix that is necessary for CBP to bring rights holders into the authentication process as soon as possible. The faster CBP can conclusively determine the authenticity of suspect goods, the faster legitimate goods make it to market. Any can increase costs to manufacturers and consumers. Unnecessary detention or seizure of legitimate goods mistakenly believed to be counterfeit, or entry into market of counterfeit goods mistakenly believed to be legitimate, creates additional issues for manufacturers and consumers.

Conclusion

Mr. Chairman, Senator Hatch, thank you again for the invitation to testify this morning. P&G values our partnership with you and this Committee on this important Bill. We also value our partnership with the CBP and we believe this bill will help CBP keep our country safe while allowing globally engaged companies like P&G to be competitive here in the U.S. and throughout the world.

**FINANCE COMMITTEE QUESTIONS FOR THE RECORD**

**United States Senate**
**Committee on Finance**

**Hearing on**
**S.662, The Trade Facilitation & Trade Enforcement Act of 2013**
**June 11, 2013**

**Questions to Mr. David Cooper, Global Customs Compliance Manager, Procter & Gamble, Cincinnati, OH**

**Questions from Chairman Baucus**

**Question 1:**

**The creation of the Office of Trade (OT) consolidated CBP trade policy, program development, and compliance measurement functions into one office. Some of the revenue-related positions, including import specialists and entry specialists, remained under the Office of Field Operations (OFO). What effect has this had on your interactions with CBP, especially in terms of communication and policy implementation? Some have proposed moving these positions from OFO to OT. What are your thoughts on this proposal?**

**Answer:** These organizational changes at CPB haven't impacted P&G's operations or interactions with CBP in a substantive way. We support efforts to achieve meaningful organizational efficiencies at CBP that result in faster and simpler clearances, but we have no position on the proposal to move revenue positions from OFO to OT.

**Question 2:**

**The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is a forum for the Secretaries of the Department of Treasury and the Department of Homeland Security to discuss the commercial operations of U.S. Customs and Border Protection and related DHS functions with the trade community. Do you see benefits in including a representative, either formally or informally, from U.S. Immigration and Customs Enforcement (ICE)? Also, current COAC meetings are open to the public and must follow the rules under the Federal Advisory Committee Act (FACA). What benefits do you see in allowing the COAC to hold closed meetings in order to address specific issues for which disclosure would compromise CBP operations or ICE investigations?**

**Answer:** P&G is not a member of the COAC and as a result our direct experience is very limited. We would not be opposed to formal or informal ICE participation in the COAC.

Holding occasional closed COAC meetings to address issues that would otherwise compromise CBP and ICE investigations is reasonable. It would allow government and non-government stakeholders to address issues candidly and freely without risking interference with sensitive investigations.

**Question 3:**

**The President's FY14 budget proposed providing funds for the Department of Homeland Security to conduct a study on the feasibility and cost related to imposing a crossing fee on pedestrians and passenger vehicles along the northern and southern borders. Today, these travelers enjoy free movement across our borders. As a border state, Montana's economy is dependent upon cross-border trade and tourism. Businesses rely on the free flow of people across our northern border to export world class Montana products. And for Montanans, crossing the border is a way of life in order to access essential services, travel to their jobs, to shop and dine, to attend church, and to visit family and friends. I'm concerned about the impact this would have for Montanans. In your opinion, what would be the impact of imposing such a fee in other states or on your businesses?**

**Answer:** The impact on P&G would be minimal. Our employees do not cross the northern and southern borders in a business capacity as pedestrians or in passenger vehicles at a rate that would cause us to be seriously concerned by this proposal.

**Question 4:**

**The President's FY14 budget also included a proposal to increase certain customs user fees. As you know, customs user fees are paid by the trade community in return for customs services, such as the inspection and processing of imported merchandise. The budget proposes a $2 increase to the fee on commercial trucks, commercial aircraft, commercial vessel passenger, and international mail subject to duties, COBRA user fees, and a proportionate increase for all other COBRA user fees. This funding from increased fees would fund an additional 1,877 Customs and Border Protection Officers, which would help to address long wait times and speed processing of goods across our borders. In fact, wait times at most U.S. ports of entry would be reduced by 30 minutes. What are your views on the proposal to increase these customs user fees? How can the trade community be a partner in ensuring CBP has sufficient funding to facilitate the movement of goods across our borders?**

**Answer:** The trade community clearly has a vested interest in efficient processing and clearance of goods crossing the border and should bear a reasonable portion of the cost of these services. P&G believes some of the wait times could be reduced by funding additional CBP officers. We also believe wait times could be reduced by simplifying the information submission process (fully implementing ACE), by moving from an entry-based clearance process to an account-based clearance process, and through the establishment of more robust preclearance programs that provide trusted importers with clear and measurable benefits if the meet high standards of internal controls and CBP eligibility criteria.

## STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER U.S. SENATE COMMITTEE ON FINANCE HEARING OF MAY 22, 2013 THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2013

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following opening statement at a committee hearing examining S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013:

*The long and distinguished history of the United States Customs and Border Protection agency dates back to 1789, when the First Congress of the United States created its predecessor, the United States Customs Service.*

*The U.S. Customs Service was the first agency of the federal government. Its primary function was the collection of import duties, which placed the agency under the direct authority of the Secretary of the Treasury.*

*As our nation evolved so did the agency's mission.*

*Most recently, following the terrorist attacks of 9/11, Congress passed the Homeland Security Act of 2002 to help improve border security. That act reorganized the U.S. Customs Service along with other agencies into two new agencies now known as Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).*

*Since their creation, these two agencies have faithfully carried out their dual missions of facilitating trade and protecting our nation from terrorist attacks.*

*Today, international trade is a vital component of our economy.*

*U.S. imports and exports amount to trillions of dollars.*

*Robust international trade enables companies such as Proctor and Gamble and Oracle to expand their operations around the world and in my home state of Utah.*

*As our future economic growth is increasingly linked to international trade it is important that Congress works to enhance our economic security.*

*That is why Senator Baucus and I have introduced S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.*

*Among other things, this bill would improve our ability to protect one of our nation's most important economic assets: intellectual property.*

*We included in the bill provisions to codify the National Intellectual Property Rights Coordination Center which coordinates federal efforts to combat intellectual property rights violations.*

*The bill also significantly expands CBP's tools and authorities to protect intellectual property rights at the border by requiring the agency to share information about suspected infringing merchandise with rights holders.*

*Our legislation further requires CBP to establish a process for enforcing copyrights while registration with the Copyright Office is pending, and to publish information about unlawful circumvention devices that are seized.*

*S. 662 also strengthens CBP's targeting of goods that violate intellectual property rights, and requires an intellectual property rights education campaign for travelers at the border.*

*And, the bill requires the Customs declaration form that everyone entering the country fills out to contain a warning that the importation of goods that infringe intellectual property rights may violate criminal and/or civil laws and may pose serious risks to health and safety.*

*This seems to me to be an obvious way to raise awareness about the dangers of intellectual property rights infringement at no cost to U.S. taxpayers.*

*Our bill will do many other things to facilitate trade, including: improving the CBP Trusted Trader partnership programs; enhancing the private-sector advisory system so that U.S. importers and others involved in trade have a stronger voice in formulating trade policy; and ensuring that CBP completes and deploys information technology systems such as the Automated Commercial Environment which fosters trade facilitation through the use of automation.*

*Through these provisions, S. 662 will help alleviate unnecessary and costly delays at the border. At the same time, it will help to prevent unsafe and illegal goods from entering the United States as well as protect American businesses from unfairly traded goods coming into the country.*

*This legislation is long overdue.*

*S. 662 is a strong bill that will benefit our economy and help ensure that America remains one of the most competitive nations in the world.*

