

Before the

Committee on Finance

United States Senate

Statement of

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Chairman Baucus, Ranking Member Grassley and Honored Members of the Senate Finance Committee:

I am pleased to appear before you today. My name is Jerry Cook. I am Vice President, Government and Trade Relations for Hanesbrands with responsibility for our Customs and Trade operations. I am a licensed Customs broker. Hanesbrands is a global consumer goods company with more than a century of history and a portfolio of leading apparel essentials including T-shirts, bras, panties, men's underwear, kids' underwear, socks, hosiery, casualwear and activewear. We operate under many of the special trade programs and FTAs this committee so successfully developed and passed.

We value our partnership with US Customs and Border Protection and view the relationship as an integral collaborator in our business success.

We are a charter member of CTPAT (Customs and Trade Partnership Against Terrorism);

We are an early member of the BASC (Business Alliance for Secure Commerce);

We were involved in the pilot program of Operation Safe Commerce;

We are one of the first ACE Accounts;

We are one of the early Customs Accounts;

We are a filer under PMS;

I am a member of the Trade Support Network and current Chair of the USCIB Customs Committee along with active membership in key trade groups such as ECAT, USCIB, AAEL, AAFA, NCTO, Cotton Council and other North Carolina state organizations and a former member of COAC.

In 2006, Hanesbrands was spun off from Sara Lee Corporation. CBP played a very supportive role in their ability to accumulate our account history/data and successfully re-deploy the associated account data for a seamless start-up. It is just one of the commercial successes we have experienced with the partnership with CBP.

Seven years ago I was representing Sara Lee Branded Apparel and was sitting in this same chair, here before you, testifying on a very similar subject. On June 26, 2002, we were discussing the transfer of U.S. Customs Service to the Homeland Security Department. On that occasion, I emphasized the importance of keeping enforcement and commercial operations together. As I said in 2002 and still believe it today, “the process of enforcing trade laws and advancing a hybrid solution that both informs the trade community of the respective programs and seeks joint ownership in critical areas” is essential. In other words, Customs and the trade community have worked, and are continuing to work together to ensure compliance and improve enforcement.

This partnership is critical to Customs security and commercial targeting operations, allowing them to focus on higher-risk goods and shipments and then to rapidly release/facilitate low-risk trade. And it provides a transparent and predictable environment in which business can operate smoothly and efficiently. As I will describe later, this interaction can be improved upon, but it is essential that for whatever policy changes are contemplated, the integrity of the enforcement and commercial nexus remain intact. I believe the leadership at Customs recognizes the importance of this interaction and has sought policies and practices to support that connection. Over the past years, Customs has been largely successful in creating a culture of knowledge, discipline and professionalism. My remarks today should in no way be construed as a call for a wholesale reorganization of the agency. Rather, they should be understood as appreciating that culture of partnership with the trade and my comments are intended to be recommendations for helping to refine, realign and improve the current partnership.

In my presentation seven years ago, I also stressed the importance of accelerating the implementation of the Automated Commercial Environment (ACE) and the need to provide for trade industry input to senior levels of the Customs Service. As I enumerated before, input

from the trade community in fora such as the Trade Support Network (TSN), the Customs Operations Advisory Committee (COAC) and through programs such as BASC and C-TPAT have greatly improved the effectiveness of enforcement operations and the efficiency of commercial transactions. That said, in both the areas of ACE implementation and industry input, much more work is still needed. In fact, in some areas, we have seen a degradation of the relationship between government and industry, which has led to a worsening of the trade environment. This is certainly the case with the expectation of ACE and its operational support to both the trade and government.

As you know, the Mission statement for Customs and Border Protection is:

“We are the guardians of our nation’s borders.

We are America’s frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our Nation’s economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.”

I would purport that CBP and Congress through their focus on funding and legislation over the past 7 years have greatly enhanced CBPs ability to achieve successes in the first four statements. However, I believe the one that we need to focus on and bolster is “fostering our Nation’s economic security through lawful international trade”. During these economic difficulties companies need to be able to rely on predictable costs and processing. Every day merchandise is not on store shelves means millions of dollars in lost potential revenue to a company. We applaud your efforts to refocus CBP on its mission to facilitate trade and provide the following comments.

