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U.S. CUSTOMS SERVICE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

APRIL 30, 1998

Serial 105–64

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
54–189 CC WASHINGTON : 1999

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U.S. CUSTOMS SERVICE ISSUES

THURSDAY, APRIL 30, 1998

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

The Subcommittee met, pursuant to notice, at 11:02 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 21, 1998
No. TR–24

CONTACT: (202) 225–1721

Crane Announces Hearing on U.S. Customs Service Issues

Congressman Philip M. Crane (R–IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on a variety of issues relating to the U.S. Customs Service, including drug interdiction and passenger and merchandise processing issues. The hearing will take place on Thursday, April 30, 1998, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 11:00 a.m.

Oral testimony will be from both invited and public witnesses. Invited witnesses will include Sam Banks, Acting Commissioner of the U.S. Customs Service. Also, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

Customs Drug Interdiction and Enforcement Efforts—Operation Hard Line and Brass Ring: Operation Hard Line, initiated in February 1995, is the response of the Customs Service to problems of violence and drug smuggling along the Southern border of the United States. Hard Line emphasizes enhanced primary inspections, increased secondary inspections, more intensive cargo searches, installation of concrete barriers to manage traffic flow, and an increase in investigative support. Hard Line was designed to promote "strategic problem solving" by relying on experts at each port to develop and test creative new ways to prevent drug smuggling.

According to the U.S. Customs Service, their seizure amounts for cocaine have decreased by 12 percent overall during the past year. Operation Brass Ring is intended to reverse this trend. Established on February 1, 1998, Brass Ring is a multi-functional operation, designed to be an aggressive and unpredictable operation with the goal of dramatically and immediately increasing the amount of narcotics seized by the U.S. Customs Service. In addition, the Subcommittee is interested in receiving other legislative or administrative proposals from the Customs Service for improving their interdiction and enforcement efforts.

Fiscal Year 1999 Budget Request: The President's request for the U.S. Customs Service included $1,283 million for Commercial Operations and $733 million for drug and other enforcement activities. In addition, the Customs Air and Marine Interdiction Program requested $102 million in budget obligations.

Merchandise Processing Fees: Customs assesses a user fee known as the Merchandise Processing Fee (MPF) in the amount of 0.21 percent ad valorem for the processing of merchandise that is formally entered or released. The fee, set at a minimum of $21 and a maximum of $485 per entry, is intended to offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which the fee is collected. The President has proposed in the fiscal year 1999 budget to increase the fee to an ad valorem rate of 0.25 percent (not to exceed $575) for necessary expenses incurred by Customs for modernization of the automated commercial operations.

Redesigning and Modernizing the Merchandise Processing System: The Customs Modernization Act (Mod Act) was enacted as part of the North American Free Trade Agreement implementing legislation in December 1993. Through passage of this Act, the Congress provided the Customs Service with the necessary legal authorities to redesign its merchandise processing systems for the twenty first century. Specifically, the Act required Customs to develop a fully-automated commercial environment to replace the current Automated Commercial System. Customs now states that the development and implementation of this new system, the Automated Commercial Environment, and the infrastructure needed to run this system will cost approximately $797 million over the next seven years.

Another major feature of Customs' efforts to implement the Mod Act has been the recent redesign of the process of inspecting and controlling outbound cargo. Customs currently inspects less than one percent of all U.S. exports. The agency has recently sought to increase its effectiveness in interdicting illegal shipments of outbound currency, munitions, dual-use goods, chemical and hazardous materials, and stolen vehicles. The cornerstone of Customs' effort to redesign the outbound cargo process has been the development of an Automated Export System (AES).

Customs COBRA User Fees: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (P.L. 99–272) established a schedule of seven passenger-related and conveyance user fees. The Tax Reform Act of 1986 (P.L. 99–514) added to this schedule, fees for processing barges and bulk carriers from Canada and Mexico. Under COBRA, user fee revenues pay for all Customs inspection overtime and all pre-clearance costs for which reimbursement was not required and excess pre-clearance costs. The Customs and Trade Act of 1990 (P.L. 101–382) amended COBRA: (1) to allow Customs to use any surplus revenues, after overtime and pre-clearance were funded, to hire inspectors, purchase equipment, and fund items related to inspection; (2) to distribute revenues in proportion to the amount contributed by each user fee category; and (3) to require that surplus-funded Customs inspectional positions facilitate passenger and conveyance processing and be used to enhance inspection services already provided.

The North American Free Trade Agreement Implementation Act (P.L. 103–182) increased the air- and sea-passenger processing fee from $5 to $6.50 for fiscal years 1994 through 1997 and removed the prior air- and sea-passenger processing user fee exemption for passengers arriving from Canada, Mexico, and the Caribbean. The fee was reverted to $5 and the exemption expired on September 30, 1997. With this increased funding provision, Customs filled an additional 77 positions to perform preclearance inspections and to inspect cruise vessels from these countries. Customs notified the Committee in October 1997 that it would have to phase out these positions and discontinue preclearance inspection services in the absence of new legislative funding authority. Public Law 105–150, enacted on December 16, 1997, authorized the use of customs user fees to maintain up to 50 inspectors through September 30, 1998, in Florida to process passengers aboard commercial vessels. On April 1, 1998, Chairman Crane introduced H.R. 3644, a bill to authorize the use of customs user fees to maintain up to 50 positions plus equipment to provide preclearance services at 11 locations in foreign countries.

Compensation System for Customs Officers: COBRA fees fund overtime and premium pay for Customs officers. The original overtime pay system for Customs inspectors was created by the Act of February 13, 1911, known as the "1911 Act." Section 13811 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), known as the Customs Officer Pay Reform amendments, amended the 1911 Act in an attempt to eliminate abuses and mismanagement of the prior system. The reforms were intended to limit overtime and premium pay for Customs inspectors and canine officers to hours of work actually performed. In order to "make inspectors whole," the law also allowed overtime compensation to be counted as part of the basic pay for the Civil Service Retirement System up to 50 percent at the $30,000 statutory overtime cap, or $15,000.

Due to recent arbitration decisions, Customs must now pay overtime plus interest to Customs officers: (1) for hours not actually worked by officers who were denied overtime assignments because they have reached a dollar limit set by port directors; and, (2) who were inadvertently passed over for a specific overtime assignment. Due to another arbitration decision, Customs is required to pay overtime for hours not

actually worked to officers whose overtime is inappropriately assigned to part time employees.

On July 25, 1997, Chairman Crane introduced H.R. 2262, a bill which addresses a number of reforms to the overtime and premium pay compensation system for Customs officers.

FOCUS OF THE HEARING:

The hearing will focus on: the effectiveness of interdiction efforts and their impact on trade; Customs automation and modernization efforts and the mechanisms needed to fund these efforts; and the use of Customs user fees and the compensation system for Customs officers.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225–1721 no later than the close of business, Monday, April 27, 1998. The telephone request should be followed by a formal written request to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Trade Subcommittee staff at (202) 225–6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statement and an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format, for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than close of business on April 28, 1998. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) single-space legal-size copies of their statement, along with an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format only, with their name, address, and hearing date noted on a label, by the close of business, Thursday, May 14, 1998, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request

for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments. At the same time written statements are submitted to the Committee, witnesses are now requested to submit their statements on an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

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

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS__MEANS/'.

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

Chairman CRANE [presiding]. Folks, if you will please be seated now, we will begin today's hearing. You can let the dog roam, but all the two-legged folks, take seats please.

Good morning, this is a hearing of the Ways and Means Trade Subcommittee to consider the variety of issues related to the U.S. Customs Service, including drug interdiction and passenger and merchandise processing fees. In addition, I hope to hear some discussion on two bills related to the Customs Service, first a bill that Mr. Ramstad and I introduced, H.R. 3644, which allows continued Customs preclearance inspectional services in Canada, and second, a bill which I introduced in July which will amend COPRA, the Customs Officer Pay Reform Amendments.

As my colleagues know, drug use among teenagers is skyrocketing. The President's Office of National Drug Control Policy reports that heroin is being sold by a wider range of dealers who are likely also to sell cocaine. In short, heroin has made a comeback almost everywhere and it is no longer confined to older addicts from another generation of drug users, nor has there been a noticeable reduction in cocaine and crack use even though prices for both cocaine and crack appear to be stable or declining.

Further, many drug users do not even consider marijuana a drug. Its use is widespread and it is a constant where other illicit

drugs are being consumed. While the administration speaks of reducing the flow of illegal drugs into the United States, it has not provided the needed increases to the Customs Service's budget designed to stop the flow of drugs into the United States. To address this problem I'm introducing a bill today which increases Customs authorization to provide for a net increase of 1,705 inspectors, canine special agents, and other personnel dedicated to reinforcing drug interdiction operations along the borders between the United States and Canada and Mexico, Florida and gulf coast seaports, and in major metropolitan narcotics distribution and money-laundering locations, such as Chicago, Los Angeles, and New York.

The 27-percent increase of $202 million over the administration's proposed levels will also ensure additional resources necessary to purchase high-technology equipment such as busters and truck x rays which will significantly aid Customs in its abilities to combat drug smuggling.

I'm looking forward to hearing Customs discuss its two initiatives, Operation Hard Line and Operation Brass Ring, designed to combat drug smuggling. I also want to recognize senior Customs Inspector Alfredo Morales, an inspector with Operation Brass Ring, for his heroic efforts in saving a child's life last week at the border between San Diego and Mexico. His efforts reflect the best qualities of the U.S. Customs Service. In fact, would you stand and be recognized? [Applause.]

I saw it on television and your performance was inspiring. Keep up the good work.

I'm also interested in the testimony from our other witnesses as well. Today's discussions will focus on issues related to the Customs Modernization Act, including the automated systems needed to ensure that Customs meets the Mod Act goals, proposals to fund automation, issues related to user fees, and how these funds pay for inspectional services, including Customs officers' overtime and night pay.

Our first witness today is Acting Customs Commissioner Sam Banks, who will be followed by two panels of private-sector witnesses, the Treasury Inspector General, and finally, the president of the National Treasury Employees Union.

[The opening statement follows:]

Opening Statement of Hon. Philip M. Crane, a Representative in Congress from the State of Illinois

Good Morning. This is a hearing of the Ways and Means Trade Subcommittee to consider the variety of issues relating to the U.S. Customs Service, including drug interdiction, passenger and merchandise processing fees. In addition, I hope to hear some discussion on two bills related to the Customs Service, first, a bill that Mr. Ramstad and I introduced, H.R. 3644, which allows continued Customs preclearance inspectional services in Canada and secondly, a bill which I introduced in July which will amend the Customs Overtime Pay Reform Act.

As my colleagues know, drug use among teenagers is skyrocketing. The President's Office of National Drug Control Policy reports that heroin is being sold by a wider range of dealers who are likely to also sell cocaine. In short, heroin has made a comeback almost everywhere, and it is no longer confined to older addicts from another generation of drug users. Nor has there been a noticeable reduction in cocaine and crack use even though prices for both cocaine and crack appear to be stable or declining. Further, many drug users do not even consider marijuana a drug—its use is widespread, and it is a constant where other illicit drugs are being consumed.

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I am looking forward to hearing Customs discuss its two initiatives—Operation Hard Line and Operation Brass Ring—designed to combat drug smuggling. I also want to recognize Senior Customs Inspector Alfredo Morales, an inspector with Operation Brass Ring, for his heroic efforts in saving a child's life last week at the border between San Diego and Mexico. His efforts reflect the best qualities of the United States Customs Service.

I am also interested in the testimony from our other witnesses as well. Today's discussions will focus on issues related to the Customs Modernization Act, including the automated systems needed to ensure that Customs meets the Mod Act goals; proposals to fund automation; and issues related to user fees and how these fees pay for inspectional services including Customs officers overtime and night pay.

Our first witness today is Acting Customs Commissioner Samuel Banks, who will be followed by two panels of private sector witnesses, the Treasury Inspector General, and finally the President of the National Treasury Employees Union.

I would now to like to yield to my distinguished colleague, Mr. McDermott. Mr. Matsui, unfortunately, was planning to be here, but had a problem develop. He may get here some time later today in our hearing, but in the interim he will be represented by Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. As somebody who represents, maybe not the largest port on the West Coast, but close to it, we have an interest in how the Customs Department can do its job as efficiently and effectively as possible. So I am here, really, to listen. I would ask unanimous consent to enter Mr. Matsui's remarks into the record.

Chairman CRANE. Without objection, so ordered.

[The opening statements follow:]

Opening Statement of Hon. Robert T. Matsui, a Representative in Congress from the State of California

Mr. Chairman, I welcome this hearing today as an opportunity to review the operations of the U.S. Customs Service and to discuss a number of pending Customs issues, some of which are controversial and involve legislation before this Subcommittee.

The Committee on Ways and Means authorizes appropriations for the Customs Service—one of the nation's oldest agencies, created in 1789—and has jurisdiction over the trade laws which it administers. Traditionally, this Committee has given strong bipartisan support to the operations of the Customs Service and granted the authority needed to accomplish its mandates for administering and enforcing the trade laws, border enforcement against drugs and other illegal activities, processing merchandise and passengers through United States ports, and assessing and collecting customs revenues.

The Congress granted authority under the Customs Modernization Act to enable the Service to redesign and modernize its automated systems for processing merchandise in order to meet the increased demands and workloads of the 21st century. The President's budget submission for fiscal year 1999 includes a legislative proposal to increase merchandise processing user fees to cover costs for implementing these automated systems.

Temporary additional user fees authorized by the NAFTA Implementation Act enabled Customs to provide passenger preclearance services in foreign locations. Since the NAFTA authority expired last September, the Committee will consider new legislative authority to cover costs to maintain these services. The system of overtime and premium pay for Customs inspectors remains an issue as a result of recent arbitration decisions and the Committee will consider possible legislative reforms.

Customs has undertaken a number of initiatives—most recently Operations Hard Line, Gateway, and Brass Ring—to increase drug interdiction and seizures and other border enforcement. The fight against illegal narcotics trade must remain a major focus of the Customs Service and we need to ensure that adequate resources are devoted to this ongoing effort. At the same time, enforcement activities must be balanced with the commercial operations of the Service and the need to minimize unnecessary burdens and delay for entry of legitimate commerce.

I welcome Acting Commissioner Sam Banks back to the Subcommittee. I look forward to hearing your assessment of the operations and needs of the Customs Service to meet its various missions as we enter the 21st century. I also look forward to hearing the views and proposals of our private sector witnesses today on these various Customs issues.

In addition, I wish to draw special attention to senior Customs inspector Alfredo Morales, who is present here today, and commend him for his heroism. The entire nation watched transfixed as Inspector Morales rescued an infant at the San Ysidro border crossing, after a 150-mile chase, from an armed and dangerous felon.

Opening Statement of Hon. Jim Ramstad, a Representative in Congress from the State of Minnesota

Mr. Chairman, thank you for calling today's hearing to discuss U.S. Customs Service Issues.

The importance of the work of the U.S. Customs Service cannot be overstated. It is not only involved in the important import/export industry, which employs millions of Americans with solid, high-paying jobs, but also interdicts the flow of illegal products, especially drugs, in and out of our country.