*I look forward to continuing our work with CBP to ensure that its dual mission of protecting our homeland and facilitating trade is successfully fulfilled.*

*At the same time, I hope that the administration will soon nominate a new CBP Commissioner.*

*This agency has been without a Senate-confirmed commissioner since December of 2011, which is far too long. In choosing a new commissioner, I hope the administration will make sure that individual has a strong foundation and understanding of international trade.*

*Mr. Chairman, thank you, once again, for holding this hearing today. I look forward to hearing from each of our witnesses about how S. 662 can help to strengthen and improve the trade facilitation and enforcement functions of CBP and ICE.*

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**WRITTEN TESTIMONY OF CLARK R. SILCOX**
**GENERAL COUNSEL,**
**NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION**
**ROSSLYN, VIRGINIA**

**Legislative Hearing on S.622**
**The Trade Facilitation and Trade Enforcement Reauthorization Act of 2013**

**United States Senate**
**Committee on Finance**

**May 22, 2013**

CHAIRMAN BAUCUS, RANKING MEMBER HATCH and Members of the Committee. Thank you for inviting me to appear before the committee to address the trade enforcement provisions of The Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. I testify primarily about Section 241 of the Bill, but I note Sections 231 and 242 through 258 are intended to enhance intellectual property enforcement and we are in support of those provisions as well.

I am Clark Silcox, General Counsel of the National Electrical Manufacturers Association (NEMA), which is headquartered in Rosslyn, Virginia. NEMA represents approximately 430 North American manufacturers of electrical equipment used in the generation, distribution, and control of electricity. The product scope of our organization is very broad and includes over 50 different electrical product groups. It includes electrical equipment used in factories, in commercial buildings, apartments and homes, as well as hospitals, schools, and government buildings. These are products sold for installation by electrical contractors in construction projects, to utilities, as well as medical imaging and radiation therapy equipment. It also includes some consumer products sold at retail such as batteries, extension cords, smoke detectors, thermostats, lighting products, and for the do-it-yourself homeowner, products like circuit breakers, fuses, switches and receptacles that are also sold at retail.

Our member companies have business operations and employees in all fifty states, and they have either headquarters or plants in the states of every member of this committee. Of interest to the committee members, NEMA member companies who have been victims of electrical product counterfeiting have headquarters and/or production facilities in New York (receptacles, ground fault circuit interrupters, conduit fittings), Ohio (lighting, ground rods, and batteries, welding products), Pennsylvania (circuit breakers), Georgia (batteries, circuit breakers), North Carolina (ground rods, receptacles, batteries), Florida (batteries) and New Jersey (batteries). We have member companies with headquarters and/or production facilities in many other states who have been impacted by counterfeiting as well.

Product safety is a major concern of our industry, and many electrical products are third-party tested to safety standards by independent laboratories such as Underwriters Laboratories, CSA Group, Intertek, and other testing and certification organizations. Counterfeit electrical products are frequently found to be substandard in terms of safety or product performance characteristics. One of our member companies with headquarters and manufacturing in Illinois learned they had a counterfeiting problem a few years ago when they were wrongly named as a defendant in a products liability lawsuit involving a defective counterfeit product.

The electrical sector is not often viewed as the poster child for trademark counterfeiting, yet annual Customs data has recognized our products in the top 5 seizure categories for health and safety products. The counterfeit electrical products that we have found in this country include, for example, residential circuit breakers, medium voltage circuit breakers, extension cords, batteries, ground rods, light bulbs, electrical receptacles, ground fault circuit interrupters, electrical connectors, electrical adaptors, and outside the United States a number of other electrical products. Members of our industry, along with the testing and certification industry whose certification marks have been counterfeited, have worked with US Customs at the ports to help them identify suspect counterfeit products, educating them where genuine products are made and where counterfeit products come from. I have been personally involved in several of those training programs. And we appreciate the public private partnership that has combined their resources to achieve some good results.

Sometimes, based on information provided by the trademark owner to Customs, the port officials are able to make a determination that a product is counterfeit or genuine. In that case,

our training programs have worked and are effective. There are situations where it can be very difficult for a port official to determine whether a suspect product is genuine or counterfeit.

I hold in my hand today a counterfeit circuit breaker and counterfeit packaging for that circuit breaker. The genuine product is made here in the USA -- Nebraska. Knowing that, a port official seeing the product come off a ship or airplane from China ought to be able to make the determination that the product is counterfeit and take action. That decision is reinforced when the packaging that comes from China says "Made in the USA" as this counterfeit package does.

In contrast, NEMA battery manufacturers make batteries for the domestic market here, but they will make batteries for the Asian, European and African markets overseas. The labeling of the counterfeit batteries can successfully simulate the genuine labeling and it can be difficult to tell the difference by visual inspection. A look under the hood so to speak, may be required, and sometimes the ultimate determination of whether the battery is genuine or counterfeit is secured by an X-ray examination that can see the structural differences inside the battery cell.

Historically, as part of their port training programs, NEMA manufacturers told the ports, if you need our assistance, send us the product for study and we will have a response for you within 48 hours of receipt of the sample. And we did. Customs has 30 days to make a determination whether goods it is holding are genuine or counterfeit.

Customs officers were forced to suspend that part of public private partnership a couple of years ago when they were reminded of an agency legal opinion that port officials violated the Trade Secrets Act if they disclosed images or samples of products to trademark owners whose marks were on the suspect products.[1] This was a curious interpretation of trade secrets. If the product is counterfeit and the importer has no legal right to sell the product, a claim of trade secrets makes no policy sense. If the product is genuine, the trade secrets inherent in the product belong to the trademark owner.

Although Customs' interpretation has now been superseded by Section 818(g) of the National Defense Authorization Act of 2012 (P.L. 112-81), that provision sunsets upon the enactment of this bill and Customs has not stepped forward to implement the 2012 law. See Addendum. It is time to make this policy permanent as provided in Section 241 of this bill and implement it so that the ports hands are no longer tied by an erroneous interpretation of the Trade Secrets Act. That is the intent of Section 241.

There are twin policies at stake here and they are reflected in the title of this bill: Trade Facilitation and Trade Enforcement. Brand owners are in the best position to determine quickly if it is their product or not. The brand owner may be the only person who can make that determination. In the civil litigation that ensued over the counterfeit circuit breakers in this country, the typical defense asserted by those who imported them was --- despite the fact that they came from China with Made in the USA on the packaging --- We were fooled. We could not tell. We thought they were genuine.[2] So in terms of trade facilitation, if Customs has doubts about the authenticity of a product, the most effective tool is to allow the manufacturer to examine the product and give them a deadline to respond, and both trade facilitation and trade enforcement are supported at the same time.

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[1] See Addendum.

[2] *Square D Co. v Breakers Unlimited,* 2009 WL 1407019 at *2 (S.D. Ind. 2009). See also *Square D Co. v Breakers Unlimited,* 2010 WL 381334 *1 (S.D. Ind. 2010)(final judgment on jury verdict that defendant sold counterfeit circuit breakers, but did not act with willful blindness).