Renew Commitment to the Automated Commercial Environment (ACE)

In 1993, Congress passed and enacted the Customs Modernization Act. It enumerated 30 key provisions that were to be incorporated in ACE. It has now been more than a decade since this Congressional mandate was established. While targeted implementations have been developed and large expenditures have been made on ACE implementation; nevertheless, only four of the 30 provisions that were originally enumerated have been fully delivered in ACE. The following statement is made in every CBP Report to Congress on ACE:

“The Customs Modernization Act (Mod Act) outlined requirements for automation and emphasized electronic trade processing. The delivery of ACE capabilities will fulfill the Mod Act by enabling trade community users and CBP officers to electronically submit and retrieve import transaction data through an intuitive, standards-based, secure Web portal. ACE is providing new capabilities to Government users and the trade community by streamlining CBP business processes, reducing requirements for paper documentation, and strengthening Screening and Targeting (S&T) systems. ACE is also providing the technology backbone for ITDS, which will provide a “single window” for submitting trade information to Federal agencies that share responsibility for facilitating international trade and securing America’s supply chain. These are key requirements for enhancing border security and expediting legitimate trade.”

To Date, there are only 4 of the 30 measures that are even partially implemented: Electronic Entry of Merchandise; Electronic Entry Summary; Electronic Manifest; Electronic Payment of Duties and Fees. As I said, these four elements are not fully functioning for all methods of transportation or in all entry processes.

When the Modernization Act was being debated, the trade community agreed to undertake expenditures and changes with the hopes of realizing benefits. That is why we supported the bill in 1993 with the 30 provisions to be implemented and accepted the new concept of “reasonable care” thus taking more responsibility for legal importation of goods.

However, each and every one of the original Mod Act provisions are critical to the international business community to establish efficient supply chains, not to mention the basic modernization of Customs. As a member of the trade community, I can greatly appreciate the adjustments that have been made by CBP to incorporate new and urgent concepts of security, but the trade's expectation for a robust and effective commercial system is struggling.

I applaud the provisions in Section 205 of your "Customs Facilitation and Trade Enforcement Reauthorization Act of 2009" (S. 1631) which authorize funds until 2012 and require reports from Customs regarding the plans and deadlines to roll out ACE as was congressionally mandated. Oversight of Customs in this matter is desperately needed to help bridge the competing demands on CBP's development of the full commercial functionality and the importance of implementing ACE to the business community cannot be overly stressed. We want to urge the Committee to ensure that funding continues at the levels historically provided and that are necessary to implement the full system. indeed, I look forward to a time when all data interfaces with the U.S. government will be electronic and CBP is permitted to be the single portal for entry with any Federal agency import requirements as intended in the ITDS model. We also look forward to achieving a robust data-base that the trade and CBP can each utilize for validation, compliance and operating in a true paperless environment.

Support effective input to CBP from industry

As I stated before this Committee in 2002, communication between CBP and industry is essential for both parties. Some observers may see the relationship between enforcement and commercial activity as being necessarily antagonistic. This could not be farther from the truth. Our experience with CBP is most appreciated from either the critical insights on how better to protect and secure our cargo, to assistance with understanding complex trade regulations and commercial issues. Interaction is beneficial for both. Transparency from Customs provides a compliance roadmap from industry, and input from industry allows Customs to further refine

rules and regulations. Unfortunately, this beneficial exchange of information has been challenged by some of the recent developments. The complexity of issues necessitates industry involvement, but by CBPs reductions of industry involvement in program development and implementation problems are increased rather than decreased. We need for CBP to an active partner in the encouragement of trade and commerce as opposed to being strictly an enforcement agency.

You address this issue to an extent in S. 1631, specifically in Section 101 with the creation of the positions of Principle Deputy Commissioner, Deputy Commissioner, Assistant Commissioner and the new Office of Trade. The addition of these positions will give renewed support and organization balance to advocate for commercial trade concerns and challenges. I also support the creation of the Trade Advocate, although I would recommend that the Advocate report directly to the Principle Deputy, if not directly to the Commissioner. Requiring the Advocate to report through additional layers will lessen the position's effect to provide critical input and balance for commercial facilitation among the many competing challenges that the senior team a CBP is managing.