The committee will be reviewing ways today to enhance the services Customs provides to process the massive amounts of products entering and exiting our country. I look forward to reviewing legislation that might help facilitate these transactions, especially H.R. 3644, the legislation Chairman Crane and I have introduced to allow the Customs Service to access funds in the User Fee Accounts and enhance inspector staffing and equipment at preclearance services in foreign countries.

In addition, Customs' duty of interdicting drugs is certainly not an easy job. Millions of Americans rely upon their efforts to stem the supply of drugs in our nation. I applaud efforts to design new and effective programs, like Operation Brass Ring, to seize even more illegal drugs entering the US, and to protect our children from these life-threatening chemicals.

Thank you again, Mr. Chairman, for calling this hearing. I look forward to hearing from today's witnesses about ways in which to improve the operations of the US Customs Service.

Mr. MCDERMOTT. Thank you.

Chairman CRANE. All right. Fine.

With that, we'll proceed. Mr. Banks. I never thought Mr. McDermott would have control of the time without speaking. Mr. Banks.

STATEMENT OF SAMUEL H. BANKS, ACTING COMMISSIONER, U.S. CUSTOMS SERVICE; ACCOMPANIED BY BOB TROTTER, ASSISTANT COMMISSIONER, FIELD OPERATIONS, AND CHUCK WINWOOD, ASSISTANT COMMISSIONER, STRATEGIC TRADE

Mr. BANKS. Mr. Chairman, good morning. Members of the Subcommittee, it is always a pleasure to appear before you today to review some of the successes of the U.S. Customs Service and the challenges we face in fulfilling our commitment to insure safe borders for the American people.

With your permission, I would like to introduce my formal statement for the record and just abbreviate my comments.

Chairman CRANE. Without objection, so ordered.

Mr. BANKS. Thank you, sir. Accompanying me today, on my left is Bob Trotter, who is our Assistant Commissioner for Field Operations. He's the one that really is in charge of all of the ports of entry around the country. And to my right is Chuck Winwood who is with our Office of Strategic Trade and has been instrumental in redesigning our commercial processing for the future.

Everything I would like to discuss today stems from our strategic plan that we have tried to conscientiously develop in concert with this Subcommittee, with our employees, with members of the U.S. business community, and a host of other interested parties. The success of this plan, and what's going to weave through some of my discussion, is dependent on three critical factors: One, a quality work force; two, modern technological solutions; and three, strategic partnerships.

We have adopted a business approach to our work, trying to continually improve upon our processing of people and goods crossing our borders and by fundamentally redesigning our operations to meet the future needs of the American people and the American economy. However, first, and foremost, we are a law enforcement agency. Narcotics enforcement is at the top of our law enforcement priorities.

Earlier this year we launched a narcotics enforcement operation entitled Brass Ring. Even though U.S. Customs seized, for the second year in a row, almost 1 million pounds of narcotics, more than all other Federal agencies combined, our analysis of threat estimates versus the seizures we were making, indicated certain vulnerabilities which led us to initiating Brass Ring. The amount of narcotics we have seized under Brass Ring is up 30 percent over the comparable period of 1997. Our currency seizures have almost doubled. Our controlled deliveries, which is our mechanism to working our way up the chain to find the people involved in the distribution networks of these narcotics organizations, have also doubled.

We are not even attempting to proclaim any kind of success. We have a long ways to go, but I have to tell you that the renewed commitment, the energy, and the creativity of our fieldpeople in attacking the drug problem is at an all-time high in this organization. This operation has been conducted with what we think is a minimal adverse impact on the flow of commerce and trade. In fact, if anything, we are building extensive partnerships with industry

to engage them in the effort to secure their shipments and their conveyances against narcotics.

We'd rather prevent the narcotics from ever entering in the first place rather than seizing it.

It is our intention to build on this momentum in our interdiction and investigative operations. The fiscal year 1999 budget request will further our narcotics enforcement efforts in part by adding $54 million in new nonintrusive inspection technologies, large-scale x rays, gamma rays, and so forth, along the Southwest border and in south Florida.

The authorizing bill that you mentioned today and the authorizing bill from Senator Gramm on the Senate side, holds the potential to dramatically improve both our border enforcement capabilities, especially against narcotics, and simultaneously expedite the movement of legitimate trade and travelers and for that, we thank you very much, Mr. Chairman.

U.S. Customs is committed to the most cost effective use of our resources, and to be held accountable under the Results Act. We have received our second consecutive clean, unqualified opinion on our financial statement. Our performance plans, our measures that we use, have been used by the Congressional Institute as a best-practice example. We are also doing our utmost to fulfill the requirements of the Clinger-Cohen Act because information technology, because automation is so absolutely critical to our future. I would like to announce that next Monday, Woody Hall, who is currently the Deputy Assistant Secretary for Information Management and also the Chief Information Officer for the Department of Energy, the entire Department, and who is widely respected for his strategic vision in building a strategic information technology organization, is joining us to lead our Office of Information and Technology.

As you know, we have embarked on a major redesign of our commercial automation. Actually this effort began with the Modernization Act which was crafted under the leadership of this Committee. It has fundamentally changed our legislative underpinnings, and allowed us to engage with industry in completely redesigning how we process the $845 billion in imports and still ensure compliance with all U.S. laws.

I am pleased to inform you that most of the Modernization Act regulations are complete and, if we haven't automated, we've at least initiated pilots for most of the automation features of the Modernization Act.

But in order to fully capitalize on the Modernization Act and implement this new business plan, we need a major revision to our information technology system. The current system, the Automated Commercial System, ACS, has served the government and the trade community very well for 14 years. But it was designed for business practices of the eighties, and for the legal requirements that existed before the Modernization Act.

Today it is operating virtually at maximum capacity and we are experiencing some degradation in response times. Three years ago we began development of a new system, the Automated Commercial Environment, ACE, which is designed to meet modern business needs, to employ advanced technologies that are demanded by in-

dustry, and to really build upon the Modernization Act and bring its full benefits for industry and for the government.

I would like to announce that this past Monday we implemented the very first component of ACE that interfaces with industry and it goes live on May 4, next week, in Detroit, Laredo, and Port Huron with five major importers.

It took us 14 years and millions of dollars to build ACS, the current system, and we anticipate it is going to take 6 years, and millions of dollars, to fully deploy all of the required automation architecture in the field and to complete all of the new features of ACE.

Probably the most important vulnerability, the most important thing that we need, is to have a reliable, predictable source of funding to build this automation system. Even our industry partners demand this of us because for their own long-term planning and for their efforts to build their business plans in conjunction with ours. They need to know that we are going to continue to progressively roll out this automated system.

In formulating our budget request for fiscal year 1999, the administration determined that $8 million could come from appropriated resources. The remaining $46 million should be funded by users of the system through an increase in the merchandise processing fee that would be dedicated to building this automation.

Although the funding proposal is understandably controversial and is meeting with resistance from industry, I believe you are going to find that most of the trade community, and the trade community you are going to hear from today believes and supports the idea and the need for building a new automated system that will provide an efficient international trade system in the future.

Another issue this Committee asked Customs to address is the use of a COBRA user fee, to support our preclearance operations in Canada and the Bahamas and our inspection operations for cruise ships in south Florida.

The authority to collect user fees for these activities expired last September and accordingly we began withdrawing our inspectional resources that were providing these services. Although a temporary remedy was provided for cruise ships in Florida, this authority will also expire on October 1, 1998.

We are sincerely appreciative of the efforts of this Committee's to attempt to resolve this issue and we are now withholding any further reductions in staffing from the Canadian preclearance operations in order to be cooperative with the Committee. We are hopeful that the authority to fund these positions can be instituted by the beginning of next year so we can continue to avoid having to reduce staff.

The final topic I'd like to mention concerns inspectional overtime. Customs operates, 24 hours a day, 365 days of the year, just like our customers do and overtime is an integral part of maximizing our staffing while providing cost-effective service.

Four years ago Congress revised our legislation on how we compensate our inspectional personnel for working outside normal hours. There is now a recognized need to modify that law to ensure that we are only paying officers for time actually worked and to ensure that management has the flexibility to align staffing to the workload and to the enforcement threat.

And, again, we look forward to working with this Committee to accomplish these changes in the best interest of the American taxpayer.

In closing, Mr. Chairman, I'd also like to thank you very much for introducing Al Morales, the supervisory Customs Inspector who saved that infant's life in San Ysidro. He really does represent some of the finest in Customs. Two weeks ago I mentioned to you we had another officer in El Paso, Tony Perez, who actually performed the Heimlich maneuver on a young child, a baby coming in. The mother carried the baby forward and it wasn't breathing, and he saved that baby's life. Every day these officers are out there, protecting our borders and protecting the American public. I am incredibly proud of Inspector Morales and all of the people that he represents. I thank you very much for the opportunity to be here, Mr. Chairman, and I'd be happy to answer any questions.

[The prepared statement follows:]

Statement of Samuel H. Banks, Acting Commissioner, U.S. Customs Service

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

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

NARCOTICS ENFORCEMENT

Similar to past years, Customs remains in the forefront of our Nation's narcotics interdiction and investigative efforts. Our foremost priority continues to be narcotics interdiction. In FY 1997, Customs nearly matched its all time high seizure record set in FY 1996, by seizing 982,815 pounds of narcotics.

In order to meet the challenge of policing the Nation's borders against drugs, Customs has continued to develop and wed new technologies with conventional inspectional and investigative techniques. Last fiscal year, over 118 million automobiles, 9.3 million trucks, 321,000 railcars, and 4.5 million sea containers entered the United States creating an enormous window of opportunity for drug smugglers and a massive drug enforcement dilemma for Customs. Each year, drug smugglers probe for and exploit weaknesses in Customs enforcement shield in, around, over and under our air, land, and sea ports of entry. Drug Smuggling Organizations continue to diversify their smuggling routes and have increased the sophistication of their smuggling techniques. They have established elaborate front companies, both foreign and domestic, to facilitate the movement of illicit drugs; conspired with dock workers and baggage handlers to form internal conspiracies to circumvent the Customs inspection process; deployed stealth boats and sophisticated air drop procedures to go around established ports of entry; and established sizable spotter networks in and around our ports of entry to "pick and choose" smuggling times and routes.

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

In FY 1997, Southwest border seizures under Operation HARD LINE were 33,106 pounds of cocaine, 602,549 pounds of marijuana, and 197 pounds of heroin. Operation GATEWAY, the multi-staged operation designed to address the air and maritime threat in Puerto Rico, the Virgin Islands, and their surrounding waters, also continued to show positive results. Since the start of the second year of operation, March 1, 1997, through January 31, 1998, GATEWAY has resulted in the seizure

of $3.4 million in currency, 16,693 pounds of cocaine, 376 pounds of marijuana, and 92 pounds of heroin.

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

Industry partnerships

To assist in deterring narcotics smuggling, Customs developed and deployed a number of innovative programs and detection technologies that act as force multipliers to meet our enforcement goals. Customs continues to expand its Carrier Initiative Program (CIP) with the truck industry and with Southwest border railroads as well. This program is a joint effort by Customs and the transportation industry to reduce smuggling in commercial conveyances. Presently, 3,900 carriers (875 land, 110 air, and 2,915 sea) have signed agreements with Customs. Building on the CIP, Customs established the Business Anti-Smuggling Coalition (BASC) with Southwest border importers. In FY 1997, information from these two programs resulted in 74 seizures totaling 12,700 pounds of narcotics. We believe these partnerships play an important role in combating narcotics smuggling. Last year alone, 43 percent of the cocaine seizures that were made by Customs as a result of prior intelligence, came from information that was provided to Customs by the trade community.

Building on the success of these programs, Customs has developed the Americas Counter Smuggling Initiative (ACSI), which will expand our anti-narcotics security programs with industry and government throughout Central and South America. This initiative is designed to: strengthen cooperative efforts with legitimate businesses involved in international trade; increase actionable intelligence on narcotics and contraband interdiction; increase participation in CIP and BASC; prevent narcotics from entering the U.S. via commercial cargo and conveyances; increase narcotics seizures throughout the region; disrupt smuggling by an aggressive attack on internal conspiracies; and force smugglers to use riskier methods such as air drops and speed boats. Beginning in January 1998, the Offices of Field Operations, Investigations, International Affairs, and Intelligence began detailing Customs officers to South America to assist exporters, carriers, manufacturers, and other businesses. These employees will perform security site surveys, develop and implement security programs, conduct post-seizure analyses, foster information exchange and follow up activities, and provide guidance on technology deployment and application to safeguard legitimate trade from being used to smuggle narcotics. Target countries include Venezuela, Colombia, Peru, Ecuador, Panama, Costa Rica, and Mexico.

OPERATION BRASS RING

Although Customs consistently, year after year, seizes more drugs than any other Federal Agency, and in fact more than most combined, we have become concerned that the quantity of drugs seized may be decreasing. We therefore launched on February 1, 1998 Operation Brass Ring. It will continue until July 31, 1998. Its objective is clearly stated as "To immediately and dramatically increase the amount of narcotics seized." In terms of the sum total of amounts of narcotics seized, that objective was met in the first two months of Brass Ring. Comparing fiscal years to date for 1997 to 1998, the total amount of narcotics seized has increased by 13 percent and for the time period February 1–March 31 of 1997 and 1998, the amount of currency seized increased 89 percent.

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

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

Technology

Technology plays an important role in all Customs counterdrug activities. It provides new capabilities to allow inspections to keep up with changing smuggling tech-

niques, acts as a force multiplier, increases enforcement effectiveness and efficiency and allows us to cope with growing trade and traffic.

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

Customs currently operates four truck x-ray systems in El Paso and Pharr, Texas and Otay Mesa and Calexico, California. In addition, one prototype mobile truck x-ray system and one prototype gamma-ray system are in place at Laredo and El Paso, Texas, respectively. The prototype gamma-ray system uses gamma-ray radiation to penetrate the structure of heavier-bodied trucks, such as propane tankers, to allow Customs to examine both the conveyance and some cargoes for the presence of contraband. Since the first truck x-ray system became operational in August 1995, this system, and the three others that have become operational since March 1997, have been involved in 150 drug seizures totaling over 38,000 pounds of narcotics. By December of 1998, Customs will have four additional fixed site truck x-ray systems operational in El Paso, Laredo, and Brownsville, Texas; and Nogales, Arizona.

We believe this type of technology is invaluable in enhancing Customs narcotics enforcement capabilities without impeding the flow of legitimate commercial traffic. The fixed site truck x-ray and mobile truck x-ray systems can inspect approximately eight full size tractor-trailer trucks per hour. The gamma-ray system can inspect 12–15 tractor-trailer trucks per hour. Both of these systems can inspect any vehicle that is legal for operation on public roadways.

Air and Marine Programs

In FY 1997, the Customs Air Program contributed to the seizure of 51,908 pounds of cocaine, 64,595 pounds of marijuana and 50 pounds of heroin. It also continued assistance to Mexico in the air transit zone and to South American countries in the narcotics source zone.

Since the implementation of HARD LINE and the strengthening of the ports of entry, the marine threat has risen dramatically from its previous levels. Over the past few years, the Marine Program has been scaled back to focus Customs efforts on other methods of deterring narcotics smuggling. In FY 1997, the Customs Marine Program contributed to the seizure of 31,538 pounds of cocaine, 25,040 pounds of marijuana, and 39 pounds of heroin. It is imperative to sustain this successful program.