## ADDENDUM

### Legal Background on Information Sharing Respecting

### Suspect Counterfeit Goods

Historically, the identification of, and enforcement against, suspected counterfeit shipments entering the country generally followed the process described below. Upon their arrival at a port of entry, imported goods are presented to US Customs and Border Protection for examination and inspection. Customs regulations authorized officers, "At any time following presentation of the merchandise for Customs examination . . . to provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name."[3] On that authority, if a CBP officer had questions regarding the authenticity of those goods, they would routinely query their Recordation Database, find the designated contact for the trademark owner, and provide them with a sample or digital image of the goods. Our members report an average turnaround time of 48 hours or less, from the time that image or sample is received, to respond to CBP's inquiry. During this same period, CBP was permitted to provide the trademark owner with a variety of information related to the shipment, including the date of the importation, the port of entry, the quantity involved, a description of the merchandise, and the country of origin of the merchandise.[4]

Because of the potential for unreasonable delay for legitimate imports bound for the U.S. market, Federal Regulations have required (both in the past, and currently,) prompt action by CBP in making determinations about shipments' suitability for entry. Within five days of the goods' presentation for examination, pursuant to 19 CFR 133.25, CBP is required to either permit their entry, or provide notice to the importer that the goods are being detained for a suspected intellectual property violation. If the officer chooses to detain the goods, such investigation, absent a showing of good cause, is to be concluded within 30 days of the goods' presentation for inspection. Following the issuance of a notice of detention, the importer is permitted to present evidence that the importation of the goods is, in fact, not prohibited or can be remedied by action prior to the release of the goods.[5] During this period of detention, the trademark owner whose rights are implicated can likewise provide evidence to demonstrate that the importation of the goods in question would constitute an IP violation, and that CBP should therefore seize the shipment.

At the conclusion of its investigation, CBP would either release the goods into the country (if the evidence available was insufficient to establish an IP violation), or seize the goods (if the evidence was sufficient to establish a violation). Following a seizure of articles bearing a counterfeit mark, CBP was required to provide to the owner of the mark both the information for which disclosure was required following detention of the goods, as well as the name and address of the manufacturer, the exporter, and the importer.[6]

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[3] 19 CFR 133.25(c) . Similar authority, with respect to imports violating copyrights is set forth in 19 CFR 133.43.

[4] 19 CFR 133.25(b). Disclosure of that same information to the trademark owner is not permissible, but required, by the regulation within 30 days of the issuance of a notice of detention.

[5] See, 19 CFR 133.25(a), 133.22(c), 133.23(d).

[6] 19 CFR 133.21(c).

Several years ago, U.S. Customs and Border Protection ("CBP") announced a change in policy that has served only to frustrate the sort of collaboration that was once the norm. The agency advised its personnel that, even when made for the limited purpose of determining whether goods intended for import were authentic or counterfeit, the disclosure of certain information regarding that shipment was impermissible. The rationale offered by CBP is that such disclosures would constitute a violation of 18 U.S.C. 1905 ("the Trade Secrets Act"), and Customs Regulations concerning the procedures for providing information and samples related to suspected IP violations. CBP points to the issuance of Customs Directive 2310-008A[7] (hereafter, "the Directive"), dated April 7, 2000, as the date of the formal change in policy, however NEMA members continued to enjoy data sharing under historical practices up until approximately 2008, and then it changed.

The Directive includes language in Section 5.2.3, which requires Customs officers to "remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or other identifying marks," prior to the release of any sample to a trademark holder. The basis for the Directive appears to be tied to an overly-formalistic reading of the relevant regulatory code sections related to the sharing of information regarding, and samples of, the suspect shipment. The apparent conflict, as seen by CBP, is between CBP's officers' authority to seek assistance by providing a physical sample (or a digital image of those goods) to a trademark owner from the date the goods are presented for inspection[8], and the timing authorized for the disclosure of other information related to the shipment.[9] CBP has stated that if various markings, distribution codes or the like might reveal to the trademark owner any information that would otherwise only be made available after a determination that the goods should be seized, any such markings must be removed or redacted before providing the samples to the rights-holder. It is worth noting however, that no such language mandating the removal or redaction of information is included in the relevant regulatory code sections.[10] Contrary to CBP's position, Customs regulations provide no basis whatsoever for the proposition that samples of the suspect goods should be provided to the rights-holder in any condition other than that in which they were presented for inspection.

CBP argues, by extension, that because it believes it has no specific authorization to reveal that information relating to the identity of the manufacturer, exporter, or importer, pre-seizure – and on the assumption that bar codes, or other information included on the product or packaging would reveal that information to the trademark owners – that providing unredacted samples or images of the goods would constitute a violation of the Trade Secrets Act. That statute prohibits the disclosure by a federal employee of confidential information to a third party which is not otherwise authorized by law. Violations of the statute are punishable by no more than one year imprisonment, and removal from office or employment.[11]

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[7] See, U.S. Customs & Border Protection - Customs Directive 2310-008A.

[8] *See* 19 CFR 133.25(c).

[9] *Compare* 19 CFR 133.25(b) , permitting the disclosure, from the time of presentation, of the date of importation, the port of entry, a description of the merchandise, the quantity involved, and the country of origin of the merchandise; and 19 CFR 133.21(c), authorizing the disclosure of the above information, as well as the identity of the manufacturer, exporter, and importer, subsequent to a seizure.

[10] *Compare*, Customs Directive 2310-008A, 19 CFR 133.21 and 19 CFR 133.25.

[11] *See*, 18 U.S.C. 1905.

It is clear that the conduct in question – the provision of samples to rights-holders by CBP officers, for the limited purpose of seeking assistance in fulfilling its IP enforcement mission –is not the sort of conduct that Congress intended to criminalize by its enactment of the Trade Secrets Act. Furthermore, such conduct should not be precluded by the Act, *because the bar codes and other such information included on the products and packaging in question are not "trade secrets."* Were the goods to be released into the U.S., those same codes will be plainly visible to the trademark owner, and to any consumer who finds the product on a store shelf. The markings themselves are in no way secret or confidential; the only arguable secret inherent in the markings is the information encoded by the markings. But even if that assertion is accepted, the disclosure of an unredacted sample or image to the trademark owner would not run afoul of the Act. If the suspect goods in question were, in fact, legitimate goods, then the codes and information in question were applied by, and owned by the rights-holder to whom they would be disclosed; and the Trade Secrets Act does not prohibit the disclosure of a trade secret to its owner. If the goods were counterfeit however, any such codes included on the goods will be indecipherable by the trademark owner; they will not reveal any information regarding the identity of the manufacturer, exporter, or importer, but simply reveal the fact that the goods are not genuine.

Though drafted broadly,[12]courts and federal agencies have generally construed the Trade Secrets Act narrowly.[13] CBP's adopted policies though take a very expansive view of the range of conduct that is prohibited by the Act. This expansive view is unwarranted.

In December 2011, Congress addressed this very issue with its enactment of provisions pursuant in the National Defense Authorization Act, authorizing the Secretary of the Treasury to "share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the right holders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section," in cases where CBP suspects the goods of being imported in violation of trademark law.[14] Since the enactment of that law however, CBP continues to refuse to provide such information and unredacted samples, purportedly due to conflicts between that law and existing regulations. Furthermore, because the Defense Authorization provisions are scheduled to sunset upon the enactment of forthcoming Customs Reauthorization legislation, Congressional action is necessary to ensure that CBP will not revert to its current policy in the future. Section 241 will direct the ports to provide to trademark and copyright owners information that appears on the merchandise and its packaging, including unredacted images and product samples, if examination of the merchandise would assist the port in determining if a counterfeiting violation has occurred.

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[12] One court has observed that the Act, "had a bizarre effect of criminalizing and imposing prison terms for almost every communication by government employees of information they obtain in the scope of employment." *See United States v. Wallington*, 889 F. 2d 573, 576 (5th Cir. 1989).

[13] *See, e.g.*, "Business Confidentiality After Chrysler." United States Department of Justice, FOIA Update, Vol. 1, No. 2 (1980), describing the policy of the Department of Justice's Criminal Division to not prosecute government employees for violations of 18 U.S.C. 1905, if the employee was acting in good faith to comply with a request made pursuant to the Freedom of Information Act.

[14] *See*, National Defense Authorization Act for Fiscal Year 2012, Public Law No: 112-81, at Section 818(g).