Broadly speaking, the trade community and associations endorse the reorganization proposed by S. 1631 and echo strongly the opportunity for enhanced organizational changes in CBP to emphasize CBP's trade facilitation responsibilities and programs. In that vein, I would recommend an additional structural change - that the commercial resources and staff in the field components of CBP be incorporated into the new Office of Trade. This is a critical element for the effective implementation of new policies. The Office of Trade would be able to set policies, but could not ensure proper and effective application of the policies without direct control of the import specialists and entry specialists that perform the revenue and commercial functions in the ports.

The other part of this equation is to further enhance industry input and participation. As I stated earlier, the success of programs like C-TPAT can be attributed to the highly successful inclusion of the trade on day one and by validating it with input from industry. CBP deserves full respect for the sheer involvement, working partnership and sustained attention with the industry via a volunteer program to help secure America's cargo. That said, over reliance on communicating to CBP – through COAC – has been diminished with the re-alignment of COAC within CBP's organization and the lack of strong interplay within DHS. The resulting challenge is how to restore COAC to its vital and robust role. The current arrangement needs adjusting to seek more industry contributions into the agenda but also on the future state of the organization and its role. One example is the COAC members are required to go through CBP in order to communicate to Members of Congress their concerns. Further, DHS is nearly detached from this process which further reduces the effectiveness of advocating strong commercial-security effective policies/implementations when DHS is not a co-owner. We believe that for an advisory body to be effective, it must also be independent and able to operate independently from the agency to which it is providing advice, critical or otherwise. The current situation – in which industry is not an active partner on the design concept through full operation is limiting COAC's effectiveness, and thus preventing the progress that we originally envisaged by Congress. Further, it limits the overall effectiveness of the partnership. I am pleased to see that Section 204 addresses many of these issues; I trust that these standards will apply to COAC as well as whatever new advisory committees are established.

Industry is not the only outside voice that needs to have input. The actions that Customs takes can have sweeping effects over other U.S federal agencies, and accidentally impeding other government functions and policy objectives. For example, CBP's office of rulings and regulations recently undertook the issuance of new interpretations of trade provisions that had been effectively functioning in the trade community for over two decades: CBP's proposal to reverse prior practice and court decisions on the ability of a US company to use the first sale doctrine and its proposal to reverse the applicability of a Chapter 98 provision

to prevent the double taxation of goods that are merely exported for warehousing or sales and then returned to the commerce of the United States. These two provisions were both long standing policies that had been determined by Customs as allowable through prior binding rulings but apparently due to increased use of the provisions and the additional burdens on customs to review such actions, CBP unilaterally determined to revoke the privileges to use them. This proposed revocation was despite court rulings as well. Such actions were proposed without consulting the industry and realizing the negative financial impact such actions will have on companies in a very tough economic time.

Given the trade leadership this committee has so strongly supported and sought, CBP needs to be a vested partner in the inter-agency process to insure its decisions that may impact trade policy/practice remain consistent with the robust development of trade and as were intended either by Congress or by other agencies that may have negotiated the provisions. We strongly support the language that you have included in Section 101, where you establish an Interagency Customs Review Board and mandate that “[b]efore the U.S. Customs and Border Protection Agency may publicly propose or adopt a proposed change to a customs regulation, interpretation, or practice, the interagency Customs Review Board shall review the proposed change to determine if the proposed change conforms to the international trade obligations of the United States.” In general, I am concerned that Customs has become accidentally isolated from the other trade-related agencies of the U.S. government. This situation has led to the overly enforcement-focused rulings described above at the expense of trade development. CBP needs your support for engaging the trade partners in the other agencies to support robust trade policies and resulting practices More needs to be done to include Customs in conversations regarding trade policy to encourage Customs to assume its role and responsibility as trade facilitator with the same enthusiasm that is has for law enforcement. I would recommend that CBP be directed to establish an organizational unit within the Office of Trade that specifically addresses interagency coordination and that this office have more than the current handful of staff support.