The Customs National Marine Strategy places an emphasis on intelligence-driven interdiction operations and investigations. Smuggling methods have changed from the very simplistic (boats with bulk marijuana thrown on the decks or in cabins) to the very sophisticated (cleverly engineered hidden compartments, as well as air drops). The contraband has also changed from large, easily detectable cargoes of marijuana to smaller loads of cocaine. Customs future air and marine interdiction successes will be based on a flexible response in meeting new external challenges like those mentioned above.

Railroad inspections

In FY 1997, Customs processed more than 320,000 rail cars at eight major crossings along the Southwest border—Laredo, Brownsville, Eagle Pass, Presidio and El Paso, Texas; Nogales, Arizona; and Calexico and San Ysidro, California. Approximately half this volume crossed at Laredo, Texas. In response to the emerging threat of narcotics smuggling via rail, Customs is increasing its intensive inspections of railroad equipment and is testing non-intrusive technology on railcars. Cus-

toms recently completed successful tests of the Vessel and Container Inspection System (VACIS), a gamma-ray imaging system that has been modified for use in the rail environment. Customs also plans to deploy 47 positions to increase rail inspections by Contraband Enforcement Teams, add rail inspection training to its existing Southern Border Interdiction Training course, and perform joint operations with other agencies.

Recently, Customs and Border Patrol officials met to coordinate joint inspection operations on Southwest border railcars. Since the summer of 1997, joint operations have been held at each of the eight major rail crossings with successful results. To date, these efforts have produced several marijuana seizures totaling more than 700 pounds as well as the discovery of 17 railcars with false compartments. These seizures are in addition to Customs own rail operations which have resulted in the seizure of approximately 10,000 pounds of marijuana and 2,200 pounds of cocaine. Customs is also an active participant in a multi-agency working group formed by Attorney General Reno to address the threat of narcotics smuggling via rail.

MONEY LAUNDERING

FY 1997 was one of dynamic change in the investigative approach taken in the area of money laundering investigations and initiatives. As a result of the programs implemented in FY 1997, Customs money laundering strategy is now more focused on the disruption and incapacitation of the two key business functions that are the lifeblood of most sophisticated international criminal organizations: laundering and investing the proceeds and profits of their criminal activity. Asset Removal Teams, undercover operations, training foreign counterparts, and the establishment of the Money Laundering Coordination Center, discussed below, have all contributed to improving our money laundering strategy.

In FY 1997, our money laundering efforts resulted in seizures of $257 million in monetary instruments, most of which were related to narcotics trafficking. The Customs-led El Dorado Task Force in New York met with tremendous results in disrupting money laundering in the wire remitter industry. Using a combination of undercover operations and regulatory interventions, such as Geographic Targeting Orders (GTOs), the task force targeted 12 remitters that sent over $1.2 billion a year to South America—$800 million of it to Colombia. Their efforts have reduced the amounts remitted to Colombia by over 30 percent, driving the drug proceeds out of this system and contributing to the overall rise in the cost of laundering drug money.

On legislative and regulatory matters, Customs worked closely with the Department of Treasury and the Financial Crimes Enforcement Network, which resulted in several notices of proposed rule making for enhanced reporting for money services businesses, wire transfer record keeping requirements, and currency and monetary instruments reporting on foreign bank drafts.

For FY 1998, our money laundering strategy will build upon the successes from the previous year. Our Money Laundering Coordination Center will become operational in FY 1998 and will coordinate Customs nationwide undercover money laundering operations and follow-up investigations. Customs also plans to expand the use of covert undercover money laundering operations and continue to increase the use of non-traditional law enforcement methods, such as GTOs, in coordination with the Internal Revenue Service, the Department of Justice, the Financial Crimes Enforcement Network, and state and local law enforcement.

INTEGRITY

While there is no systemic problem of corruption at Customs, it is necessary to develop a strong integrity assurance program to counter perceived and potential threats of corruption. In FY 1997, Customs began an enhanced integrity program to address these issues and redirected resources to strengthen the Office of Internal Affairs (IA). Of the 45 positions identified for this critical program, 42 have been filled or selections made. These employees will be devoted to the new Computer Analysis Division (which will perform forensics, analysis, and assessments of the integrity of automated systems), special operations, inspection and audit, and other similar functions. Activities, such as inspections and audits, will also increase current employee awareness of integrity issues.

Pending funding availability requested for FY 1999, IA will also develop ways to complete background investigations more quickly with a higher degree of reliability, expand its own polygraph capability to address internal investigations of alleged misconduct, and acquire the specialized hardware and software to accommodate the FBI's change to electronic fingerprint technology. Working in concert with the State Department, IA plans to continue to accommodate other countries' requests for in-

tegrity and internal investigative training. This effort fosters better coordination with other countries' customs services, and the development of initiatives of mutual benefit in thwarting international corruption of law enforcement personnel. Customs is exploring changes to its hiring mechanisms to ensure that the highest level of integrity in its workforce is maintained.

AUTOMATION

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

In addition, major Customs IT projects are under ongoing review by the Treasury IRB in order to ensure that these investments meet the criteria of the Clinger-Cohen Act and the goals and strategies of the Treasury Department. One such project, the Automated Commercial Environment (ACE) is reviewed by the Treasury IRB every month. The Treasury IRB evaluates the project's progress against established milestones and performance measures, reviews and approves Customs IRB's ACE funding release requests, approves every status report that is sent to GAO and Congress, and ensures that ACE, as well as Customs enterprise architecture follows GAO's best practices.

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

Also during the past year, Customs has undertaken an extensive self-examination of how its IT operations support business needs. This effort has enabled Customs to establish the foundation for developing both an enterprise architecture, which defines how information systems and applications support business needs, as well as a technical architecture describing the components of the IT infrastructure. As a result of this effort, Customs has strengthened its ability to develop comprehensive and integrated IT infrastructure assessments and budget proposals. Further, Customs is proceeding with an effort to more fully develop an enterprise architecture and a process for renewing that architecture in conformance with Treasury guidelines and industry best practices.

Finally, Customs is intensively attacking the problem of Year 2000 compliance. Customs recognizes the gravity of the situation of our automated trade and enforcement systems, on which the trade and other law enforcement agencies depend, if our systems are not ready for the Year 2000. Customs is devoting considerable attention and has shifted resources to support the necessary renovation and testing of IT systems; the replacement of IT software, hardware and telecommunications that are not capable of operating in the Year 2000; and in addressing Year 2000 problems in such non-IT areas as laboratory equipment, x-ray machines, and building infrastructure.

While much work needs to be done and many problems can be anticipated, the Year 2000 conversion effort is meeting with some success. As of April, Customs is slightly ahead of schedule for ensuring that mainframe mission critical trade, enforcement and administrative systems are renovated and tested by October 1998. Further, these efforts are currently within budget, although Customs remains concerned about the rising costs of IT professionals in the current tight labor market.

TRADE COMPLIANCE

Through a complete redesign of the trade process and a focus on key industries and importers, Customs has made good progress toward attaining its goal of 90 percent overall compliance and 95 percent compliance for Primary Focus Industries (PFI). PFIs are industries which are of sufficient trade sensitivity to warrant a

heightened degree of attention by Customs with respect to imported goods. The agency also has been able to sustain a close to 99 percent duty collection rate.

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

For FY 1998, Customs has set forth an ambitious agenda. In the trade compliance area, Customs will initiate a number of positive initiatives. Included are: an initial prototype of elements of the modernization of Customs automated commercial operations at three land border ports; finalizing and implementing new drawback regulations to tighten control over this program (which was previously identified as a Federal Managers Financial Integrity Act weakness); instituting multi-port compliance efforts focused on three compliance areas (bearings, production equipment, and gloves) to see if greater organizational focus will result in higher levels of compliance sooner; continuing the informed compliance program with more focus on high impact areas; and continuing efforts to improve Customs compliance measurement program. Trade Compliance also plans to expand the account based-approach to 150 accounts; initiate over 100 compliance assessments of companies; develop a similar compliance approach for Mexican and Canadian NAFTA goods; increase focus on our international cooperation efforts with other countries, the World Trade Organization, and the World Customs Organization; and finally continue improvement of our commercial financial systems to improve compliance with the Chief Financial Officers (CFO) Act. The $11 million appropriated to the Department of Treasury's Automation Enhancement account in FY 1998, and subsequently transferred to Customs, will continue efforts to modernize Customs automated commercial operations.

Account Management

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

In FY 1997, Customs had 25 full-time National Account Managers in place and a growing list of accounts participating in the program. In addition, the prototype of Port Account Management was implemented. The Port Account concept also focuses on major accounts—importers with annual trade value in excess of $10 million. Successful prototyping has led to a January 1998 expansion of the program which now numbers 350 accounts, and further expansion is planned for later in 1998. The Account Management approach, as exemplified by these programs, is the cornerstone for the future of the trade compliance process. While analysis of trade patterns and determination of compliance levels for industries and countries of origin will remain critical for effective operations, an account focus is the means for implementing strategies resulting from such analysis. Customs believes that the vast majority of companies who import goods wish to do so in compliance with laws, rules, and regulations. The Account approach enables Customs to assist compliant companies to maintain compliance, while better using its resources and processes to focus on non-compliant activities. Such a focus will enable Customs to maximize the enforcement of laws and further develop risk management.

PASSENGER

In FY 1997, the performance target of 60 percent of the arriving flights providing Customs advance passenger information was met, and Customs continued to attain a 5 minute or less processing rate for 95 percent of arriving air passengers. Informed compliance projects continued with the establishment of 17 additional self-service informational kiosks at 16 airport departure lounges, production of brief television public service announcements for 8 airport television networks, and AM radio loops at the land borders.

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

Over the next year, improvements will be made to the passenger compliance measurement program in the commercial air program area. Customs will continue efforts to obtain advance passenger information for 65 percent of all international flights. This will be accomplished by working with various airlines and the Immigration and Naturalization Service.

Customs will also continue to expand automated targeting capabilities; test or install several new technologies, such as automated license plate readers, at the land borders; and continue efforts to increase the compliance levels of non-willful violators. Most arriving persons choose to be compliant when information for compliance is easily available. If the number of inadvertent violations can be significantly reduced, inspectional resources can focus more fully on serious violators.

OUTBOUND

In FY 1997, the Outbound Process made significant outbound interdictions of currency, stolen vehicles, and Exodus violations. Outbound seized more than $55 million in undeclared outbound currency. The majority of undeclared currency going out of the U.S. involved proceeds from illicit activities, with the majority being proceeds from narcotics smuggling into the U.S. Outbound also recovered 2,119 stolen vehicles worth an estimated $35.3 million. In FY 1997, Customs Exodus Program, an intensified enforcement program intended to intercept illegal exportation of strategic technology and data, interdicted 1,034 shipments of weapons, munitions, and critical technology illegally leaving the United States, valued at more than $59 million.

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

Customs determined through compliance measurement that there was an extremely low compliance rate for exports. As a result of a vessel compliance program initiated last year, the bill of lading compliance rate has increased from 63 percent to 93 percent, Shipper's Export Declaration (SED) filing has increased from 70 percent to 94 percent and manifest timeliness has increased from 90 percent to 94 percent. Customs will continue to use the compliance measurement program to address the air and land environments. In addition Customs will: test the concept of Account Management; continue to work with all segments of the trade community to ensure that the Automated Export System (AES) captures all export information to meet the needs of both the Government and the trade; continue to work with the other government agencies to incorporate their export requirements in AES; standardize used car export procedures; and further a number of initiatives to deal with willful violators (e.g., test new outbound examination facilities funded by appropriations). Outbound will also evaluate new technologies; support Department of Defense and Department of Energy foreign export control programs; evaluate a stolen vehicle initiative started in the Port of Miami; and work with our intelligence units to improve outbound currency interdictions.

Antiterrorism

In FY 1997, Customs received $62.3 million for antiterrorism initiatives to be used to meet the recommendations issued by the White House Commission on Aviation Safety and Security. Customs has filled all 140 positions (100 inspectors, 33 agents, 6 intelligence analysts, and 1 technical support position) authorized under the antiterrorism legislation. One hundred inspectors and 10 special agent positions have been assigned to 14 of the largest international airports. In addition, 20 special agents and the intelligence research specialists are working jointly with the Federal Bureau of Investigation and the Central Intelligence Agency at both field and Headquarters locations.

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

In addition, funding is available to further develop the Automated Targeting System (ATS) to identify cargo shipments that may pose terrorist threats. A prototype test of this system is scheduled to take place at New York's JFK Airport in June 1998.

Since October 1, 1997, Customs made many significant interdictions that support aviation safety and security at 17 international airports that have received resources under this initiative. Customs has assisted in three terrorist related arrests, made 65 firearm seizures in baggage and cargo, and made 56 seizures of violative shipments of hazardous materials and dangerous goods that would have been placed on aircraft.

FY 1999 BUDGET REQUEST

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

Budget Highlights

• Our Narcotics and Money Laundering Strategy will provide essential resources which will enhance our investigative and intelligence capabilities while enabling Customs to better anticipate and respond to changes in drug smuggling behavior. The $5 million and 27 FTE (54 positions) requested will provide us with additional personnel and investigative assets needed to exploit seizures made at the border and effectively identify and disrupt the transportation and distribution cells of Drug Smuggling Organizations (DSOs) within the U.S.

• The Customs Integrity Assurance Program (CIAP) Initiative of $6 million requested for FY 1999 will allow Customs to conduct more special operations in partnership with other Federal agencies, place a much stronger emphasis on intelligence and the analysis of investigative data, and increase contract and computer fraud investigations. In addition, Customs will change the process for hiring law enforcement officers by requiring increased emphasis on pre-employment screening.

The quality recruitment component of the initiative will insure that applicants of the highest quality and integrity are hired by using written tests, suitability assessments, structured interviews, and the redesigned pre-employment process. Customs will use the requested funds to develop ways to expedite background investigations with a higher degree of reliability, expand polygraph capability in order to address internal investigations of alleged misconduct, and acquire specialized hardware and software to accommodate the FBI's change to electronic fingerprint technology.

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

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

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

• Congress' FY 1998 enactment of $9.5 million for the Land Border Automation Initiative is recurred in this budget. This will have the ancillary benefit of improving targeting of arriving vehicles for enforcement purposes. This is the second phase of a joint initiative with INS which began in FY 1998. The automated targeting systems, license plate readers, and Treasury Enforcement Communications System replacement program, will free up inspectors to do more careful visual screening and questioning of vehicle occupants for enforcement purposes, thereby resulting in increases in detections of violations and subsequent seizures and arrests.

• In addition, Customs is requesting $7.252 million and 80 FTE as part of base resources in response to several mandates. The National Performance Review (NPR)

goal to clear most travelers on the southern border in 30 minutes or less and on the northern border in 20 minutes or less by the year 2000 for land border travelers by vehicle, and the legislative mandate contained in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 account for $4.185 million and 46 FTE. The NPR customer service goal is a joint initiative with the Immigration and Naturalization Service (INS) and the Department of Agriculture. The Immigration law authorizes Customs and INS to cover all primary lanes during peak processing hours and in equal numbers. This staffing and the staffing requested for the new border crossings, ($2.706 million/30 FTE) will help to support both requirements. Finally, the adjustments reflect the completion of resource levels for the requirement to staff an additional dedicated commuter lane in El Paso, Texas ($0.361 million/4 FTE).