**FINANCE COMMITTEE QUESTIONS FOR THE RECORD**

**United States Senate**
**Committee on Finance**

**Hearing on**
**S.662, The Trade Facilitation & Trade Enforcement Act of 2013**
**June 11, 2013**

**Questions to Mr. Clark Silcox, General Counsel and Secretary, National Electrical Manufacturers Association, Rosslyn, VA**

**Questions from Chairman Baucus**

**Question 1:**

**The creation of the Office of Trade (OT) consolidated CBP trade policy, program development, and compliance measurement functions into one office. Some of the revenue-related positions, including import specialists and entry specialists, remained under the Office of Field Operations (OFO). What effect has this had on your interactions with CBP, especially in terms of communication and policy implementation? Some have proposed moving these positions from OFO to OT. What are your thoughts on this proposal?**

**Answer:** NEMA believes that OFO needs to maintain control of both the commercial positions because:

- there needs to be unity of command. Some people reporting through one chain and others reporting through another is not effective.
- the Office of Trade (OT) supports the present reporting system through OFO.
- the new Centers for Excellence and Expertise (CEEs) will profit from a strong inter-relationship with the port director (OFO). When the CEE can't get support for something, that relationship means that the port director goes to bat for them. An example of this is the strong relationship that exists in LA between two CBP leaders. That will mean that the CEEs will be more effective on performing their anti-counterfeiting function.
- the goal -- developing a stronger presence within the CBP culture and hierarchy for the OT and commercial staff -- can better be accomplished through more cross-assignment of OFO and Trade staff. Career OFO people need to work for a time at OT and vice versa. This is underway but ideally would be expanded. The culture at CBP -- where only uniformed officers have political clout within the organization - needs to change.

**Question 2:**

**The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is a forum for the Secretaries of the Department of Treasury and the Department**

**of Homeland Security to discuss the commercial operations of U.S. Customs and Border Protection and related DHS functions with the trade community. Do you see benefits in including a representative, either formally or informally, from U.S. Immigration and Customs Enforcement (ICE)? Also, current COAC meetings are open to the public and must follow the rules under the Federal Advisory Committee Act (FACA). What benefits do you see in allowing the COAC to hold closed meetings in order to address specific issues for which disclosure would compromise CBP operations or ICE investigations?**

**Answer:** NEMA does not have a formal representative on the COAC, but has on occasion had discussions with persons, including members, who are familiar with the COAC's structure. The COAC is presently led by CBP, Treasury and DHS. All have representatives at the meeting; however, CBP sets the agenda. Presently, a representative of ICE attends the meetings and sits on the dais on an informal basis. NEMA believes the mandate of COAC should not be diluted by expanding its oversight to ICE. That would require an entire set of private sector people who work with ICE sitting on the COAC. Presently, there is very little expertise on ICE operations. Also, the focus of COAC is on commercial operations -- both facilitation and enforcement. There is very little subject matter that crosses the line into the scope of ICE at present. ICE's presence helps to educate ICE on commercial issues.

As to the question about closed sessions, NEMA understands that is the way the COAC is run now, *de facto*. There is a closed meeting the day before the public session so that confidential discussions can occur.

**Question 3:**

**The President's FY14 budget proposed providing funds for the Department of Homeland Security to conduct a study on the feasibility and cost related to imposing a crossing fee on pedestrians and passenger vehicles along the northern and southern borders. Today, these travelers enjoy free movement across our borders. As a border state, Montana's economy is dependent upon cross-border trade and tourism. Businesses rely on the free flow of people across our northern border to export world class Montana products. And for Montanans, crossing the border is a way of life in order to access essential services, travel to their jobs, to shop and dine, to attend church, and to visit family and friends. I'm concerned about the impact this would have for Montanans. In your opinion, what would be the impact of imposing such a fee in other states or on your businesses?**

**Answer:** NEMA has no information at this time in response to this question.

**Question 4:**

**The President's FY14 budget also included a proposal to increase certain customs user fees. As you know, customs user fees are paid by the trade community in return for customs services, such as the inspection and processing of imported merchandise. The budget proposes a $2 increase to the fee on commercial trucks, commercial aircraft, commercial vessel passenger, and international mail subject to duties, COBRA user fees,**

**and a proportionate increase for all other COBRA user fees. This funding from increased fees would fund an additional 1,877 Customs and Border Protection Officers, which would help to address long wait times and speed processing of goods across our borders. In fact, wait times at most U.S. ports of entry would be reduced by 30 minutes. What are your views on the proposal to increase these customs user fees? How can the trade community be a partner in ensuring CBP has sufficient funding to facilitate the movement of goods across our borders?**

**Answer:** NEMA has no information at this time in response to this question.

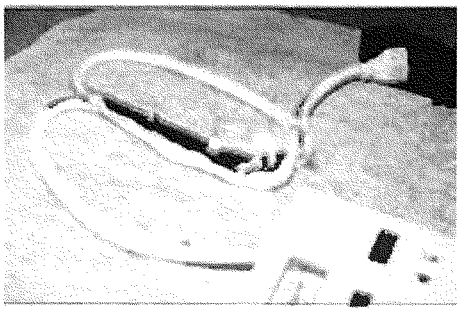
**Questions from Senator Hatch**

**Question 1:**

**You make an important point in your testimony: protection of intellectual property rights is not just about keeping out low priced counterfeit products, it is about consumer safety.**

**Can you provide me with an example of how a counterfeit product has impacted consumer safety in the past?**

**Answer:** As I indicated in my oral testimony, a substantial number of counterfeit electrical products are sub-standard. In the United States electrical products sector, a significant number of products are "listed" or evaluated and certified by third-party testing organizations to conformity with safety standards. This involves a significant investment on the part of the domestic electrical manufacturing industry, an investment and expense that is typically avoided by firms producing counterfeit versions of their products. In some case, the counterfeit mark on the product is the certification mark of the third party testing organization who has never evaluated the counterfeit product. When these products are evaluated, they are found to fail in unsafe ways that risks damage or injury to property or person. Here is an example where a cord caught fire in a manner of minutes after it was connected to an electrical outlet:

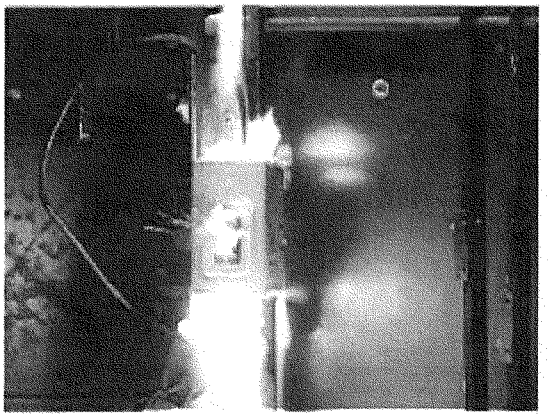


The most tragic example of an unsafe counterfeit product that I am familiar with actually occurred outside of the United States when a young British boy was killed by a

counterfeit electrical adaptor while on vacation in Thailand. The details of this event are described in a newspaper article and the inquest report, which I attach to my responses to these written questions.

In my oral testimony I also mentioned the example of a NEMA member company that learned it had a counterfeiting problem when it was sued in a product liability lawsuit here in the United States. I attach a report from the company.

Finally, a few years ago, there was a seizure of counterfeit circuit breakers at San Francisco. A sample of the counterfeit circuit breaker was provided to Underwriters Laboratories for evaluation, and applying a simple standard short circuit test, the following photo illustrates the catastrophic event that occurred during the test. Had this event occurred in someone's home when people were present near the panelboard, very serious injury could have occurred.