There needs to be greater connectivity in general between security and law enforcement and trade facilitation discussions. For example, even with all the activity at the World Trade Organization (WTO) surrounding trade facilitation, trade facilitation has not been raised at the World Customs Organization (WCO). When Customs participates in these types of international fora, it must remember to wear both the trade promotion and law enforcement hats. CBP has an incredible history and abundance of talent that is well trained and highly disciplined as we can see from their success to manage trade and protect cargo. But, CBP needs your active over-sight and encouragement to engage in commercial development programs in addition to cargo security.

Direct CBP to take the lead role in coordinating USG trade-related enforcement

The final topic I would like to discuss is coordination between U.S. agencies which are involved, or may become involved in the business of trade. You address this issue in Section 206 of the bill, directing the Secretary to work with the head of each agency participating in the International Trade Data System (ITDS). Paragraph "iii" is particularly important – ensuring that the agencies provide admissibility criteria and data elements required by the agency to authorize the release of cargo by the U.S. Customs and Border Protection Agency for incorporation into the operational functionality of the Automated Commercial Environment computer system. In addition, I would recommend that the legislation include a mandate that 1) all agencies that are authorized to regulate cross-border commerce participate in the ITDS and 2) all data elements that are provided from the ITDS agencies to Customs be submitted electronically. We must avoid scenarios like the one industry experienced last year with the amendments to the Lacey Act, which required an import declaration but did not provide for an electronic interface for that declaration. Paper documents in this new economy are worse than useless – they are costly and wasteful. Having said this, I recognize that for some economic

operators paper is the only means available to them. With that in mind, I would recommend that an electronic interface option be mandated for all entry documents.

We all have read the challenges related to the safety problems of imported foods, consumer products, and pharmaceuticals. The prior Administration created an Interagency Working Group to focus on the problem and their recommendations highlighted the role of CBP, ACE, and ITDS as fundamental to interagency cooperation. There are several talented individuals who have done a superb job in helping to understand and craft a process for CBP. Nevertheless, I understand that at CBP Headquarters they are challenged to take this to the next level given the current deployment of employees available as only a handful of people are dedicated to interagency coordination on import safety and ITDS. It would seem appropriate for CBP to have a well-staffed Office dedicated to these programs. This office could also serve as the secretariat for the Interagency Import Safety Agency Working Group. I am not convinced that when new requirements are mandated affecting international trade like Lacey or the CPSIA that CBP is always incorporated in the full implementation requirements. This exclusion impacts not only CBP's ability to be effective but also stymies legitimate commerce. CBP is a critical interface, source and partner that the trade relies on for interpretative and effective compliance requirements to insure that it meets the objectives of those new mandates.

There is, in fact, a tool which could be used to bring the security and commercial sides of customs matters together, to enhance communication between Customs and industry, and to oversee the use of security and commercial data to improve targeting and facilitate commerce. It is called the Account Management Program. The AMP is supposed to provide uniform, consistent, and efficient treatment of importers willing to invest in CBP compliance programs and participate in CBP partnership programs. The business community, in fact, has lived up to its end of the bargain by investing resources and time and by voluntarily joining several CBP programs including C-TPAT, pilot programs like ATDI, but CBP has struggled where and how to fully implement and staff National Account Managers. The role of the Account Manager today

has shifted from the original concept and now often you have two account managers (Security and Commercial). In fact, I believe there are fewer CBP Commercial Account Managers today than there were a decade ago. The robust Account Concept fully embraces the marriage of security and commercial risk and can provide a vital commercial and security facilitation beneficial to government and industry. Industry seeks to fully comply with CBP rules but wants a more predictable, simplified process to move goods across our borders. But sometimes, the goal of perfection becomes the enemy of success. Account managers can provide a clearinghouse of information regarding Customs rules, security enhancements/advice and the rules of other agencies, in order to facilitate that process. When the Account Management is fully deployed along with ACE, the expected dividends of the Mod ACT, ACE and Security can assist in yielding a more robust and compliant commerce for the United States.