• Finally, Customs is requesting an increase in the Merchandise Processing Fee. This increase would provide Customs with a funding source to fund our Information Technology infrastructure and modernize our commercial processes. The fee would be used to develop automated capabilities to respond to the trade's interest in account management, periodic payment, and capabilities envisioned in the Modernization Act.

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

Chairman CRANE. Thank you, Mr. Banks, and let me say that the entire Nation is very proud of the distinguished service of these people.

Back in 1993, with the passage of the Customs Mod Act, Congress allowed weekly consolidated entry filings for foreign trade zones. Today Customs has prevented firms operating in nonmanufacturing foreign trade zones from enjoying this benefit that Congress authorized and I am curious as to whether you could explain Customs rationale behind that.

Mr. BANKS. Well, there is no question that the Modernization Act provided the authority to do even monthly filing of entries in order to see if we couldn't streamline the administrative burden of filing information with the government and the pilot that we kicked off was with foreign trade zones, doing it on a weekly basis.

One of the unintended consequences of that had to do with the collection of the merchandise processing fee. The way that we ended up structuring this in the pilot reduced the collections of the fees and actually created a disparity between the fees that foreign trade zones were paying versus other customers. We don't feel that we can go forward allowing this disparity.

Two things will happen: One is we're allowing treatment that is unfair and unequal within the trade community; two is that it provides kind of an artificial incentive for people to set up their operations in a foreign trade zone and even pay the expense.

What we are actually trying to do is work with the foreign trade zones, their national association, to see if we can't continue to allow the administrative simplicity of an aggregate entry filing, but to still continue with some kind of fee structure.

We would like to continue with the administrative simplicity but we believe that it is not our prerogative to set up an artificial advantage where someone does not pay their fair fee.

Chairman CRANE. Why did Customs choose not to fund continued preclearance activities in Canada and inspectors to process cruise ship passengers, especially in Florida?

Mr. BANKS. This was a very difficult issue for us. When we lost the authority to fund those positions out of the user fees, when they expired as provided for by NAFTA, there were 77 inspector positions covered by the fees. The option was to reduce service or to remove inspectors from some other location in order to maintain those operations in Canada and on the cruise lines.

To be candid with you, we would like to continue to provide those services, we don't want to damage the smooth flow of either cruise ship operations or of Canadian preclearance, but the difficulty was, if you look at it, that they are much lower enforcement risks than the areas from which we would have had to pull those inspectors.

That was unacceptable to us. I did not feel I would be doing the right thing for the American Government in taking that approach, so we did, indeed, begin to withdraw those resources from Canadian preclearance and from the cruise ship operations.

Chairman CRANE. What alternatives to an increase in the merchandise processing fee are available to Customs to help pay for needed automation projects?

Mr. BANKS. When the administration was considering how to pay for this automation, and it's a very expensive proposition, we talked to them and a decision was made that those who benefited from the automation should pay for it, and thereby was structured this increase in the merchandise processing fee. That is the administration position in the budget. I will say that there are possibly other options that could be pursued and I think the administration would be open to considering other alternatives.

Some of the things that have been mentioned by people within the trade community you are going to hear today, I think. Some people say take the money out of the current collections of the merchandise processing fee. Some people support taking 1996 or 1997 as a base and any normal increases in collections of the processing fee because of increased imports should be dedicated to automation. So I think there is a variety of options and actually we have expressed our willingness to work with the industry associations to see if we couldn't construct other acceptable alternatives.

Chairman CRANE. And, finally, when may we expect that Customs will have an accurate cost accounting system that will allow Congress to know exactly how much it costs to process cargo, passengers, trucks, autos, and ships.

Mr. BANKS. I wish I could give you an actual date. I cannot not at this point. I will say that we have built a cost accounting system, a cost management information system. We are prototyping it right now on passenger processing in order to try to get those numbers down. The numbers that we have come up with the testing have not been entirely accurate, we are not satisfied with the system, and we won't bring the system online until we believe it accurately reflects what our costs are.

I will commit to you, Mr. Chairman, that we are working that issue as hard as we can. I will try to get you a date for the record.

[The following was subsequently received:]

Chairman Crane, Customs has implemented a Cost Management Information System (CMIS) for FY 1997 financial data that covers the work performed by Customs top ports and all CMCs. It is expected that further deployment of CMIS will be completed by the end of FY 1999. CMIS data is compiled using surveys to capture labor distribution information, and additional information is taken from several existing

financial and workload data systems. Analysis performed on the results of the FY 1997 cost model have shown that certain adjustments/corrections are needed both to the cost model as well as the feeder systems. Procedures have been built into CMIS to reconcile the financial information with Customs annual financial statements, which are audited in accordance with the Chief Financial Officers Act. To ensure the data integrity of the workload system, a group has been established and tasked with validating the accuracy of the data input at field offices. It is hoped that the efforts undertaken will provide CMIS with better workload data and continued improvements in the survey process will result in more accurate unit cost calculations. The more accurate the feeder systems are, the more accurate CMIS data will be. Customs sees the adjustments and corrections to the feeder systems as a continual process.

Chairman. CRANE. Thank you, Mr. Banks.

Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. I have a technical question that I would like to ask Commissioner Banks. Commissioner, one of the areas that Operation Hard Line strongly emphasizes is the need for more intensive cargo searches. For instance some 300,000 railcars enter the United States from Mexico each year at 8 border crossings. Customs has asked from input from industry regarding how best to inspect fully laden railcars. I understand that only higher energy systems, such as the ones operational overseas in China and elsewhere, are capable of inspecting a fully laden railcar. Since rail crossing inspections are the only areas in which 100-percent inspection interdiction is possible, it would seem logical that the most powerful type of system available for this application would need to be deployed.

What is Customs current position with respect to utilizing high-energy systems in this capacity?

Mr. BANKS. Congressman Neal, we are working with the Department of Defense to help construct the right technology to bring to bear on trucks, on railcars, even on shipping containers. The current technology we are experimenting with and we actually have a prototype out there, is a gamma ray imaging device that has the capability to look through things like double-walled propane tankers railcars. Our initial tests have been successful.

The Department of Defense is helping us develop an improved model that will be tested this summer in south Florida on ocean-going containers. A slightly different version is being developed to use on railcars.

We're open to any technology. Our goal is getting the job done, not who is supplying the technology or what type of technology it is. We have a research and development staff to consider what is the right technology.

That satisfies my inquiry, Mr. Chairman, thank you.

Chairman CRANE. Mr. Ramstad. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman. Obviously our commerce with Canada is very important to Michigan, which is where I'm from, and I have a question and particularly for the sort of just-in-time inventory that you see many of the industries employing.

I have a question regarding the automatic or automated or key or card entry system that is possibly going to be in place as a result of legislation that has passed the Congress and I know that Customs is developing. And there are some concerns with matching

this to a list and how entry will occur and, obviously with Canada, we've not had to have documented entry. Can you comment on that and what progress you've made on that and where that is?

Mr. BANKS. Congressman Camp, I believe what you may be referring to is a requirement passed for the Immigration Service on passengers who enter our country. They want to keep track of those who come in the country and then whether or not, indeed, these people leave.

We do provide the automation system for the border crossing. Immigration uses the U.S. Customs system and we do key in at least license plate numbers of all cars crossing our land border into the United States. We don't typically input people's names, although we have the technological capability to do so. Immigration is in the process now of issuing new border crossing cards. I believe their primary focus is on the Southwest border. The Immigration Service has told their congressional committees that they anticipate real difficulty implementing this matching system within the timeframe that the legislation requires and I believe there is some activity by Congress to modify that legislative requirement.

Mr. CAMP. Yes, I was asking you because I knew that Customs would be charged with implementing this system and last year we passed a 1-year delay and I know there is some move to deal with this issue in the Senate particularly. But I wondered as a practical matter how this border crossing card would be used because literally the person would be stopped at the border while this check was going on. I can see tremendous delays in border crossing, particularly, not just tourists or people who are traveling back and forth, but obviously the commerce that goes on between countries as well. I wanted to hear your comments on the implementation of it and what concerns you may see from that system.

Mr. BANKS. Well, 442 million people entered this country this past year, that's what, one and a half times the U.S. population? Are we concerned? Absolutely, we're concerned. To be able to do that efficiently and effectively is going to be a real challenge. If we are going to engage in this at least it would be our recommendation, in working with the Immigration Service, that perhaps there could be some kind of reader set up in advance of crossing. Perhaps if we could really do it correctly, we could expedite the movement of passengers.

I think at this particular point Immigration does have the lead on the issuance of the cards and even on the schedule for implementation but I guarantee we are going to support them and we are also going to be very vocal if it is going to damage the smooth transport of people across our borders.

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

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman. Mr. Banks and I were talking during the dog show and I have to say despite all of this impressive equipment I think the dog is everybody's favorite. I want to compliment your agency and the good men and women that you've got down there in south Florida. You have really done, just as my kids would say, an awesome job, in pointing out the problems we've had in the port, we have in the ports, plural.

The Port of Miami has come light years, I think, in doing the work that desperately needs to be done in security, doing some background checks, or at least putting the legislation, the local legislation, in place to do that.

We are following suit at Port Everglades. In my district, I've got the Port of Miami at the southern border, and then I've got the Port Everglades in the middle, and the Port of Palm Beach at the north. Quite obviously as the Port of Miami became more and more secure, the port of least resistance became Port Everglades. We have got the county commission down there doing quite a bit in order to secure that port and following, I think, in large part the recommendations of the Customs Service.

I will be filing, in the next week or so, a bill that will make it easier to get background checks. A spot check of the workers in Port Everglades, which my office did in cooperation with Customs, disclosed that roughly half the employees working the docks, the employees that were out there, the ones that could create the problems, the ones that could grab the contraband out of containers, the ones that could get it off the ships and everything else, over half of them had criminal records and most were drug related.

Now it doesn't take a whiz kid to figure out that you don't put people in a position where they can easily get these drugs, illegal drugs, into this country if they have a background in that and even make it worse, they were parking their vans, most of them had vans which should turn a light bulb on in somebody's head also, right there near the containers, so they didn't even have to carry it a long distance.

The whole thing was crazy and the internal conspiracy there and the work that the Customs has done is really, really magnificent. And, as I said, next week, or the next couple of weeks, I'll be filing legislation to make it easier to get those background checks because there is some problems in that has been pointed out to me.

Down in Miami, you have a system called the STAR system. I have two questions with regard to that. That would relate to the stolen auto and getting the recovery. As you know we have problems with that up in the Dania-Port Everglades and around in there. How is that system working and what are the chances of getting that up in Port Everglades?

Mr. BANKS. First, Congressman Shaw, I want to thank you very much for your support on the port security issues. It really makes a significant difference, it really helps us in our whole effort. As you know, we arrested 22 dockworkers within the last 30 days that were involved in drug smuggling. We've got videotapes. It takes them 7 seconds to break into a container, pull duffle bags out, and be gone. That is our window of opportunity to do that enforcement effort.

Mr. SHAW. And sitting on top of the duffel bag, is a new, what do you call the tab that shows that no one got into the container, so they have a brandnew one to put on there so the guy coming up there, it appears like no one ever got into the container.

Mr. BANKS. A brandnew seal, counterfeit seal, so we sincerely appreciate that support. On the stolen vehicles, that is a priority issue, especially in south Florida, but nationwide as well. We've gotten tremendous support from a variety of different sources, in-

cluding the Miami Dade County Police. The STAR system, which has the capability to use the gamma ray imager through the containers enabling it to spot vehicles that are concealed inside those containers is fabulous. We're working with LoJack and with a variety of other groups in order to try to bring more technology to bear on that problem. I think we'd be extremely happy to transport that technology to Port Everglades to continue to deal with this serious problem.

We seized about 2,100 stolen cars last year. We're just scratching the surface, so we'd be very happy to work with you on that problem.

Mr. SHAW. Well, consider this a formal request because we really need some more help up there at Port Everglades. I'll be at Port Everglades speaking tomorrow and I'll be at the Port of Miami on Monday.

Mr. BANKS. I don't know if I can have it there tomorrow, but I'll do my best.

Mr. SHAW. Thank you. Thank you, Mr. Banks, and congratulations on your job.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Commissioner Banks, thank you for doing a tough job well as Acting Commissioner.

Let me ask you just two questions. As a followup to the Chairman's line of inquiry, like my colleague Mr. Camp, I represent a State that borders Canada, namely Minnesota. Last year, 15 million air passengers traveled back and forth between the United States and Canada. Chairman Crane mentioned a bill that he and I have introduced, H.R. 3644, to allow Customs to access funds in the user fee account to enhance your inspector staffing at preclearance airports in Canada. Does the administration support our bill?

Mr. BANKS. Yes, sir. I believe they do.

Mr. RAMSTAD. I appreciate knowing that and hopefully that will help us hasten its passage. The second I have——

Mr. BANKS. I'd like to be able to go back and absolutely confirm that for you in writing, but I believe so.

Mr. RAMSTAD. I take you at your word, sir.

Mr. BANKS. We're thrilled with it.

Mr. RAMSTAD. Let me ask you a second question and we have to go for a vote, as the lights indicate.

In reference to the ACE business plan as its called, is Customs in a position to share that ACE business plan with the airline industry and identify how ACE will be implemented?

Mr. BANKS. Yes, sir. Immediately. We'll be happy to sit down, we will show you how we crafted our business plan first. We went out and did customer survey needs. We mapped it, in order to satisfy those customer needs, we mapped what products they needed. What processes needed to be to deliver those products, and then the information and the information technology necessary to deliver those processes.

Mr. RAMSTAD. As well as the itemized costs?

Mr. BANKS. As well as the costs.

Mr. RAMSTAD. Thank you, I appreciate hearing that. That's refreshing to hear that you are working together with the private sector in that way to implement this plan.

That's all I've got, Mr. Chairman. Thank you again, Commissioner.

Mr. BANKS. Thank you, sir.

Chairman CRANE. And we want to express great appreciation to you, Sam, and we look forward to working with you and with that the Subcommittee will stand in recess subject to the call of the Chair. We'll get over to this vote and come right back with our next panel. Thank you.

[Recess.]

Chairman CRANE. The Subcommittee will resume and we shall resume with a panel and first on that panel will be Carol Hallett. I want to welcome all of our witnesses, but provide especially a warm welcome to Hon. Carol Hallett, former Commissioner of Customs Service, who is joining us today.

So if you will all take seats and your written statements will be made a part of the permanent record, so if you can, please try and keep your oral presentations to 5 minutes or less.

Thank you so much. And with that, Carol, we shall start with you. Ladies first.

STATEMENT OF CAROL HALLETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA

Ms. HALLETT. Thank you very much, Mr. Chairman, and to the Members of the Subcommittee. I am very pleased to be here with you today. I am Carol Hallett, the president and chief executive officer of the Air Transport Association of America or ATA. As you know, in my previous role as the Commissioner of Customs, I frequently had the opportunity to testify before this Subcommittee and today I would like to discuss many of the same issues, from a different perspective, however, a perspective of a Customs Service customer, the airline industry.