**Question 2:**

**S. 662 authorizes and directs Customs and Border Protection to share information with Intellectual Property Rights holders to help quickly ascertain whether a suspect good crossing the U.S. border violates a recorded copyright or trademark.**

**Please tell us whether your association sees this as something that will serve to protect U.S. intellectual property rights at the border?**

**Answer:** As I indicated in my oral testimony, NEMA believes that IPR holders are in the best position to respond quickly to CBP inquiries about suspected counterfeit products. We understand the CBP recognizes this as well. In the past, our member companies have been able to respond quickly to CBP inquiries about suspect counterfeit products and affirm that the products are either genuine or counterfeit. Currently, US Treasury policy requires CBP to provide the importer a 7-day window to first respond to such inquiries. In our experience, the importers of counterfeit electrical products are the least qualified to make this assessment and sometimes do not even respond, and thus both trade facilitation and intellectual property enforcement is hindered by this policy. Given that CBP has to make a decision to seize within 30-days, this 7-day delay in reaching out to the most knowledgeable party who can assist CBP in determining whether the product is genuine or not prejudices officers at the port in the timely performance of their duties. We understand that it is the intent of S.622 to allow CBP to promptly share information with IPR holders when they suspect that imported merchandise is counterfeit without impediment, and we support that policy and intent. As I indicated in my oral testimony, we believe this is something that will not only serve to protect US IPR holders at the border, but in the case of counterfeit electrical products it will protect the safety and health of American consumers. The Committee may want to emphasize in S.622 that CBP shall share the specified information with IPR holders immediately, promptly, without delay or some similar language. Except in the case where there is a law enforcement reason not to share with the importer, we would not object to CBP making whatever inquiry it believes it needs to make of importers simultaneously. The goal is to allow CBP officers to do their job in the most timely way to both facilitate trade and protect intellectual property rights.

# FAKE GAMEBOY CHARGER KILLS LAD, 7, ON HOLIDAY

**A BOY of seven was killed by a fake Gameboy charger he bought for £9 on holiday in Thailand.**

Tragic Connor O'Keeffe was found electrocuted on the floor of his room.

He was clutching the lead from the dodgy charger. Thai police said Connor died because he was wet from swimming when he touched it. But tests revealed "serious defects" in the charger, an inquest heard yesterday.

By JAMES CLENCH

Two wires in the circuit were just 1mm apart instead of the regulation 4.6mm. It made the lead to the games machine "live".

Connor, of Walworth, South East London, bought the gadget while in Phuket with his family after he forgot to take his own.

His mother Kathleen, 45, wept as she told the inquest in Southwark how Connor's aunt found him lifeless in his room.

She said: "He was holding the wires. She pulled them off and got a shock as well." Coroner John Sampson said the charger looked authentic, which "masked its inherent danger". And he said evidence showed Connor dried and changed after swimming.

Verdict: Accidental death.

Nintendo said they had taken 110 actions against counterfeiters and seized 160,000 products in Thailand. *j.clench@the-sun.co.uk*

Connor . . found on floor

**In the Southwark Coroners Court**

**In the Matter of an Inquest touching the death of Connor Dean O'Keeffe**

# VERDICT

**Box 3**

Connor was on holiday in Phuket Province at the Sunset Beach Resort Hotel Pa Tong with his family at the end of 2006. They were enjoying a holiday in which a lot of activities were taking place but in the preparations for the holiday, the charger unit for Connors Nintendo Gameboy had been forgotten. As a result his step father bought a charger unit which appeared to be an official product from a local store. It was not a licit product but a counterfeit one.

On the 30th December 2006 following a day quad biking the family returned home at about 4 PM and Connor and his mother and other family members ordered some food from the hotel. Unusually Connor asked for more and his mother ordered some additional food for him which was delivered in only a few minutes. When she called Connor there was no reply and she went to look for him wondering if he had gone into the pool which he had not. She heard a shout from his step aunt Maureen Hopkins and discovered Connor unresponsive on the floor of the hotel room (2101). She felt he was dead and picked him up to lay him on the bed. Maureen told her that when she found Connor he had been attached to the flex of the charger unit, the Gameboy had not been connected and when she had pulled the unit from him she got a shock herself.

Assistance was given initially by other people at the hotel and ultimately by Emergency Services and resuscitation was continued sadly without success for some time following his arrival at the Hospital at Pa Tong where he was certified dead at about 8:00 PM that day.

The charging unit was examined at the laboratories of LGA in Nurnberg Germany who reported on the 24th May 2007 that the unit was not licit and had a serious defect making it likely that it could be easily live and capable of delivering a fatal shock. The unit would not have complied with EU safety standards and was a hazard.

In the initial police report there was some confusion over whether Connor had attempted to plug in the charger whilst wet from swimming. On the evidence although Connor had been swimming on his return from the days quad biking he was dry and changed into dry clothes before he ate.

**Box 4**

Accidental Death

11th October 2007

John Sampson
H M Coroner for the Inner South District of Greater London

## Annex A of the ERCA-Safety Alert 1/2007 (informative):

**Please note that this letter is only attached to inform about the message provided by PRCA.**

***1/2007 Strandvise® connectors***

*This message was send by the PRCA. Please reconsider the utilization of strandvises produced by MacLean Power Systems since the manufacturer does not allow any application on ropes courses.*

*Ropes Course Advisory - Strandvise*

*Recently a Qualified Ropes Challenge Course Professional attempted to purchase strandvise devices from a well known challenge course equipment supplier. They were informed by the supplier that MacLean Power Systems had ordered them not to sell these devices for use on ropes courses anymore. This in conjunction with mandated requirements associated with the on-going ANSI Industry Standard resulted in the PRCA immediately contacting MacLean Power Equipment to determine the problem.*

*MacLean Power Systems had recently been named in a personal injury/product liability suit involving the use of a counterfeit strandvise on a ropes course. Discovering that their products are still in use, the MacLean - Fogg Company was highly disturbed as they feel that at the time of their November 27, 2000 Application Advisory they had adequately and clearly indicated that their product was not designed nor intended for ropes challenge course usage in any application with or without back up.*

*The PRCA has attempted to negotiate a moratorium on MacLean's Advisory to allow courses time to effect replacement of these devices without result. MacLean Power Systems has notified its' distributors again that they are not to sell this product for ropes challenge course installations and has requested that the PRCA notify the challenge course industry not to "utilize Strandvise® connectors in any ropes challenge course design, construction or installation." For further information, including copies of the MacLean Power Systems advisory and letter, liability concerns, etc. visit the Professional Ropes Course Association's web site at www.prcainfo.org.*

# COMMUNICATIONS

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**WRITTEN STATEMENT OF THE**

**AMERICAN WIRE PRODUCERS ASSOCIATION (AWPA)**

**SENATE COMMITTEE ON FINANCE**

**HEARING on the "Customs Reauthorization Bill" (S. 662)**

**May 22, 2013**

**American Wire Producers Association**
**801 North Fairfax Street**
**Suite 211**
**Alexandria, VA 22314**
**703-299-4434**
**www.awpa.org**

## INTRODUCTION

The American Wire Producers Association (AWPA) appreciates the opportunity to submit this written statement in connection with the Committee's hearing on the "Trade Facilitation and Trade Enforcement Reauthorization Act of 2013" bill (S. 662). Specifically, our members support the inclusion of the "Enforcing Orders and Reducing Customs Evasion Act of 2012" (ENFORCE, as approved by the Finance Committee in July 2012) in this bill. We remain firm in our view that the U.S. Government needs to be more proactive in ensuring that foreign producers and exporters cease the illegal evasion of antidumping and countervailing duties by transshipping goods through third countries and illegally declaring the goods as a product of that third country; falsifying documents to misrepresent country of origin or misclassify the goods; and other "creative" means of evading the duties imposed on the goods by the U.S. Government.