From the perspective of industry, any import requirement – be it commercial or security related - effects business at the border. As I said before, industry's top priorities are transparency and predictability. If this Committee can provide those elements then it will have accomplished much on the trade facilitation agenda. We recognize that there are inherent limitations to your jurisdiction and that you do not have the authority to address the security ledger of the customs equation. That said we appreciate that in Section 201 you direct the Secretary of Homeland Security to develop and implement trade benefits for Tier 1, 2 and 3 C-TPAT participants. As I just said, however, one of the biggest benefits that you could provide the trade is creating a system that coordinates the disparate actors of the importing environment related to security and commerce. The Customs Facilitation Partnership which you propose to create in Section 202 represents another step toward enhancing communication and cooperation between Customs and Industry. While understanding, again, that you have limited jurisdiction over security matters, I would recommend that language be included in the legislation that points to coordination between security programs like C-TPAT and commercial programs like the CFP. From the industry perspective, the two are simply two sides of the same coin.

If it is not possible to house benefits of each in the same program, then you should at least allow the other points of interfacing to address both. The Account Management Program could be used to oversee and manage that interface. That could include, for example, the management of security data and commercial data. There are a lot of concerns in industry about the use of proprietary commercial data. A robust AMP could allow CBP to use data for improved targeting, while at the same time assuring its protection and assuaging the concerns of industry. If we look at the C-TPAT program again as a model, what has made it successful is the interaction and confidence building that has developed over time. The same focus and energy should be applied on the commercial side.

The Account Management model could also provide benefits to so-called “trusted traders”, importers that have invested heavily in security and commercial compliance programs, and have demonstrated time and time again that their shipments are secure and safe. Qualified importers should be able to benefit from programs which allow for pre-admissibility and self-determination, which will reduce costs, time and energy. Companies that are importing the same product from the same sources, with a strong track record and high predictability should be granted a path toward expedited release of goods. Having to file before entry and then repeat the process by filing post entry history is burdensome and unnecessary. Everything should be done to complete documentation before entry, and Congress is in the position to create incentives to move companies in that direction. These kinds of programs would not be for everyone. Only the companies with a proven track record of consistent compliance could participate. But creating such a system would provide the trade facilitation benefits that Congress wants to deliver.

Compliance with trade programs should be rewarded through enhanced entry benefits. However, programs that are put in place to ensure compliance with trade programs should be applauded and not penalized. In other words, if a company implements an internal process to

ensure compliance with a preferential trade program and the system implemented uncovers errors that the company then seeks to remedy, the process should be rewarded and the company should not be penalized. Trade enhancement and compliance need to be the focus versus penalizing companies as they try to comply.

In closing, from 2002 till today, an integrated CBP of Commercial and Security focus provides the highest commercial benefit and safety. Since 2002, the need of knowing of what shipped has changed dramatically to needing to know “what is going to be shipped and from and to.” We need to shift to a full and robust account structure along with enhanced organizational changes in CBP to provide the trade and commerce dialogue equal perspective to the challenges CBP faces and has successfully met over the years.

CBP needs to be incorporated as a full partner and challenged to have respective policies, regulations and implementations to support commercial facilitation and robust development of trade utilizing their demonstrated experience of secure cargo and understanding of the trade accounts they manage.

We need to assess past requirements that detract CBP, the trade and other agencies from looking at past shipments and shift the focus to perspective commerce and current commerce to have a highly integrated business environment.

We need to seek the benefits of utilizing known and repetitive account based information to reduce the cost of compliance, cost of CBP’s operation and development and fully implement efficient and lean practices that enable the US to be the most effective and secure commerce in the world-

Mr. Chairman and members of the Committee please understand that Hanesbrand has been and will remain committed to working with CBP as a partner. Compliance is one of the

pillars of our policy. However, when we are compliant and serving as models in the industry we need to have concrete recognition for our efforts and to benefit from the additional costs and burdens of being a “good actor” warrant. My comments today are meant to help you in helping CBP become a better partner for the trading community. We will make ourselves available to provide additional input as you deem necessary.

Again, thank you Mr. Chairman and distinguished members of the Committee for this opportunity to appear before you today. We also want to thank CBP for the outstanding efforts, professionalism and partnership that they have provided to us, and the trade, over the years and we look forward to continuing to work with them. I welcome any questions you may have and am submitting a more complete copy of my comments for the record.