First, on behalf of our industry, I want to thank you, Mr. Chairman, and I want to also thank Mr. Ramstad, for your diligent work on H.R. 3644 authorizing the use of Customs user fees to maintain the critical equipment and positions required to provide preclearance services in key foreign locations. I also want to extend the industry's appreciation for your decision to allow the sunset of the temporary NAFTA surcharges on Canada, Mexico, and Caribbean passengers, as well as the additional $1.50 on all international passengers.

Clearly, the historical charge of $5 on passengers is more than sufficient to cover the cost of routine processing of air and sea traffic by U.S. Customs. In fact, Customs has determined that the entire cost for processing air and sea passengers is, on average, approximately $3.25. And so we are very pleased that H.R. 3644 provides continued authority to expand the fees, or extend the fees, collected from air passengers on preclearance operations in both Canada as well as the Caribbean.

In addition, passengers originating outside of Canada, Mexico, or the Caribbean transiting those locations also pay the fee.

It is important to remember that our country has a bilateral agreement with Canada to provide sufficient staff and service, as it does at the designated preclearance locations. And H.R. 3644 is going to provide the authority necessary to ensure that we can and will meet our commitment by eliminating existing limitations on the spending authority.

It does so, Mr. Chairman, by expressly providing that user fee proceeds can fund the preclearance positions, even though no fees are collected on traffic originating in Canada.

Mr. Chairman, another issue being deliberated here today, the merchandise processing fee, is also of concern to the airline industry. During the last decade, air carriers have worked cooperatively with the Customs Service on design and implementation of several systems that have been developed to automate merchandise processing. Under the umbrella of the Customs Automated Commercial Environment, ACE, an initiative to redesign Customs legacy systems, work is underway to develop the Automated Export System. Unfortunately, after more than 2 years of operational modification, the Automated Export System has had very limited success and active industry participation remains light.

In fact, it is not working satisfactorily for either the trade or for enforcement purposes.

ATA and our member airlines want to make clear that we believe, as does Customs, that the export process is far too paper intensive and in dire need of automation. Yet, the foundation for automation cannot be built on the premise that automating the existing manual process will address our mutual concerns.

Clearly we need to embark on the path of innovation that will allow for creative approaches to export automation. Therefore, it would be premature at this time, for the ATA members are all in agreement on this, we simply do not believe it is appropriate at this time to increase the merchandise processing fee earmarked for ACE automated initiatives.

And finally, Mr. Chairman, in closing, I want to say that we are in strong support of continuing the efforts by the Customs Service to interdict drugs flowing into the United States. Interdiction is a critical task and Customs is ever mindful of its interdiction mission in dealing with every shipment that it handles. However, we believe that such an important mission must be adequately funded. Customs should not be required to strip away resources from other high priority responsibilities to pay for operations on the Southwest border or other high drug risk locations.

And so, Mr. Chairman, I want to thank you for the opportunity to appear before you today. It is indeed a pleasure to be back. Thank you.

[The prepared statement follows:]

Statement of Carol Hallett, President and Chief Executive Officer, Air Transport Association of America

Thank you Mr. Chairman, and members of the subcommittee. I am Carol Hallett, President and Chief Executive Officer of the Air Transport Association of America (ATA). As you know, in my previous role as Commissioner of Customs, I frequently testified before this subcommittee and always found the experience to be both pleasant and productive. Today, I would like to discuss many of the same issues—but from the perspective of a Customs Service customer—the airline industry.

ATA represents the major commercial passenger and cargo air carriers in the United States.[1] Collectively, our members account for over 95 percent of all revenue passenger and cargo ton-miles that scheduled air carriers operate in this country. I am pleased to have this opportunity to present the industry's views on the issues before you here today.

First, on behalf of the industry, I want to thank both you, Mr. Chairman, and Mr. Ramstad for your diligent work on H.R. 3644, authorizing the use of customs user fees to maintain critical equipment and positions required to provide preclearance services at critical foreign locations. I also want to extend the industry's appreciation for the decision to allow the sunset of the temporary NAFTA surcharges on Canadian, Mexican and Caribbean passengers, and the additional $1.50 charge on all international passengers.

We are pleased that H.R. 3644 provides continued authority to expend fees collected from air passengers on preclearance operations in both Canada and the Caribbean. In addition, passengers originating outside Canada, Mexico or the Caribbean transiting through those locations continue to pay the fee.

It is important to remember that our country has a bilateral agreement with Canada, to provide sufficient staff and service at designated preclearance locations. H.R. 3644 will provide the authority necessary to ensure that we can and will meet our commitment by eliminating existing limitations on spending authority. It does so by expressly providing that user fee proceeds can fund the preclearance positions at issue even though no user fees are collected on traffic originating in Canada. Clearly the historical charge of $5 on passengers is more than sufficient to cover the cost of routine processing of air and sea traffic by the Customs Service. In fact Customs has determined that the entire cost for processing an air or sea passenger is—on average—approximately $3.25.

Customs user fees, collected from air passengers, are used for purposes beyond air passenger processing such as land border inspectional overtime. In that the money is not segregated exclusively for the use of those paying the fee, industry participation through an advisory committee as H.R. 3644 provides, is instrumental in the appropriate and efficient use of these resources.

Another issue being deliberated here today—merchandise processing fees—is also of concern to the airline industry. During the last decade air carriers have worked cooperatively with the Customs Service on the design and implementation of several systems developed to automate merchandise processing. Under the umbrella of the Customs Automated Commercial Environment (ACE), an initiative to redesign Customs' legacy systems, work is underway to develop the Automated Export System (AES).

Unfortunately, after more than 2 years of operational modification, AES has had very limited success, and active industry participation remains light. In fact, at the moment, AES is not working satisfactorily for either trade or enforcement purposes. In general, it can be said that there is widespread concern over AES throughout the transportation industry.

ATA members are unified in their view that AES, in its current design, is unacceptable. It represents a 180-degree departure from common trade-favorable practices, as well as Customs requirements over the last half-century.

Mr. Chairman, the problem has not been unwillingness on the part of Customs to automate. Rather with the Customs Service dual mission of trade facilitation and enforcement, it is not particularly helpful or productive on those occassions when Customs attempts to define—or redefine—the global business process to fit into its own proprietary automation needs. Such an approach is destined to fail.

ATA and our airline members want to make clear that we believe—as does Customs—that the export process is far too paper intensive and in dire need of automation. Yet, the foundation for automation can not be built on the premise that automating the existing manual process will address our mutual concerns. Clearly, we need to embark on a path of innovation that will allow for creative approaches to export automation. Therefore, it would be premature at this time for ATA member carriers to support an increase in the merchandise-processing fee (MPF) earmarked for ACE automation initiatives.

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[1] U.S. flag members are: Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, America West Airlines, Atlas Airlines, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, Federal Express, Hawaiian Airlines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. Our foreign flag technical members include: Aeromexico, Air Canada, Canadian Airlines International, KLM-Royal Dutch Airlines and Mexicana.

Finally, in closing, I want to say that we are in strong support of the continuing efforts by the Customs Service to interdict drugs flowing into this country. Interdiction is a critical task, and Customs is ever mindful of its interdiction mission in dealing with every shipment it handles. However, we believe that such an important mission must be adequately funded. Customs should not be required to strip away resources from other high priority responsibilities to pay for operations on the southwest border and other high risk drug locations.

Once again, Mr. Chairman, I want to express my appreciation, and that of ATA, to you and the members of the subcommittee for the opportunity to appear here today. Thank you.

Chairman CRANE. Thank you, Carol.

Mr. Nemmers.

STATEMENT OF BARRY H. NEMMERS, CHAIRMAN, CUSTOMS COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS; ACCOMPANIED BY JACK PARTILLA, OLYMPUS CORP.; AND CHAIRMAN, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. NEMMERS. Mr. Chairman, my name is Barry Nemmers. I am here testifying on behalf of the American Association of Exporters and Importers. Accompanying me on my left is Jack Partilla, of Olympus Corp. and chairman of AAEI.

We're here before you today to express our views regarding the funding of the redesign of Customs computer systems. We can be brief for our only real point of disagreement with Customs is how that redesign is to be funded.

Customs and the trade community have been working together very closely in common cause, first to draft and then to implement the Mod Act. Customs was asked by this Subcommittee in particular to bring the trade community into the regulatory making process. They have done so with enthusiasm, with creativity, and, with the adoption of current management concepts. All of this shows in the results.

A prerequisite for the Mod Act implementation was the design and acquisition and implementation of a sophisticated computer system to replace the aging ACS. From 1994 until late last year, Customs continued to say that ACE was in development for rollout in the late nineties. In our many meetings on the Mod Act provisions, they gave us no indication that they were behind schedule and that there was no funding.

This year they've said they have no money for ACE, they need $850 million, and another 6 years. Yet the administration has requested only minimal appropriations for ACE and Customs wants to increase the user fee to pay for ACE.

You can imagine our surprise.

But the implications of this situation are sobering. First, a modern computer system at Customs is important to the private sector's own implementation of new hardware and software systems on which Fortune 500 companies, midlevel companies are spending hundreds of millions of dollars to automate their supply chains from manufacturer to customer.

Until it has ACE, Customs will be standing squarely in the middle of those supply chains, with an eighties computer system and

thirties procedures. It will be a limitation on the growth potential of all companies in each supply chain, not just importers.

Second, the need to rely on an antiquated and failing ACS for another 6 years is dismaying. The independent Gartner Group's January 1998 assessment of ACS leaves no room for doubt on this. Furthermore, it is now essential if we're to have ACS for 6 more years, that Customs and the trade community ensure that their year 2000 fixes are both sufficient and compatible.

The situation is critical. ACS may soon begin to experience noticeable slowdowns and processing degradation. These processing failures will impact Customs enforcement capability as well as its commercial processing effort because Customs runs only one computer system.

We have stated in our written statement that we need to see a business plan from Customs that sets forth in some detail the kinds of things we have to justify in the business community when we ask for expenditures from upper management. What's needed, why it's needed, when it's needed, what it will cost, and where the money will come from.

Yesterday we received from Customs a stack of documents that appear to contain all of the elements of a business plan, but not presented as such in such a way that we can really track that. But we do believe that there is sufficient basis there for Customs to put together a credible appropriation request. The issue that is remaining, of course, is where the money is to come from.

We are adamantly opposed to this financing through a user fee. We've made the arguments before about user fees and we need only to summarize them here as to where they particularly apply to computer systems.

First of all, Customs computer costs are not generated by a service provided to importers. Customs is a service the importers would be happy to do without. They do add—there are certain functions of any governmental agency that are core functions of the Government of the United States and benefit the people at large. We believe this is one, as much as rent and salaries. Customs computers benefit many other national interests, other agencies, statistics; it's unfair to ask importers to finance those uses.

The cost of a distributed computer system can't be allocated between enforcement, commercial processing, and support for other agency requirements. User fees are now of questionable legality. The decision of the Supreme Court in *U.S. Shoe* is encouraging lawyers to take another look at the merchandising processing fee and other user fees of this type.

A user fee would be vulnerable to challenge in the World Trade Organization.

And finally we feel that use of a user fee for this purpose will have a boomerang effect on exports as other countries copy a U.S. user fee and if it's not challenged in world forums.

AAEI has been a strong and vocal supporter of Customs automation and we have confidence in Customs design. We believe they can put together a system that will work for us into the next century. We believe that the cost is a responsible investment for the United States.

We appreciate your interest in this subject and we'll try to answer questions and help as we can. Thank you.

[The prepared statement follows:]

Statement of Barry H. Nemmers, Chairman, Customs Committee, American Association of Exporters and Importers

Good Afternoon, Chairman Crane and members of the Trade Subcommittee. I am Barry Nemmers, partner at the law firm of Chadbourne & Parke. I am testifying today in my role as Chairman of the Customs Committee of the American Association of Exporters and Importers (AAEI). With me to answer questions is AAEI's Chairman, John Partilla, Vice President, Logistics for Olympus America, Inc. AAEI is a national organization of approximately 1000 firms involved in every facet of international trade. AAEI is the largest association concentrating on policies and practices of the U.S. Customs Service. Our members are active in importing and exporting a broad range of products including, chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, household consumer goods, toys and automobiles. AAEI members are also involved in the industries which serve the trade community such as customs brokers, freight forwarders, banks, attorneys, accountants and insurance carriers.

We are pleased to have this opportunity to address issues concerning the U.S. Customs Service. The management and oversight of Customs' commercial operations are of great concern to AAEI, as our members interact with the agency on a daily basis.

AAEI and Customs have always dealt with each other in a direct, honest, usually harmonious, and always mutually respectful, manner. Due to this long-standing relationship, AAEI does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many specific problems are resolved.

As you know, the funding of the redesign of Customs computer systems has emerged as a critical and time-sensitive problem. We are here before you today to express our concern and frustration on this matter.

AAEI's position can be summarized as follows:

- Customs and the trade community worked together and continues to work together in common cause to draft and implement the Mod Act.
- A pre-requisite for the implementation of the Mod Act was the design, acquisition and implementation of a sophisticated computer system to replace the aging Automated Commercial System (ACS).
- From 1994 until January of this year, Customs continued to say that the Automated Commercial Environment (ACE) was in development and in our many meetings on the Mod Act provisions gave us no indication that it was behind schedule and that there was no funding.
- Only this year did Customs announce that it has no money for ACE, that it needed $850 million and another six years to develop ACE, that the Administration had requested only minimal appropriations for ACE and that Customs was proposing an increase in its Merchandise Processing Fee ("MPF") to pay for all or part of ACE.
- AAEI continues to support ACE and Customs automation. We continue to believe that Customs is competent to design and build the appropriate computer system.
- We are disturbed to learn only now that there has been a funding problem for years and that the trade community was allowed to continue to believe that ACE would be ready in 1998–99.
- We are adamantly opposed to the use of a user fee to pay for this core cost of the U.S. Customs Service.

In 1993 Congress enacted the Customs Modernization Act, legislation which had been sought jointly by Customs and the trade community authorizing Customs to automate virtually all of its commercial operations. Customs then embarked upon an ambitious program to rewrite its regulations while simultaneously developing and building the computer system on which the Mod Act was premised. At the same time, Customs was faced with implementing both NAFTA and an agency-wide reorganization. The success of each of these programs was dependent on the timely implementation of this new computer system, a system that we knew at the time would be complex and expensive. Adding further to Customs burden were the demands of maintaining the aging and increasingly unstable existing ACS and carrying out its Year 2000 project with its inflexible deadline.

Because many of our larger corporate members also were experiencing a similar disruption as their corporate organization and workflow were re-engineered and their data and information management systems were converted from mainframe-centered computer systems to distributed systems, we were sympathetic with the immense tasks facing Customs. We commended Customs for its ambitious undertakings.

Four years later most of the major automation programs in the 1994 Customs Modernization Act remain in development and the decentralized computer system on which these programs depend does not yet exist. The aging Automated Commercial System is said to be reaching its limits; Customs has said that it is no longer developing new functionality for it, and there is no question of burdening ACS with the multiple new tasks contemplated in the 1994 Mod Act.