American wire and wire products manufacturers have been seriously and adversely impacted by these trade-distorting policies, making it almost impossible for our industry to compete with unfairly-traded imports. The ENFORCE Act's provisions included in S. 662 will increase the transparency, responsiveness and effectiveness of Customs and Border Protection's (CBP) enforcement activities and, thus, greatly improve the effectiveness of our trade laws and the relief that they are intended to provide to U.S. industries and American workers injured by unfairly-traded imports.

## BACKGROUND

The AWPA is a trade association which represents companies that collectively produce more than 80% of all carbon, alloy and stainless steel wire and wire products in the United States. The 80 member companies employ more than 26,000 workers in over 165 plants and facilities located in 33 states and 110 Congressional Districts.

American wire and wire products manufacturers are entrepreneurial and work hard to maintain their competitive market position despite heavy import pressure on their products. They pride themselves on their high productivity and constant reinvestment in the latest technology and equipment, keeping the American wire industry one of the most globally competitive segments of the steel industry.

## CIRCUMVENTION AND EVASION OF DUTIES

Domestic producers and industries may petition the U.S. Commerce Department and the U.S. International Trade Commission (ITC) to investigate imports that are believed to be sold at less than fair value or "dumped" in antidumping duty (AD) investigations or which benefit from improper government subsidies in countervailing duty (CVD) investigations. AD/CVD investigations and orders are the primary means by which U.S. industries combat unfairly-traded imports. However, these remedies are only effective to the extent the orders are enforced and attempts to illegally evade the orders are stopped.

*The Situation Today:*
Foreign exporters and U.S. importers are increasingly using various schemes to evade payment of AD/CVD duties when goods are imported. These often involve transshipping products through a third country, sometimes by repacking or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports, claiming that they are a different

product or that they are excluded from the scope of the case. Other common tactics to avoid AD/CVD duties include subjecting the products to minor alterations or sending parts to a third country where insignificant completion or assembly operations are performed. Such products are then improperly identified as a product of the third country in blatant circumvention of the order.

These actions not only violate U.S. law and deprive American companies of the relief which the AD/CVD laws are intended to provide, **they also result in hundreds of millions of dollars that are lost annually to the U.S. Treasury in the form of uncollected duties from wire and wire products alone**. In addition, there are a host of other industries being impacted, including glycine, honey, diamond saw blades and tissue paper products. In these lean economic times, failure to collect these duties is unconscionable and unacceptable.

*AWPA Position:*
A number of AWPA member companies have successfully obtained multiple AD and CVD orders against imported wire products that were found to be sold at dumped prices or unfairly subsidized by foreign governments. These companies have experienced firsthand the effects of the illegal evasion schemes used by foreign producers and U.S. importers to evade the payment of lawfully-owed duties. These illegal schemes have caused further injury to these companies and caused the loss of more American jobs.

We fully support the inclusion of the ENFORCE Act in the Customs Reauthorization bill. This legislation establishes the process outlined below for CBP to investigate claims that AD/CVD orders are being evaded:

- Domestic producers can formally petition CBP to investigate possible evasion.

- Once an investigation is initiated, CBP must make both a preliminary and a final determination as to whether an importer is engaged in evasion.

  To make a determination of evasion, CBP is directed to focus on whether the correct amount of duty is being collected on the merchandise, rather than on an importer's intent to engage in evasion.

  CBP is authorized, however, to use its full authority and enforcement tools, including collaboration with Immigration and Customs Enforcement (ICE) to pursue additional criminal charges when an importer's intent is involved.

- CBP is required to act and publicly report on its findings within set time frames.

- The bill prescribes enforcement and remedial measures for each determination, and specifically instructs CBP to use all its existing tools to enforce the U.S. customs and trade remedy laws.

The legislation does NOT give CBP the authority to expand the existing scope of covered merchandise or expand CBP's existing authority to investigate goods subject to AD/CVD orders.

*One Requested Revision:*
AWPA would support a slight change to the language as written. In Section 302, the amendment of Sec. 517 (b)(2)(A), we believe that all domestic interested parties should be allowed to file allegations of evasion, including manufacturers, producers, wholesalers, certified or recognized unions or group of workers, trade or business associations, and/or U.S. importers. Providing all domestic interested parties the ability to file allegations of duty evasion would allow all affected parties to offer their own perspectives and knowledge of the markets and industries in which they operate. We believe this change would improve the overall bill and make it more effective.

We look forward to working with the Members and staff of the Finance Committee to move this critical bill forward with the inclusion of the ENFORCE Act language. In these challenging economic times, we are not asking for special treatment, just the opportunity to compete fairly with our international trading partners.

Sincerely,

Janet Kopenhaver
Director of Government Relations
American Wire Producers Association (AWPA)

**United States Senate Committee on Finance**
**Hearing on S.662, the Trade Facilitation and Trade Enforcement Act of 2013**
**May 22, 2013**

The Coalition to Enforce Antidumping and Countervailing Duty Orders applauds the inclusion of the Enforcing Orders and Reducing Customs Evasion Act of 2012 (as approved by the Finance Committee in July 2012) in Section 3 of S.662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

The Coalition represents American manufacturers in more than a dozen industries – including garment hangers, innersprings, steel nails, tissue and crepe paper products, glycine, threaded rod, carbon-quality steel line pipe, kitchen appliance shelving racks, PC strand, and diamond sawblades – with operations and workers across the United States. Each of these industries has invested enormous amounts of time, internal resources and money into the arduous process of obtaining relief from unfairly-traded imports and the injury they cause to these industries and their workers. Having done so, however, they have been confronted with pervasive efforts to undermine this relief by illegal evasion of antidumping and countervailing duties.

We continue to advocate administrative and legislative solutions to improve efforts to combat illegal evasion of antidumping and countervailing duty orders. The ENFORCE Act's provisions will increase transparency, responsiveness, and the effectiveness of Customs and Border Protection's enforcement activities – significantly improving the effectiveness of our trade laws and the relief that they are intended to provide to U.S. industries and workers injured by unfairly-traded imports.

In considering the final form these provisions should take, however, we would support action by the Committee to revise the provision identifying the parties who can submit allegations of evasion. Consistent with the statutory provisions concerning standing to file antidumping and countervailing duty petitions, found in 19 U.S.C. 1677(9), we believe that the most effective approach to combatting duty evasion would be allow all domestic interested parties, including manufacturers, producers, wholesalers, certified or recognized unions or group of workers, trade or business associations, and/or U.S. importers, to file allegations of duty evasion.

Allowing all domestic interested parties to file allegations of duty evasion would allow these varied types of interested parties to draw upon their unique perspectives and knowledge of the markets and industries in which they operate. We believe that such a change to the legislation would serve to make it more effective, and would be to the benefit of all domestic stakeholders.

We fully support the Committee's commitment to preparing the most effective legislation to address the critical issue of duty evasion. The Coalition and our members stand ready to assist the Committee in any way we can.

Thank you for consideration of these comments. If you have any questions concerning the above, or if we can provide any additional information, please do not hesitate to contact us.

Respectfully submitted,

**The Coalition to Enforce Antidumping & Countervailing Duty Orders**

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Carthage, MO 64836
Phone: 800-888-4569 x. 2539
E-mail: coalition@adcvd-enforce.com

# COMMITTEE TO SUPPORT U.S. TRADE LAWS

1776 K Street, NW / Washington, DC 20006 / (202) 719-7000

Alan H. Price, President
The Committee to Support U.S. Trade Laws
(202) 719-7000


May 20, 2013

Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

**Re: Committee Hearing, Wednesday, May 22, 2013: S. 662, the Trade Facilitation and Trade Enforcement Act of 2013**

Dear Members of the Senate Finance Committee:

On behalf of the Committee to Support U.S. Trade Laws (CSUSTL), I write to you in regard to the provisions of the Enforcing Orders and Reducing Customs Evasion Act of 2012 ("ENFORCE act"), passed out of the Senate Finance Committee in July 2012, as included in Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, or S.662.

