

TESTIMONY OF

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on behalf of

**The National Customs Brokers and
Forwarders Association of America, Inc.**

**Re: Authorizations of Customs and Trade
Functions**

before the

Senate Finance Committee

April 26, 2006

Mr. Chairman, I am Peter H. Powell, CEO of the CH Powell Company of Westwood, Massachusetts, and Chairman of the Board of the National Customs Brokers and Forwarders Association of America. I appreciate the opportunity to testify before you and comment on customs authorization legislation.

First, let me say that we are grateful for the support that the Committee on Finance has provided to the international trade community over many years. Your special focus on trade and revenue gives you a unique appreciation for the commercial operations responsibilities of Customs and Border Protection. As security issues have dominated the agenda and generated issues of jurisdiction in the Senate, we have consistently supported the Committee's primacy over Customs' commercial functions and we support your continued jurisdiction over these matters. You have shown that you are willing to hold CBP into strict account when the bureau vows to balance commercial and security operations. CBP's promise must be taken literally when you consider the dramatic growth in world trade. We are rapidly becoming a global economic community and international commerce is indeed our life's blood.

1. CBP's attention to commercial operations is greatly reduced and resourcing is inadequate

Despite its promise, the truth is that CBP is **not** balancing its twin responsibilities of security and commercial operations. Resourcing for trade facilitation has dramatically diminished as the agency has scrambled to meet criticisms of its performance in the security realm. When the Government Accountability Office (GAO) pointed to disappointing output in Customs-Trade Partnership Against Terrorism (C-TPAT) validations, CBP quickly moved import specialists into these areas of responsibility, leaving a skeleton crew to serve the needs of U.S. trade. In the Port of New York and New Jersey, for example, trade inspectors numbered forty before 9/11 but were reduced to eight at a recent count. Similarly, in-bond inspectors at the Port of LA/Long Beach numbered twelve, but are now zero, as CBP shifts personnel to operate VACCIS equipment, which screens for security purposes.

These examples are representative of a wholesale diversion of personnel, as Customs robs Peter to pay Paul. The attention of CBP to its trade mission has rapidly diminished as it gives priority to security programs. Rank-and-file know this and fully understand that a successful career path at the agency calls for making their mark in C-TPAT, the Container Security Initiative, or other high-profile programs. The answer? Congress must insist that CBP dedicate sufficient personnel to conduct its commercial trade mission. Congress should set a floor for import specialists and other commercial operations personnel, fencing off these assets from diversion elsewhere within Customs.

2. CBP's approach to security and commercial operations disadvantages small and medium-sized businesses.

Similarly, Customs is not dedicating sufficient energy or attention to the needs of small and medium-sized enterprises. I must say that customs brokers and forwarders have a unique vantage in this regard – the vast majority of those on our client lists are small businesses. We must therefore be their advocates.

It is common knowledge that small firms represent 99.7 percent of all employers; they employ half of all private sector employees; and, they pay 45 percent of America's private sector payroll. It is these small firms – those with limited internal resources and expertise -- that are short-changed when there are reductions in import specialists, or when they are denied access to client representatives. But they also encounter an uneven playing field when CBP focuses almost exclusively on the needs of the 50 largest importers. We constantly hear that the Top 50 represent approximately 50% of imports *by value*; however, CBP ignores the fact that small enterprises account for the vast majority of all *transactions*. There are hundreds of thousands of small business importers, a large percentage with limited experience and resources. It is they who need the availability of import specialists and client representatives most. And, in many circumstances, it takes only one inefficient shipment to back up the entire flow of goods.

As another compelling example, while CBP constructs C-TPAT and its three tiers, it is single-mindedly looking to big companies as the mainstay of that program. Its demands and incentives are geared to the largest of companies. Companies must require their overseas suppliers to meet best practices -- who but the largest of companies has the economic clout to exert this leverage? Companies must often take resource-intensive steps to meet CBP's standards – who but the largest have the in-house expertise and finances needed to comply? Companies are incentivized with promises of expedited clearance -- who but the largest can avail themselves of this competitive advantage? Companies are expected to require C-TPAT membership of their supply chain partners – who but those admitted to the program, the very largest, can qualify for this business?

Our answer, Mr. Chairman, is for Congress to insist that Customs develop separate and independent strategies for incorporating small and medium-sized businesses into its programs. How, for instance, can these smaller enterprises successfully participate in C-TPAT? When they control almost 70% of our imports, smaller firms must become part of the equation.

3. Customs has demonstrated outstanding leadership and vision in the development of security programs, but there is room for improvement.

CBP has, since 9/11, displayed exceptional leadership in developing programs of homeland security with a global reach. Accepting the mandate to protect our borders, its focus has been on the terrorist threat generated from outside the United States. CBP has recognized, quite correctly, that America's borders need to be pushed outward to the overseas ports where the vessels are laden. After all, examination at the port of origin reduces the danger to America and permits expedited clearance at our domestic ports which are already deluged with cargo and opportunities for delay.

C-TPAT: Of specific interest to the Committee, CBP has established C-TPAT as a primary tool for securing the supply chain. Recognizing the limits of extraterritoriality, the program nonetheless permits our government to use the economic leverage of our importers to induce their overseas suppliers to meet standards of security. Putting aside for the moment our comments about diverting resources and the need to incorporate small and medium-sized business in C-TPAT, the program is an inspired concept serving as one layer in a multi-layered approach to security. It will succeed because it has been **voluntary**. From soon after 9/11,

fundamental to the program is the partnership of the private sector with Customs. C-TPAT recognizes that “one size does not fit all” and allows for flexibility in its implementation. In fact, through the overwhelming response of U.S. industry, membership in C-TPAT has become an obligatory element of doing international business. Now we see that its critics would turn this concept on its head and make it subject to notice-and-comment regulation. We believe that such a direction is counterproductive and ill-advised. Our view? Congress should resist efforts to put C-TPAT in the straight-jacket of federal regulation.