In the Mod Act, Customs was charged with developing its substantive policies and regulations under the Act by reaching out to and involving the trade community. Customs has more than met both the letter and spirit of that mandate. Customs took the lead and since 1993 the trade community has attended numerous meetings, participated in focus groups, and read and responded to innumerable concept papers, outlines and drafts. Customs accepted the 'partnership' approach with enthusiasm and creativity, and the results reflect the high quality of the process. While we wish everything was closer to completion, we recognize that our involvement necessarily caused delay.

The trade community was not involved in the same way in the planning and design of the underlying computer system. In 1995 Customs did create an informal discussion group with representatives from the trade community that it called the "Trade Support Network." However, the level of involvement of this group was not the same as the trade community's participation in the development of the substantive policies and regulations and the group was not asked to participate in the design of the actual computer hardware and software system. The group was deeply involved in such matters as what types of accounts should be established and what needs should they serve; what data should be on entry declarations and on account statements; the interfaces with other government agencies. These were valuable and necessary discussions, but they did not bring us into systems design.

To our knowledge, the Trade Support Network only met infrequently, three times for a total of six days in 1995, once for five days in 1996 and once for two days in 1997. It has not yet met in 1998. During that same time and in the years preceding 1995, the trade community and Customs met in many separate groups focused on individual subject areas of the Mod Act. In between those meetings numerous documents were exchanged, very often by publication on the Customs Electronic Bulletin Board and later on Customs' web site.

The lengthy reports of those meetings (prepared by Customs) show that there was virtually no discussion of the technology, software or hardware, under consideration. There was virtually no discussion of the system's structure. Most relevant for us today, the reports show only two references to cost, both brief and largely meaningless, with no context provided. There are no references to actual hardware and software implementation schedules or milestones and no references to appropriation requests.

Perhaps we should have asked for more information, but Customs frequently referred to its "ACE development" efforts. We had confidence (and still have that confidence) that Customs was more than competent to develop the system it would need to implement all the programs we were discussing. After all, ACS has been successful. While it may not be the most elegant system ever developed, it has been robust and scalable and has gone down relatively infrequently given its scope and size and the demands imposed upon it.

For four years, we have assumed that Customs was busily implementing ACE. Since 1994 we have heard 1998 (and more recently 1999) as the implementation date. Suddenly, three months ago, we were told that ACE is six years away. We are told that Customs has none of the hardware and software it needs for ACE and that not only is there no money appropriated, none has been requested. We are told that to implement ACE, Customs will need $850 million over the next six years. And Customs tells us that it now expects the trade community to pay for all this.

You can imagine our reaction. Our members were preparing for the imminent implementation of ACE. They have been anticipating the productivity gains from the 1994 Mod Act. Instead they hear that in order to have ACE and the most meaningful of the Mod Act reforms in six years, they must pay a user fee.

The implications of this situation are sobering.

First, a modern computer system at Customs is important to the private sector's implementation of enterprise resource planning software. The private sector is in the midst of a complex, expensive change in the way it does business. Virtually

every Fortune 1000 company and most mid-size and many small businesses are implementing new software and hardware systems to fully automate and integrate their supply chains, from manufacturer to customer. The integration is critically dependent on just-in-time, available-to-promise concepts. The idea is to be able to provide a customer with a customized order in the shortest possible time. Until it has ACE, U.S. Customs, however, will stand squarely in the middle of those supply chains with a 1980's computer system and 1930's procedures. It will be a limitation on the growth potential of all companies in each supply chain with an import and export element, not just on the importers and exporters.

Second, the need to rely on an antiquated and failing ACS for another six years is dismaying. The independent Gartner Group's January 1998 assessment of ACS leaves no room for doubt on this. Customs will be forced to carry out commercial processing, drug and other enforcement, and passenger processing on a computer system designed and built before most of us had our first PC.

Third, not only will we not have the productivity gains we expected from the Mod Act, we have to consider whether these programs any longer make sense if they will not be fully implemented for six years. The initial planning for the Mod Act began ten years ago and was not based on the business practices and sophisticated software that is now coming into use. We made assumptions about how far we could go in modernizing antiquated Customs commercial procedures that today appear tentative and compromised. For example, in a series of meetings last fall, Customs and the trade community agreed that, without compromising and probably improving Customs inspection and interdiction functions, Customs entry and liquidation system should be scrapped in favor of a post-importation, account-based system that could interface with modern business and financial practices. Such a system would be of great benefit both to Customs and the private sector, but the Mod Act did not go this far and new legislation would be required.

We do not understand why Customs is only now presenting this problem to the trade community. Customs has been exemplary in its outreach to the trade community as it developed the Mod Act regulatory structure, NAFTA, and even its own reorganization, but Customs and the Administration have not enlisted private sector resources in a comparable way regarding ACE.

The situation is critical. ACS itself may soon begin to experience noticeable slowdowns and processing degradation as its databases approach capacity. We are told that ACS cannot absorb the processing demands of the Mod Act initiatives. System overloads are certain; significant data loss and processing errors are likely beginning this year. These processing failures will impact Customs' enforcement capability as well as its commercial processing efforts—Customs runs only one computer system.

THE NEED FOR A DETAILED BUSINESS PLAN FOR ACE

Clearly, it is in the interest of all parties in both the public and private sector that moneys be made available to Customs on an urgent basis. There is no obvious source for such large amounts of money to be made available in a short time. Congress has made clear its reluctance to fund ACE unless and until Customs produces a detailed business plan for the design, procurement, and implementation of the system.

We now share Congress' frustration over the lack of a detailed business plan for the development and rollout of ACE. We fear that unless a detailed business plan is developed this year, there may never be an ACE. Certainly, we no longer feel we can support Customs funding requests until we have seen a business plan. At this point, it is clear that an ACE business plan will have to provide a significant level of detail.

Surprisingly, there seems to be serious misunderstanding as to what a business plan should include. When large expenditures are believed to be needed within businesses, senior management is presented with proposals that include in detail:

- what is needed (stated both in general terms and then in significant detail)
- why it is needed (in the context of the company's overall business plan)
- when it is needed (with implementation milestones)
- what it will cost (in as much detail as is then known).

The minutes of the Trade Support Network Meeting of May 31, 1995, prepared by Customs, contain the following as the first in a list of 14 "TSN Consensus Items":

1. Customs business plan Needed—The TSN would like to see a "business plan" defining where Customs is going, before agreeing to systems issues related to ACE. The plan should include the results of the Trade Compliance process reengineering, the various Mod Act changes, and other related initiatives, and how these are integrated. The plan is needed to address the myriad of trade meetings dealing with

Trade Compliance issues (in-bond, line release, NAFTA prototype, etc.) and the various interim activities that seem to be moving in different directions, and consuming the time and attention of the trade participants.

To our knowledge no such document has been prepared by Customs for ACE implementation. While we would be happy to work with Customs to develop such a plan, we believe that the time is too short and that it would be much more productive to have a neutral expert such as the Gartner Group (which already has some familiarity with Customs systems) or another similar group provide the basic functional, time and cost analysis. We could then be more helpful by assisting such a group as requested by it or by Customs and then by meeting with Customs regarding the findings.

FINANCING THROUGH AN INCREASED USER FEE

Customs has proposed that its existing user fee, the "Merchandise Processing Fee" be increased from 0.21% to 0.25% and with increasing caps to pay for ACE. It is AAEI's position that a user fee for this purpose is inappropriate and potentially illegal. This is not a new position for us. In testimony before you last year, Mr. Partilla stated our opposition to the use of a user fee to finance functions established to benefit the general welfare. He specifically cited the purchase and maintenance of computer systems as one part of those functions.

Customs has said that it needs funding for this computer system that is "predictable and reliable." We wholeheartedly agree. We do not agree that an increase in the MPF will provide either given the unpredictable shifts in trade and the questionable legality of such use of a user fee.

The arguments against the inappropriate use of user fees have been made on the record many times before and we need only summarize those most relevant here:

Customs computer costs are not generated by a service provided to importers. Certain functions of any government agency are core functions of government. Not everything done by an agency can be characterized as benefiting a limited group of users of a service. Certain core functions are necessary to the agency's existence; the continued existence of the agency presumes that it will exist for the benefit of the nation as a whole. The essential costs of the agency thus are borne appropriately by all citizens. The cost of office space and essential facilities, salaries of core employees, furniture, telephones, even pens and paper are core costs. Today, the cost of computer systems undeniably are among these core costs and should be borne by the nation as a whole as the price of having that agency.

Customs computer costs benefit many other national interests. Customs computer system is used for many purposes. In addition to the clearance of commercial import shipments, drug enforcement, export shipments, health and safety regulations, and processing of data for other federal agencies rely on that system. Importers cannot fairly, or legally, be asked to finance those uses.

The costs of the system cannot be "allocated" between enforcement, commercial processing, and support for other agency requirements. We do not believe that the use of the system can be accurately "allocated" so that importers "bear their share," however that "share" might be defined. We question whether it is even possible to determine accurately the amount of an MPF increase that would be required to meet system costs. It has been suggested that the existing fee of 0.21 percent be increased to 0.25 percent. However, there are inconsistencies in the amounts Customs says it needs and the amounts such an increase would bring. There seems to be no meaningful study or analysis.

The MPF goes into the general revenues, not to Customs. The current user fee is not returned to Customs but is left in the general revenues. We question whether its increase will go to Customs for this purpose.

User fees for this purpose are of questionable legality. User fees that are not assessed equally on all parties who benefit from or are required to use the service to be financed by the fee have met disfavor in the courts. It would be truly unfortunate if Customs were to rely on the user fee to finance the computer system only to have the fee later found illegal and subject to refund.

A user fee would be vulnerable to challenge in the World Trade Organization. A surcharge on user fee paid by importers to finance a computer system used by exporters and by Customs for non-commercial purposes would be inherently discriminatory and subject to challenge by nations exporting to the United States.

AAEI requests a review be conducted by an unbiased government agency, such as the ITC or USTR to assess the compatibility of the proposed new automation MPF with the rules of the World Trade Organization. We also ask Congress to join AAEI in its efforts to obtain from Customs, OMB and/or Treasury any analysis or review they have already conducted with regard to WTO compatibility and informa-

tion relating to when this review of the automation user fee concept was first commissioned and completed as well as information on financial methodology employed.

Use of user fees to finance computer systems will have a boomerang effect on exports. If the United States implements a user fee for the computerization of customs clearance functions for imports, we can expect other countries very quickly to do the same, imposing additional costs and competitive burdens on US exports.

The MPF is not the right mechanism for funding a general purpose computer system unless Customs is willing to be accountable to those paying the fee, as well as to the Congress, through experts of the importers' choice. Rare are examples of user fees in which the parties paying the fee participate in any oversight of how the fee is spent. The user fee proposed by Customs for ACE funding is no exception. Existing advisory committees would not be appropriate review bodies since (i) they are composed in large part of parties who would not be paying the user fee and (ii) they do not have the requisite technical expertise to make valid judgments or to provide meaningful advice on this subject.

CUSTOMS YEAR 2000 EFFORTS

We have not previously seen a need to be involved in Customs' Year 2000 remediation efforts. However, because we now know that we must rely solely on ACS through the Year 2000, not only is Customs successful completion of its Year 2000 plan even more important, it is critical that Customs' and the private sector's manners of fixing these software errors be compatible. It is now essential that there be a close and continuing dialogue between Customs and all elements of the trade community on this subject.

Business publications and technical publications for information technology professionals are unanimous in saying that regular discussions between companies in each supply chain are essential, not just to ensure that each company is properly addressing its Year 2000 problems but to ensure that the solutions are compatible. It would be folly for the trade community to ignore Customs' position in a multitude of American supply chains and it could be disastrous for many companies if Customs or individual companies were to withhold information needed by the Year 2000 technology professionals within Customs and these companies.

Customs and the trade community also must reach a common understanding about the legal implications of non-compliant data passed to and from each other. Under current law, importers who submit date-contaminated data to Customs would be subject to very severe penalties. If it becomes necessary to legally prove or disprove the claimed culpability level in each case, Customs and the Customs Courts will be overwhelmed with Year 2000 cases for many years. Computer professionals assure us that despite the best Year 2000 repair and testing programs, there will almost certainly be many Year 2000 errors, because the problem is so detailed and has never before been experienced. Assurances that a Year 2000 program will be completed may be sincere and accurate, but they will not assure freedom from errors.

CONCLUSION

AAEI, as well as the National Customs Brokers and Forwarders Association, has been a strong and vocal supporter of Customs automation efforts from their inception. We believe that the cost of implementing and maintaining a modern computer system in Customs is a responsible investment. We look forward to working with Customs and with the Congress to find an equitable and effective means to promptly fund, through Congressional appropriations, Customs' need for the right computer systems.

AAEI appreciates this Committee's interest in this subject. We will try to answer any questions you may have.

Chairman CRANE. Thank you, Mr. Nemmers.

Mr. Bobeck.

STATEMENT OF JEFFREY BOBECK, SENIOR CONGRESSIONAL LIAISON, AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION

Mr. BOBECK. Thank you, Mr. Chairman. I'm Jeffrey Bobeck. I'm here on behalf of the American Automobile Manufacturers Association, a trade association consisting of Chrysler Corp., Ford Motor Co., and General Motors Corp.

And, on a personal note, it's a particular honor to be here, having served as staff to a Member of the Committee, Mrs. Johnson from Connecticut. I'm still not sure which is the most difficult side of the table to sit on. I think I'll learn.

AAMA's three member companies account for more trade over the land borders than any other domestic manufacturing industry. Vehicle trade alone, not including the substantial volume of parts trade, accounts for 14 percent of all U.S. merchandise trade over the NAFTA borders. In the 5 years since the negotiation of NAFTA, cross-border trade has increased for our members by an average of 10 percent each year. Modern, just-in-time delivery schedules means that a component may be produced in one country in the morning and assembled into a vehicle in another country later that same day.

A delayed delivery may shut down an assembly plant and an idle assembly plant may cost from $½ million to as much as $1 million per hour.

Hence AAMA's members have a critical interest in the practices and procedures in the U.S. Customs Service on the land borders. Our companies have invested millions of dollars in their individual Customs automation systems to handle the increased volume and to adapt to future Customs modernization activities.

We are sensitive to the dual roles that Customs must serve as both the facilitator of trade and the enforcer of the law at the border. AAMA believes that while these two roles sometimes may be in conflict, it is critical that they not become mutually exclusive.

Please allow me to address a number of issues that we believe must be of continuing focus and attention. AAMA and its member companies work very closely with this Committee and with the Customs Service to help draft key provisions of the 1993 Mod Act. We are now poised to be a partner in their implementation. The Mod Act provided for the development of the National Customs Automation Program, or NCAP. Many of the procedures now authorized by law, such as remote filing, periodic filing of entry summary information, and reconciliation were first proposed by AAMA's members. During the past 2 years our members and Customs officials have worked closely on the program, meeting together approximately twice each month to develop the Customs Electronic Cargo Release Program and the NCAP prototype or NCAP/P.