CSUSTL's members, which span all major industrial sectors, including manufacturing, technology, agriculture, and mining (companies, associations and workers representatives) are continually harmed by unscrupulous foreign companies and U.S. importers that increasingly devise schemes to avoid paying antidumping (AD) and countervailing duty (CVD) fees rightfully owed on certain products unfairly sold into the United States. These bad actors evade the assessment of AD/CVD duties through transshipment, misclassification, misreporting, negligence, or outright falsification of import documents.

Importantly, provisions in the Senate ENFORCE act allow injured U.S. parties to submit allegations of evasion of the AD/CVD duties to U.S. Customs and Border Protection (CBP). Currently, there is no procedure or requirement under statute that requires CBP to take any steps or actions in response to evidence of evasion. However, while the Senate ENFORCE act provisions do provide a new and helpful enforcement procedure, they do not allow all domestic "interested parties," - as defined in the AD/CVD laws - to submit allegations of evasion to CBP. These domestic interested parties all have legal standing to file AD/CVD cases as a result of unfair competition, so their absence from the ENFORCE act provisions is highly problematic both in terms of legal policy and practical application.

In terms of legal policy, it makes no sense to allow a party the right to file AD and CVD cases, but then not avail them the right to petition CBP when their case(s) are being evaded. In practical terms this debases enforcement efforts and the legitimate rights of parties who have been found to be materially injured as a result of dumped and subsidized imports and then further injured as a result of evasion. For example, excluded from the provisions are trade associations who have filed AD/CVD petitions as an industry in order to fulfill the requisite percentage of U.S. production needed under the AD/CVD laws and also, in some instances, in order to avoid

improper and targeted retaliatory measures. As it stands, under the current ENFORCE act provisions, these organizations and other domestic interested parties do not have the right to petition CBP where they have direct knowledge of the evasion of their AD/CVD orders.

Thus, CSUSTL members strongly urge that all domestic "interested parties" as defined under 19 U.S.C. Section 1677(9)(C) through (F), be included in a final bill and allowed to submit allegations of evasion to CBP. Passage of ENFORCE act provisions that include this change is critically important to the efficacy of its enforcement provisions and members of CSUSTL.

We look forward to continuing to work with you to support comprehensive legislation in the House and Senate to secure enactment into law of procedures to stop the widespread evasion of unfair trade orders.

Sincerely,

Alan Price
President
Committee to Support U.S. Trade Laws

International Trademark Association

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STATEMENT FOR THE RECORD

Senate Committee on Finance

hearing on

"S.662, The Trade Facilitation and Trade Enforcement Act of 2013"

May 22, 2013

Alan Drewsen
Executive Director
International Trademark Association

International Trademark Association

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May 29, 2013

The Honorable Max Baucus
Chairman
Senate Finance Committee
Washington, D.C. 20510

The Honorable Orrin Hatch
Ranking Member
Senate Finance Committee
Washington, D.C. 20510

Dear Chairman Baucus and Ranking Member Hatch:

The International Trademark Association appreciates your leadership in moving forward with S. 662, the Trade Facilitation and Enforcement Act of 2013. In particular, we are pleased with the inclusion of Section 241 that re-establishes the ability of U.S. Customs and Border Protection (CBP) to share information with rights holders in order to identify counterfeit and pirated merchandise, and then prevent it from entering the commerce of the United States.

Prior to 2008, CBP routinely sought the expertise of rights holders as they worked to interdict the mounting and often overwhelming volume of illegal merchandise crossing our borders. While the customs officers are well-trained in enforcement techniques, the trademark or copyright owner is in the best position to identify counterfeit or pirated products. In fact, CBP found that with the increased sophistication of counterfeiting and piracy, the guidance of the rights holders is often the only way to differentiate real merchandise from fake. In 2008, however, customs officers were told to remove or obliterate much of the identifying information transmitted to the rights holder because to do otherwise would violate the Trade Secrets Act.

This interpretation has now been superseded by Section 818(g) of the National Defense Authorization Act (NDAA) of 2012 (Public Law 112-81), although CBP continues through regulation to restrict CBP officers despite the NDAA provision. Also, the NDAA provision will sunset upon passage of this legislation.

S.662 is therefore critical to ensure that CBP officers can utilize the expertise of rights holders to identify counterfeit and pirated goods. Section 241 makes it clear that the Trade Secrets Act should not be an obstacle to law enforcement officers collaborating with intellectual property owners in order to detect illegal products before they enter the country. Given our experience with CBP's implementation of the NDAA, however, we would like to continue to confer with your staffs in order to ensure that the language effectively accomplishes this purpose.

INTA thanks you for introducing S.662. We appreciate your strong and continued commitment to enforcement of our intellectual property laws. We would also appreciate your entering this letter in the hearing record for the legislation.

Sincerely,

Alan Drewsen
Executive Director

NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

1200 18TH ST., NW, SUITE 901 WASHINGTON, DC 20036
PHONE 202/466-0222 FAX 202/466-0226

**Statement for the Record of the**
**Senate Finance Committee**
**Hearing on**
**"S. 662, the Trade Facilitation and Enforcement Act of 2013"**

**May 22, 2013**

The National Customs Brokers and Forwarders Association (NCBFAA) appreciates this opportunity to comment on S. 662, "The Trade Facilitation and Trade Enforcement Reauthorization of 2013." We are encouraged by the committee's strong commitment to passage of a customs authorization bill.

As the association representing licensed customs brokers, NCBFAA has long worked with the committee to provide our unique perspective on customs-related issues. We again stand ready to help in this effort to streamline CBP processes, facilitate trade and improve enforcement.

**Organizational Changes at CBP (Section 102):** NCBFAA applauds efforts by the committee to ensure that, through structural refinements, CBP will be as responsive to commercial operations as it is to its other missions. This recognizes that it is important to perpetuate present efforts within CBP to acknowledge the importance of trade facilitation.

One example of how the committee has approached this is by creating a second deputy commissioner with responsibility for CBP's trade function. As we have said publicly, such a position would be best occupied by a member of the Senior Executive Service rather than by a political appointee. NCBFAA has valued its relationships with Deputy Commissioners because they bring the experience of career-long, diverse positions within the agency. As a partner to the Commissioner, who is a presidential appointee, a career CBP Deputy Commissioner provides a valuable balance to decision-making at the top of the agency. Thus, we support the way the Finance Committee has approached this issue.

**Authorization of ACE (Section 206):** The bill reauthorizes the Automated Commercial Environment computer system, providing a more realistic budget for completion of ACE. NCBFAA appreciates the Committee's continuing commitment to ACE and your rigorous and responsible oversight of the program.

The core functions of ACE – that is, "end to end electronic processing of customs entries" – must be completed. CBP has committed to doing this in a 3-year time frame. However, this is premised on the availability of sufficient budgetary resources. It is imperative that ACE funds not be diverted or sequestered and there be recognition that ACE is fundamental to CBP's cargo facilitation and security missions.

We ask the committee to stipulate – both formally and informally – to the Department and to CBP that it must meet its present timetable and provide the necessary resources for its completion.

**The Centers for Excellence and Expertise (Section 203):** Section 203 codifies the Centers for Excellence and Expertise (CEEs), broadly defining their objectives.