Automated Targeting System: CBP is also on the right track in utilizing risk analysis and targeting to determine which containers require further scrutiny. By marshalling a variety of key data -- well beyond the manifest data presently required by the Trade Act of 2002 -- and introducing it to a sophisticated, robust and real-time automated targeting system, decisions can be made to apply inspectional resources only to high-risk containers rather than spreading those resources thinly through an overwhelming volume of imports. But GAO has criticized the present system -- the Automated Targeting System (ATS) -- for its deficiencies, and those shortcomings do indeed need to be addressed. Furthermore, CBP and some others have exhibited the inclination to require vast amounts of data, without rhyme or reason, without regard for the costs to its providers from the private sector, and without any guarantee of confidentiality for competition-sensitive information. What do we suggest? Congress should permit the private sector and CBP to continue to develop the requirements for acquisition of advance data, and resist the urge to dictate specific data elements -- such as requiring the filing of entries in advance of lading. For its part, Customs needs to be clear about precisely what advance data they genuinely need for a better targeting system.

Export data: Finally, CBP recently informed the Bureau of the Census that they were withholding approval of their long-awaited Automated Export System regulations until Census relented on an unrelated matter -- its opposition to providing sensitive export data to overseas governments. Customs views its commitment to a multi-nation security agreement at the World Customs Organization as requiring the United States to make export data available, while Census feels bound by statutory constraints requiring it to protect the export information that it collects for statistical purposes. For its part, American exporters are opposed to providing information to overseas governments that might filter through to their competitors. Our view? NCBFAA feels strongly that the wholesale delivery of export information to foreign nations runs counter to our international trade interests. At a time when we are struggling with trade deficits, the United States should not be undermining the competitive standing of the very exporters that must bring these statistics more into balance.

4. CBP is successfully working with the trade community to develop the Automated Commercial Environment (ACE).

Through its Trade Support Network (TSN), CBP has actively worked with the trade community in partnership to field the automated program that will conduct the day-to-day transactions for commercial operations. ACE will revolutionize the processing of commercial entries, adding such features as periodic payment and periodic entry, moving processing into a totally paperless environment, and adding the other federal regulatory agencies to the data pipeline.

It is this last feature -- the International Trade Data System (ITDS) -- that has attracted so much attention recently. While Customs has promised the reward for the high-tiered C-TPAT members to be expedited processing, this carrot for enhanced supply chain security is meaningless if federal agencies other than CBP do not cooperate. In other words, CBP can clear products quickly for C-TPAT members, but the entire shipment can be brought to a dead stop if it is not cleared by FDA or USDA, for example.

There is however much that must be done if ITDS is to become the “front end” of ACE, with data being input through one window and routed to all of the affected regulatory agencies at the very beginning of entry processing. One essential element is that all appropriate agencies agree to participate, which they have not. The problem lies in one fundamental defect: CBP (and, therefore, the Department of Homeland Security) has no authority over agencies in other departments. DHS and the Department of the Treasury (DHS’ predecessor in directing Customs) have successfully marshaled a significant number of key agencies -- but not all.

How can this be solved? NCBFAA believes that the Office of Management and Budget, which has previously had a significant role in federal data management, has the capability to overcome this “stovepipe” problem. We believe that Congress should designate OMB as chair of the multi-agency board that directs the ITDS project. And, in consultation with other departments, OMB should evaluate what agencies are necessary to the success of ACE and direct, on a phased-in basis, the participation of those still uninvolved in ITDS. This should be completed concurrent with the completion of ACE in 2010. ITDS has profound security and commercial benefits for America. It needs the Finance Committee’s support if these benefits are to be fully realized.

A final element of completing ACE is bringing technical customs law into conformance with new procedures introduced by this automation system. In concert with CBP, the trade community through the CBP’s Trade Support Network has developed a number of technical changes to customs law that we would like to see included in this year’s authorization bill.

5. Customs has joined with the trade community in modernizing drawback. A compromise between the two parties is now ready to be considered by Congress.

Those who are conversant with the technical features of customs law know that duty drawback is an important incentive to exports. Acknowledging that goods are often imported for use as components of American manufacturing or as other valuable products, and then exported from the United States, the law has long provided for a return of duties paid on those products brought temporarily within our borders and then subsequently shipped overseas. Current law is however very cumbersome, recordkeeping --intensive, and demanding on Customs, which must administer the law and ensure that revenues are protected. Customs and a diverse range of national, private sector drawback specialists have worked over the past several years to modernize and streamline its processing. In what has been a highly interactive and even sometimes contentious process, agreement has been reached and a compromise struck.

Modernization of drawback will save the government and the private sector millions of dollars. At CBP, for example, personnel can be shifted to other commercial areas since the intensive

management and accounting of drawback claims will be substantially reduced. NCBFAA asks the committee to make the technical changes to customs law necessitated by drawback modernization, preferably in this year's customs authorization legislation.

Mr. Chairman, NCBFAA is grateful for this opportunity to share its views and will gladly respond to your questions.