Some of these meetings, in fact, were weeklong sessions. We feel that Customs has worked very hard to communicate with the trade community and to listen to our views.

Both the trade community and Customs, in fact, have worked to develop the prototype's treatment of account structure, data elements, process flow, and other related areas. With this came the implementation of the account management feature, with a Customs representative assigned to most of the large importers.

And we want to emphasize that this is a very important relationship and we hope that Customs will give the representative adequate authority.

NCAP/P is a foundation, and let me mention one of the building blocks of that foundation just to put this in some context. A fundamental feature of NCAP/P is the establishment of the account-based processing which will provide a single account number for each trade party, a means for recording business relationships among trade parties, and a system for aggregating transactions by account.

Now, again, to put this in context, imagine if the credit card companies sent you a separate bill for each and every transaction. This is effectively the way Customs works today and we hope that soon, with the implementation of an account-based processing system, that will no longer be.

No matter how successful the effort to automate Customs procedures proves to be, goods must still be physically moved across the border. Nothing hinders cross-border trade as directly as long lines of trucks waiting to cross the border.

Our member companies support Customs increased enforcement activities. However, the current practices and limited resources of both the United States and Mexico Customs agencies serve to hinder traffic flow.

The worst example of this is the impact of the currently limited crossing hours at the southern border. While crossing points on the border with Canada operate 24 hours a day, 7 days a week, three key Mexican crossing bridges operate only part time. This is very difficult for us and it is our understanding that the Mexican Government may need to be persuaded that 24-hour border operations are critical.

Briefly, let me also say that we share Congressman Camp's concerns about the implementation of section 110 of the Immigration Act and we hope this Committee will work with the Judiciary Committee on resolving that problem.

Finally, let me turn to the issue of resources. We wish to express our support for consistent and predictable funding of Customs modernization efforts. Last year movement to cut off appropriations and development of the ACE Program, and thus, NCAP, nearly halted the entire program, while congressional staff debated program priorities with Customs officials, programmers responsible for the actual development of ACE went unpaid and, in some cases, found other employment.

This is certainly not the best way to get this program done.

Regarding how the funding is to be provided, we believe that additional funding to complete ACE development should be appropriated from general revenues. AAMA believes that the development of ACE provides a basis for automation of Customs entire operations, not just narrowly defined commercial interests.

Mr. Chairman, I thank you very much again for the opportunity to testify and I'd be happy to answer any questions.

[The prepared statement follows:]

Statement of Jeffrey Bobeck, Senior Congressional Liaison, American Automobile Manufacturers Association

GENERAL COMMENTS

Mr. Chairman, the American Automobile Manufacturers Association (AAMA) is pleased for the opportunity to offer testimony today to the Subcommittee. AAMA is the trade association comprised of Chrysler Corporation, Ford Motor Company, and General Motors Corporation.

Trade with our NAFTA partners, Canada and Mexico, represents a significant portion of our industry's overall output, and is an important component of our contribution to the U.S. economy. In fact, AAMA's three member companies account for more trade over the land borders than any other domestic manufacturing industry. Vehicle trade alone—not including the substantial volume of parts trade—accounts for 14 percent of all U.S. merchandise trade over the NAFTA borders.

In the five years since the negotiation of the North American Free Trade Agreement (NAFTA), cross-border trade has increased an average of 10 percent each year. The continued integration of North American automotive manufacturing facilities, along with the increasing reliance on just-in-time delivery schedules, means that a component may be produced in one country in the morning and assembled into a vehicle in another country later the same day. A delay at the border may create enormous costs and missed trade opportunities further down the line. A delayed delivery may shut down an assembly plant; an idle assembly plant may cost from $500,000 to $1 million per hour.

Hence, AAMA's members have a critical interest in the practices and procedures of the U.S. Customs Service on the land borders. Our companies have invested millions of dollars in their individual customs automation systems to handle the increased volume and to adapt to future Customs modernization activities. We are sensitive to the dual roles that Customs must serve as both the facilitator of trade and the enforcer of the law at the border. AAMA believes that, while these two roles sometimes may be in conflict, it is critical that they not become mutually exclusive.

As the volume and importance of cross-border trade continue to increase, Congress must do all it can to provide the Customs Service with the resources and the guidance to fulfill its dual functions. Allow me to raise a number of issues that we believe must be a focus of continuing attention if Customs is to fulfill these mandates.

1. THE NATIONAL CUSTOMS AUTOMATION PROGRAM

Major recent legislation, including the 1993 Customs Modernization Act, has been aimed at providing Customs with the tools to realize the full potential of automating its practices. AAMA and its member companies worked closely with this committee and the Customs Service to help draft key provisions of the Mod Act and now are poised to be a partner in their implementation.

The Mod Act provided for the development of the National Customs Automation Program, or NCAP. Many of the procedures now authorized by law, such as remote filing, periodic filing of entry summary information and payment of duties, and reconciliation, were first proposed by AAMA's members. The NCAP prototype, or NCAP/P, is the first true test of a fully electronic system encompassing remote filing, periodic entry and duty payment, and reconciliation of entry information. The results of the prototype will have a major influence on the final development and efficacy of these systems and how they will perform well into the next century.

During the past two years, AAMA's members and Customs officials have worked closely on this program, meeting together approximately twice each month to develop the Customs electronic cargo release program and NCAP/P. Some of these meetings were week-long sessions involving the actual system designers and programmers.

Both the trade community and the Customs have worked to develop the prototype's treatment of account structure, data elements, process flow and other related areas. With this came the implementation of the account management feature, with a Customs representative assigned to most of the large importers. The trade community also has participated over the last year in a series of discussions in relation to the reconciliation feature of the Mod Act.

We appreciate the efforts of Customs and believe that the long-term benefits of an effective NCAP/P will be enormous. We also appreciate this committee's longstanding support for Customs automation and hope it will continue.

2. Border Crossing Issues

No matter how successful the effort to automate Customs procedures proves to be, goods still must physically move across the border. Nothing hinders cross-border trade as directly as a long line of trucks waiting to cross the border.

Our member companies support Customs' increased enforcement activities and are willing to provide the necessary support and cooperation to ensure effective enforcement while expediting cargo movement across the border. However, the current practices and limited resources of both the U.S. and Mexico Customs agencies serves to hinder traffic flow.

The worst example of this is the impact of the currently limited crossing hours at the southern border. While crossing points on the border with Canada operate 24 hours a day, seven days a week, three key Mexican crossing bridges operate only part-time. Going to a 24 hour/seven day schedule might allow Customs actually to reduce the number of inspectors needed since the traffic flow would be more even. It is our understanding that the Mexican government may need to be persuaded that 24-hour border operations are critical. AAMA hopes the Committee will support U.S. officials in making the case with the Mexican government.

A new source of delay will take place this fall when the U.S. Immigration and Naturalization Service is required to begin implementing an automated entry and exit system for aliens under Section 110 of the Illegal Immigration Reform Act of 1996. While this issue is subject to the jurisdiction of another committee, AAMA believes its potential for border disruption is so significant as to merit discussion here in the context of this hearing.

The automated system envisioned by Section 110 was intended to improve accounting for entries and exits by U.S. visa holders. This has little value on the land borders, especially the northern border, which thousands of Americans and Canadians cross each day. Applying new controls under Section 110 would repudiate the traditional open border policy that the U.S. and its border neighbors long have recognized.

Moreover, implementing Section 110 would precipitate significant border congestion at key ports of entry and act as a significant obstacle to trade. This is of particular concern to the automotive industries in the U.S. and Canada, which have been integrated since the U.S.-Canada Auto Pact was negotiated in 1965.

H.R. 2481, introduced by Mr. LaFalce, would require a feasibility study of creating a workable land border entry-and-exit system, while preventing the U.S. from wasting millions of dollars attempting to rush a system into operation. Again, while this matter is not before this committee, AAMA urges Members to cosponsor the bill. All the best efforts of this committee and the Customs Service to improve border operations may be derailed by new programs such as Section 110.

3. Account Managers' Authority

The critical point of contact within the Customs Service for members of the trade community is the Customs Account Manager. As new programs such as reconciliation develop, the Account Manager's role is becoming more critical.

However, AAMA's members are concerned that the Account Manager's authority actually is eroding. Customs interferes with a critical relationship when it does not provide the individual in this position with adequate authority to make decisions.

Importers understand that the assigned Customs representative is first and foremost a representative of the U.S. government. However, Customs must empower Account Managers if these officials are to be fully utilized and effective in carrying out the mission of the Customs Service.

4. Resource Issues

Finally, AAMA wishes to express its support for consistent and predictable funding for Customs modernization efforts. Last year, a movement to cut off appropriations for development of the Automated Commercial Environment (ACE), and thus NCAP, nearly halted the entire program. While Congressional staff debated program priorities with Customs officials, programmers responsible for the actual development of ACE went unpaid. AAMA was concerned that this needless funding battle proved to be a greater threat than benefit to the program.

AAMA recognizes the need for Congress to conduct oversight of this program to ensure that it is meeting the original objectives of the Mod Act in a timely and cost-effective manner. That is why we are here today. However, AAMA hopes this committee will work with the appropriators to ensure that Customs is assured of adequate resources to finish the job.

Regarding how that funding is to be provided, it is difficult to assess whether revenues currently generated by the merchandise processing fee (mpf), which is designated to fund commercial operations, corresponds to actual spending on these functions. Moreover, AAMA believes that the development of ACE provides a basis for automation of Customs' entire operations, not just narrow commercial interests. Therefore, we believe that additional funding to complete ACE development should be appropriated from general revenues.

Again, Mr. Chairman, AAMA wishes to express its gratitude to you for your strong leadership in modernizing Customs activities and in promoting free trade generally. We stand ready to respond to any questions the committee may have.

Chairman CRANE. Thank you, Mr. Bobeck, and next, Mr. Schoof.

STATEMENT OF RONALD D. SCHOOF, CATERPILLAR INC., PEORIA, ILLINOIS; AND VICE CHAIRMAN, JOINT INDUSTRY GROUP

Mr. SCHOOF. Thank you, Mr. Chairman. I am Ron Schoof, the traffic administrator responsible for Customs compliance at Caterpillar Inc. in Peoria, Illinois, in the great State of Illinois.

I'm also vice chairman of the Joint Industry Group, a coalition of 130 Fortune 500 companies, trade associations, and individuals actively engaged in international trade.

The Joint Industry Group enjoys a close and cooperative relationship to the U.S. Customs Service and frequently engages Customs in trade-related issues.

I've been asked to relate to you today the position of the Joint Industry Group regarding the issues before this Subcommittee.

First I'd like to talk about Operation Brass Ring. The Joint Industry Group actively supports Customs dual mission of promoting cross-border trade facilitation while at the same time preventing the entrance of illegal individuals and goods into this country.

Several of our member companies have commented that their shipments have not faced burdensome and costly delays at the border due to Operation Brass Ring. I recently visited the Columbia Bridge crossing in Laredo which is a modern facility with the new technologies installed and saw that the freight moves at a steady pace through this facility.

So we support this Subcommittee in funding for these types of technologies and agree with Sam that through partnership with the trade and with Customs that we can make a difference in the drug trade.

Second is the merchandise processing fee increase for Customs automation. With over $800 million per year already being collected from us to process our merchandise, we are opposed to any increase. The Joint Industry Group has been an ardent supporter of the Customs automation efforts, and was a major force behind the drafting and congressional approval of the Customs Mod Act in 1993, which ushered in a new era of shared responsibility between government and business. In return for industry to accept more responsibility in ensuring that imports and exports comply with Customs regulations, Customs promised that trade facilitation and enforcement would be enhanced due to creation of an automated system.

While industry is keeping its part of the deal, Customs has been slow in establishing an automated system that is compatible with the needs of industry. Now the administration wants industry to continue to fund its failure to conform to the Mod Act stipulation by increasing the merchandise processing fee.

Customs estimates that it needs nearly $1 billion over the next 5 years to develop and implement an automated system. However, budget requests in this administration we've seen in the last 4 years have been less than $50 million and this year's request of $8 million drives home this point.

Even if we add the estimated $50 million increase in the MPF will generate, it will take over 20 years to fund the system and this system is 14 years old and already antiquated.

The merchandise processing is considered by all to be a user fee. It is our opinion, however, that it is merely a tax on imports, and that it distorts the true value of goods and imposes additional costs to the consumer.

One example to support our views is the scheduled elimination of the fee for processing transactions within NAFTA. To be a true user fee, the MPF should be designated for the purpose it should serve, that of processing merchandise efficiently. Thus, it is the recommendation of the Joint Industry Group that a portion of the existing fee be allocated to the automation enhancement. The amount for fiscal year 1999 should be at least $50 million, with increases each year for the following 4 years to provide the estimated $1 billion needed.

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

Until now, industry has had little input into Customs automation development. To ensure that these automation programs work for both Customs and business, industry must be afforded the opportunity to help design a system that will work in an era of electronic commerce.

To support this request, the Joint Industry Group automation Committee is actively working with Customs to that end. Attached to my statement is a letter to Acting Commissioner Sam Banks outlining our automation position and the points that we support the system.

In conclusion, Mr. Chairman, the members of the Joint Industry Group, we continue to support the Subcommittee's funding for technologies such as Operation Brass Ring that is used at the ports and two, we do not support additional fees on our merchandising processing fee increase to fund automation; and three, we support taking the existing merchandise processing fee and allocating a portion of that for automation.

Thank you for allowing me to be here today and represent the Joint Industry Group. Thank you.

[The prepared statement and attachment follow:]

Statement of Ronald D. Schoof, Caterpillar Inc., Peoria, Illinois; and Vice Chairman, Joint Industry Group

INTRODUCTION

Mr. Chairman and distinguished Members of the Subcommittee on Trade of the Committee on Ways and Means. My name is Ronald Schoof and I am Traffic Administrator responsible for customs compliance at Caterpillar Inc., in Peoria, Illinois. I am also Vice-Chairman of the Joint Industry Group, a coalition of one hundred thirty Fortune 500 companies, trade associations, and individuals actively engaged in international trade. The Joint Industry Group enjoys a close and cooperative relationship with the US Customs Service and frequently engages Customs on trade-related issues that affect the growth and strength of American imports and exports.

I have been asked today to relate to you the position of the Joint Industry Group regarding several Customs' oversight issues that have already been raised today. My comments will focus on the effects that Customs' drug enforcement efforts impose upon industry, the prospect of increasing the Merchandise Processing Fee (MPF), and the use of this additional revenue to fund Customs automation programs.

OPERATION BRASS RING

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

I recently visited the Columbia Bridge border checkpoint at Laredo and observed that the amount of commercial traffic had increased in the eighteen months since I last visited. I discussed drug seizures with the import specialists and learned that drugs are found mainly in small quantities that commercial drivers transport. I also learned that commercial truck traffic is not responsible for moving large quantities of drugs from Mexico into the United States.

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

MERCHANDISE PROCESSING FEE

In the President's fiscal year 1999 budget, the Administration requested an increase in the Merchandise Processing Fee (MPF) as the means to offset the costs of modernizing the Customs Service automated commercial operations. This proposal would increase the ad valorem rate paid by importers on formal entries into the United States from the current .21 percent up to a maximum of .25 percent plus increase the maximum per transaction. With over $800 million per year already being collected from us to process our merchandise, we are opposed to any increase.