The CEEs show great promise as a resource for the trade community, expediting CBP's ability to process entries with greater uniformity and consistency. Yet, the CEEs are new and their capabilities are just emerging. We are therefore pleased that the committee has chosen to provide broad parameters rather than defining a detailed structure. This approach allows greater flexibility for the CEEs to evolve over time, as CBP and its trade partners work closely and innovatively to see what works best.

As the process continues, however, it will be especially important for the Centers to serve small and medium-sized businesses, not just large importers. This can be achieved, to a great extent, by involvement of customs brokers in the operation of the CEEs. Customs brokers are the pathway for the vast majority of importers to reap the benefits envisioned for the CEEs. We encourage the Committee to include this objective in the bill.

Although S. 662 does not specify where the CEEs should be placed within CBP's organizational structure, NCBFAA wishes to emphasize our position that the CEEs remain under the umbrella of the Office of Field Operations (OFO). We do not support a realignment of the CEEs to the Office of International Trade.

**International Trade Data System (ITDS) (Section 207):** Section 207 reinforces the ITDS by requiring the Secretary to work with the head of each agency participating in the ITDS to develop and maintain the necessary information technology infrastructure. $25 million per year from 2014 through 2018 is authorized for this purpose.

It is essential for ITDS to become the single-window interface to ACE for other government agencies with import or export data requirements. Not only will ITDS reduce costs by eliminating redundant data submission requirements, it will give agencies more accurate and complete trade data at an early point, increasing their ability to detect risky cargo and to expedite cargo processing. Great strides have been made in coordinating ITDS among the agencies, yet progress continues to be hampered by competing priorities and funding limitations. NCBFAA therefore appreciates the Committee's strong support for ITDS.

**Importer of Record Numbers (Section 215):** The legislation requires CBP to establish an importer of record program to assign and maintain importer of record numbers.

NCBFAA recognizes that the current numbering system for identifying importers of record, as well as other parties to the transaction, is fraught with problems. There are significant concerns about the uniqueness of each number. For example, CBP uses the IRS number as an identifier for an importer of record. However, that one importer of record may have 50 different locations. The importer of record or his broker distinguishes these 50 different

locations by adding a suffix at the end of the IRS number. Because anyone can assign the suffix, duplicate numbers for the same importer location are very common, as are multiple importers having the same number. Everyone agrees CBP must have better control over the numbers assigned to each importer of record.

Yet, repairing or redesigning this system is a complex undertaking. How does CBP avoid creating a new system that leads to the very same problems? How do you require the reassignment of millions of numbers without disrupting trade? This is not a mechanical task that CBP can design and implement in six months.

There is no requirement in the bill to work with other agencies in coordinating the numbering system. So, even as we move to a "single window" to the government under ITDS, an importer could have a different number with each of the 47 agencies participating in ITDS. There is also no requirement to work with the private sector to ensure that the system works from a commercial perspective.

We strongly urge the committee to task CBP with the following: 1) Analyze the shortcomings of the current system; 2) Conduct a critical review not only of the Importer of Record numbering system, but also the Manufacturer's Identification (MID) numbering system (which is a source of great confusion); 3) Engage the trade in developing a solution through consensus; 4) Consult with other agencies to ensure that the import numbering systems of each agency will be compatible; 5) Inform Congress as a solution is developed; and 6) Employ the rulemaking process.

This section of S. 662 also requires CBP to develop "criteria that importers must meet in order to obtain an importer of record number." Although we understand the committee's concern with "sham" corporations formed to skirt the nation's trade laws, we also think it is a dangerous step to create restrictive hurdles before allowing companies to participate in global trade. New companies enter the market every day. This is a normal, welcome occurrence in a healthy economy. It would be very unfortunate if the "criteria" for importers unduly restricts these new entities from participating in international trade.

**Drawback (Section 402):** NCBFAA supports the reform concepts incorporated in S.662, including substitution at the 8-digit tariff level and other simplification provisions. Due to the complex nature of drawback, we think that numerous technical changes are required in order to ensure that these concepts are implemented correctly. We are committed to working with the Committee to put them in place.

**Commercial Risk Assessment Targeting (Section 211)**: In 2002, when the requirements for providing advance trade data on the Importer Security Filing (ISF) were established, the advance trade data was to be used for the sole and express purpose of ensuring cargo safety and security. In effect, a firewall was erected to prevent CBP from using the data for commercial enforcement purposes and to shield ISF filers from commercial penalties for errors in the security data provided in advance. Now, Section 211 of the bill amends current law to allow CBP to use the advance trade data for "commercial enforcement purposes." We believe that advance data from the ISF should only be available for

**targeting** purposes designed to identify high risk shipments that may violate our laws relating to health, safety and security. Once targeted, goods would then be subject to inspection and appropriate customs processes. We do not believe that the data should be used for other customs enforcement purposes, most particularly those resulting in fines and penalties imposed upon the party filing the ISF (with the exception of instances of fraud).

**Customs Operations Advisory Committee (Section 205):** The Customs Operations Advisory Committee (COAC) is codified and its role expanded by this legislation. We note with concern that the scope of COAC is broadened to include matters relating to Immigration and Customs Enforcement (ICE) investigations. COAC has always been focused on commercial facilitation. To dilute its attention by widening its mandate to include the enforcement-driven ICE will only reduce its effectiveness as a strong voice for commercial operations.

At the same time, we also question the name change from "Commercial Operations" to "Customs Operations." Given the growing importance of other agencies in the import process and their participation in ITDS, use of the word "Customs" may draw a line that precludes effective solutions for customs commercial operations.

**Consultation with the Private Sector (Section 101):** NCBFAA appreciates that the committee directs CBP to consult with the private sector in carrying out its duties. We urge the committee, however, to make it clear that the COAC and Trade Support Network (TSN) should not be the exclusive path for discourse and resolution. Issues must be discussed openly and fully with trade community representatives in order to resolve specific issues and initiatives.

**Customs Broker Offenses (Section 403):** The legislation adds "has been convicted of committing or conspiring to commit an act of terrorism" as an offense subject to disciplinary proceedings, including removal of a customs broker license. Although there has been an absence of evidence to substantiate the need for this section, NCBFAA can nonetheless support this change. At a minimum, the requirement for a "conviction" assures due process.

**Increase in Informal Entry and *De Minimis* Thresholds (Section 410):** The legislation raises the informal entry threshold from $1,000 to $2,500 and the *de minimis* threshold from $200 to $800. While we will not stand in the way of advocates for reasonable increases of these limits, we must observe that increases beyond adjustments for inflation run counter to trade enforcement objectives provided elsewhere in this same bill. Already, unscrupulous importers squeeze themselves under the current limits to bypass CBP scrutiny. This is found particularly in airfreight and some truck freight, where the informal entry is used to bring in fake drugs or other products that violate intellectual property or anti-dumping laws. These proposed increases will only compound this all-too-frequent problem. Also, NCBFAA questions whether the revenue impact of this increase – which we believe is substantial – has been fully considered.

**Enforcement of Antidumping/Countervailing Duties (Section 302):** NCBFAA believes a better approach is to design and implement a prospective system to assess antidumping and countervailing duties. This would better promote fair trade by informing the marketplace of fairly traded prices at the time purchasing decisions are made. A prospective system would also enable CBP to more effectively collect duties owed and be less resource intensive for both importers and the government, thereby freeing up CBP resources to better target bad actors who purposefully seek to evade proper duties owed.

**Voluntary Reliquidation by CBP** (No Section): We ask the committee to take this opportunity to correct an oversight to a provision in the Miscellaneous Trade and Technical Corrections Act of 2004. Language is needed to ensure that the triggering event starting the time for administrative review of liquidation by CBP is the date of liquidation, rather than the date *the notice* of liquidation is issued.

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Again, we thank you for this opportunity and look forward to working with you on this legislation in the coming months.

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