The Joint Industry Group has been an ardent supporter of Customs automation efforts. JIG was a major force behind the drafting and congressional approval of the Customs Modernization Act (Mod Act) in 1993. The Mod Act ushered in a new era of shared responsibility between government and business. In return for industry to accept more responsibility in ensuring that imports and exports comply with customs regulations, Customs promised that trade facilitation and enforcement would be enhanced through the creation of automated systems.

While industry has kept its part of the deal by working with Customs on improving company compliance rates and reducing the number of violations, Customs has been slow to reciprocate by establishing an automation system that is compatible with the needs of industry. Now, the Administration wants industry to continue to fund its failure to conform to Mod Act stipulations by increasing the Merchandise Processing Fee and promising industry that these funds will be used to fund Customs automation programs. The Joint Industry Group and its members seriously doubt whether these promises will indeed be carried through any more than they were over the past four years. A better approach at this late date in Mod Act imple-

mentation would be to allocate a portion of the existing $800 million in revenues to improving the process through automation.

Customs estimates that it will need nearly $1 billion over the next five years to develop and implement an automation system that will move from the laborious and time-consuming entry-by-entry process to an account-based, remote system of filing customs entries. Budget requests from this Administration over the past four years of less than $50 million to meet this demand indicate that the Administration is not serious about meeting its Mod Act responsibilities. This year's request of $8 million drives home this point. Even adding the estimated $50 million the increase in the MPF will generate, it will take over 20 years to fund this system. The current system is 14 years old and is already antiquated.

The MPF is considered a "user-fee." It is, in our opinion, merely another tax on imports that distorts the true value of goods and imposes additional costs to the consumer. One example to support our view is the elimination of the fee for processing transactions within NAFTA. Revenues received through the MPF in fact go into the general fund of the Treasury with some of it designated to pay for Customs inspectors' overtime and premium pay. To be a true user fee, the MPF should be designated for the purpose it should serve, that of processing merchandise, which will only be accomplished when Customs fully automates its operations and activities.

It is the recommendation of the Joint Industry Group that a portion of the existing fee be allocated to automation enhancement. The amount for Fiscal Year 1999 should be at least $50 million with increases each year for the following four years to provide the $1 billion needed. Such funding should come with "ropes or cables" attached, not just strings. Congress must be fully satisfied that any Treasury/Customs architecture plan for the new electronic system will meet the needs of both government and industry for the 21st century.

Until now, industry has had little input into Customs' automation developments. To ensure that these automation programs work for both Customs and business, industry must be afforded the opportunity to help design a system that will work in the era of electronic commerce. The Administration is leading efforts for global electronic commerce. That commerce will not be as effective as possible unless the customs processes are part of the global effort. Customs' current automation efforts, even if they are ever implemented, will be obsolete and inefficient. Industry should be more directly involved as to how these automation programs are developed.

To support this request, the Joint Industry Group Automation Committee is actively working with Customs to that end. We have met with past and current Customs officials on numerous occasions since passage of the Mod Act to lend support and advice on how these automation systems must be designed and implemented to satisfy the needs of Customs and industry. Attached to my statement is a letter to Acting Commissioner Sam Banks outlining our automation position. The Joint Industry Group supports the continued development and full funding of the following automation systems:

- The Automated Commercial Environment (ACE);
- The Automated Export System (AES);
- The International Trade Data System;
- The North American Trade Automation Prototype (NATAP); and,
- The US/UK Prototype.

These systems are vital to the continued leadership of the United States in automating the trade process worldwide.

CONCLUSION

Mr. Chairman and Members of the Committee, while the US Customs Service has achieved a level of success in controlling the flow of illegal goods and individuals entering our nation, it has, however, seriously fallen behind in automating its outdated and antiquated trade processing systems. An increase in the Merchandise Processing Fee will not guarantee that these revenues will be designated for automation purposes. It will, however, continue to mask Customs' structural inefficiencies and failures at the expense of American businesses and consumers. Rather than punish industry and the American people, the Administration and the US Customs Service need to re-evaluate their automation goals and the necessary steps required to achieve them. Failure to do so will damage the ability of US industry to compete in the global economy and lessen this country's influence in global economic and political affairs.

JOINT INDUSTRY GROUP
March 17, 1998

Mr. Samuel H. Banks
Acting Commissioner
US Customs Service
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Acting Commissioner Banks:

The Joint Industry Group (JIG) Automation Committee was established one year ago under the principles outlined in the attached paper. The first meeting of our Automation Committee was attended by Commissioner George Weise, who agreed to cooperate with us in the development of Customs automation initiatives and outlined Customs ambitious plans for future automation. JIG remains committed to building "a coalition of its members and other industry groups concerned with automation" and "to utilize this coalition to provide a uniform industry position on trade needs and priorities for an automated import, export and trade compliance process."

For more than a decade, Customs has been a leader in developing automated systems to streamline the trade process. As the world's largest trader, it is imperative that the United States remain a leader in trade automation and set the standard for trade automation worldwide. It is through automation and common international business practices that barriers to trade will be reduced and many inefficient and costly business practices eliminated. The biggest beneficiary of this streamlined international system of free trade is the United States. A standardized, streamlined, automated international trade process is the rising tide that lifts all boats and will be to the economic benefit of all governments and industries that choose to participate in the program. The JIG vision of this automated world is outlined in the attached paper (attachment) and briefing charts (attachment). For the reasons outlined above, JIG is in support of Customs and Treasury continued design and development and full funding of the following trade related systems provided that Customs and Treasury cooperate fully with industry in this endeavor:

- The International Trade Data System (ITDS);
- The North American Trade Automation Prototype (NATAP);
- The US/UK Prototype;
- The Automated Export System (AES); and,
- The Automated Commercial Environment (ACE).

ITDS, NATAP, the US/UK Prototype, and AES are the key to continued and future leadership by the United States in automating the trade process worldwide. These systems provide the foundation and framework for integrating the export and import process into a seamless international system of trade and represent the long-term needs for trade automation. In spite of our inability to achieve Fast Track negotiating authority, the US remains the leader in global customs and trade issues and the development of these systems is an essential part of that leadership. The ACE system is essential as the logical extension of the highly successful Automated Commercial System upon which the United States system of trade is so dependent. In view of the importance of the Year 2000 conversion, it will be the subject of a separate letter. In regard to ACE, the JIG Automation Committee recommends full implementation of the entire system with emphasis for *early implementation* of the following modules:

- NCBFAA recommendations for Enhanced Electronic Entry Program (EEEP);
- Completion of Truck Pre-Arrival Processing System (formerly known as Buffalo Pilot);
- AMS;
- Remote Location Filing;
- NCAP (Track 4 Processing, Reconciliation, Monthly Entry);
- Periodic Payment; and,
- Surety Interface.

By "early implementation" we mean that those projects should be implemented on a phased basis by the end of 1998. Design and implementation should be the responsibility of joint teams consisting of Customs personnel and exporters and importers and their agents with a stake in implementation. We would like to explore the possibility of establishing such joint teams for each of the projects outlined above as a partnership between key trade groups and Customs. This approach

would incorporate mutual commitments and public accountability using established techniques for documentation and dialogue.

In all systems development efforts it is essential that the system that Customs develops represents the interests and needs of all Federal agencies. Any system that does not is a step backwards. Of course, this common system will require that other agencies adopt risk management, selectivity, post/pre-audit, and compliance measurement standards.

We believe that Customs and Treasury are on the right path in pursuing these various automation initiatives, however, we have not been pleased with the pace of implementation and the extent to which many of the projects reflect the concerns of the trade. We are also concerned that the early implementation initiatives have been slow in materializing. JIG will make every effort to build the industry coalition to ensure that Customs is adequately funded to achieve the goals summarized above provided that we can agree upon priorities and an implementation schedule with you. In view of the fact that industry is paying the Merchandise Processing Fee, the Harbor Maintenance Fee, Air Passenger Fees, border truck fees, and the importance of these systems to continued prosperity of our economy, it is essential that funding be provided to support these vital national and international systems development efforts. The JIG supports bold and expeditious development of these initiatives and will work cooperatively with you to secure early and sufficient funding for implementation.

These systems are of major importance to industry and the early workable implementation of these projects is long overdue. Perfect implementation is a time consuming illusion. Industry and Customs must jointly assume reasonable risks and proceed to *implement*.

Please give this matter your consideration and let me know how we can work together on these issues.

Sincerely,

MICHAEL H. LANE
Chairman, JIG Automation Committee

Chairman CRANE. Well, thank you, Mr. Schoof.

And, finally, Mr. Rogers.

STATEMENT OF JAMES A. ROGERS, CHAIRMAN, INTERNATIONAL COMMITTEE, AIR COURIER CONFERENCE OF AMERICA; ACCOMPANIED BY NORM SCHENK, CHAIRMAN, CUSTOMS SUBCOMMITTEE, ACCA; SUE PRESTI, EXECUTIVE DIRECTOR, INTERNATIONAL COMMITTEE, ACCA; AND KIRSTEN ENVALL, PUBLIC AFFAIRS MANAGER, UNITED PARCEL SERVICE

Mr. ROGERS. Thank you, Mr. Chairman. It is a pleasure to appear before you today. My name is Jim Rogers and I am the chairman of the International Committee of the Air Courier Conference of America, known as ACCA.

Before I recently retired, I was vice president, government relations, of United Parcel Service, one of ACCA's members. I am accompanied today by Norm Schenk, chairman of the ACCA Customs Subcommittee; Sue Presti, the executive director of the International Committee; and Kirsten Envall of United Parcel Service.

ACCA is the trade association representing the express consignment industry. In addition to UPS, our members include other large firms with global delivery networks, such as DHL, Federal Express, and TNT, and also smaller businesses with strong regional delivery networks including Global Mail, Midnite Express, and Quick International. Together our members employ approximately 415,000 American workers and earn global revenues in excess of $50 billion.

I am very pleased to be able to discuss issues regarding U.S. Customs today. To give you a sense of the size of our industry in U.S. trade, and as a customer to U.S. Customs, the express industry accounts for roughly 25 percent of all Customs formal and informal entries.

In addition, express operators enter more than 6.5 million other manifest entries on low-value shipments, plus millions of clearances on letters and documents.

In short, we are a major part of the U.S. export-import community. I would like to focus my comments on two of the issues being examined today by the Subcommittee: Customs Automation Program and Customs user fees.

Good automation systems can enable Customs to improve enforcement standards while moving goods more efficiently, thereby enhancing both of Customs core missions.

However, notwithstanding investments in the tens of millions of dollars, our industry has thus far had disappointing experiences with Customs automation systems. One example of this is remote entry filing. While ACCA strongly supported the concept of remote filing when initially proposed in the Customs Modernization Act, unfortunately, our industry's unique characteristics were not taken into account by Customs in implementing the system.

As a result, we can only use remote filing for a very small portion of the total entries we make.

We've also experienced frustrations relating to the development of the Automated Export System, AES, for air shipments which we have been working on with Customs and Census for more than 2 years.

We are concerned that Customs is attempting to expand AES coverage to the air mode without first addressing the problems encountered by the current AES users. We have repeatedly communicated to Customs and Census that we cannot switch to AES unless it is modified not only to address existing glitches but also to eliminate the current requirements that all data be provided to Customs prior to the aircraft's departure.

Providing all data predeparture is contrary to current practice and would cripple the export operations of the express industry and the thousands of American businesses who rely on us daily to deliver their products to overseas markets.

Since we cannot use AES under its current structure, our only alternative if AERP, the Automated Export Reporting Program, is eliminated as scheduled at the end of 1999, will apparently be to file paper SEDs, shipper's export declarations. This would be a significant burden on the industry, but it would actually be far harder on Customs and Census.

The express industry alone would file hundreds of thousands of SEDs each month, overwhelming Customs and Census ability to process the data. If the current problems with AES cannot be fixed before December 31, 1999, we believe either of two options would be far superior to inundating Customs with paper SEDs: AERP could be extended beyond 1999 or Customs could develop an interface between AERP and AES.

To invest almost $10 million, as this industry has, in Automated Manifest Systems, AMS, and get so little from it, is very troubling

to ACCA members. We cannot afford to reap such a poor return on investment—nor can Customs—in future automation projects such as AES and ACE, which is why we believe greater oversight controls need to be imposed on Customs automation efforts. Specifically we suggest the following guidelines for Customs Automation Programs: Before implementing a new slate of automation programs, including ACE, Customs should first fix existing systems, such as AMS; Customs should develop a careful, comprehensive automation workplan with specific deliverables and a sound, detailed budget; Customs should maintain meaningful, frequent consultations with industry at every step of automation development to avoid future glitches when you implement the system; and, finally, Customs should incorporate new technologies such as the Internet in its designs.

Regarding the administration's proposal to increase the merchandise processing fee and to dedicate the increased funds to modernization of Customs automated commercial operations, including ACE, we cannot support this proposal at this time, given the absence of a coordinated workplan and budget for Customs Automation Program.

Let me emphasize that ACCA is fully committed to working with Customs to develop automated systems that enhance Customs enforcement abilities while facilitating the flow of trade. We simply hope that Customs will alter its past approach to this issue.

Turning now to user fees, our industry is in a unique situation. In order to obtain inspectional services when needed at our express facilities, our industry agreed 11 years ago to pay reimbursable fees to Customs. These fees are supposed to cover the cost to Customs of providing inspectors when needed.

However, in recent years, the cost of reimbursables has escalated well beyond what we envisioned, to the point where they have become a serious burden on the express industry.

I am pleased to report that we have opened a dialog with Customs to explore the inadequacies with the current reimbursable system. We thank Customs for its willingness to discuss alternatives and we look forward to reaching a mutually agreeable solution. Ultimately a resolution to this issue may require legislative action.

In closing, I want to thank the Subcommittee for holding this hearing on a subject of great importance to American business. Mr. Chairman, thank you again for this opportunity to comment on the operations of the U.S. Customs Service and their impact on the express industry.

[The prepared statement follows:]

Statement of James A. Rogers, Chairman, International Committee, Air Courier Conference of America

Thank you, Mr. Chairman; it is a pleasure to appear before you today. My name is Jim Rogers, and I am the chairman of the International Committee of the Air Courier Conference of America ("ACCA"). Formerly, I was vice president, government relations, of United Parcel Service, one of ACCA's members. ACCA is the trade association representing the express consignment industry. In addition to UPS, our members include other large firms with global delivery networks, such as DHL, Federal Express, and TNT, as well as smaller businesses with strong regional delivery networks, including Global Mail, Midnite Express and Quick International. Together, our members employ approximately 415,000 American workers and earn global revenues in excess of $50 billion.

The express transportation industry specializes in time-definite, reliable transportation services for documents, packages and freight. We are a relatively new and rapidly expanding industry, having evolved during the past two decades in response to the needs of global international commerce. Express delivery has grown increasingly important to businesses needing to use "just-in-time" manufacturing techniques and supply-chain logistics in order to remain internationally competitive. The express industry has revolutionized the way companies do business worldwide and has given a broad-based application to the just-in-time concept. Producers using supplies from overseas no longer need to maintain costly inventories, nor do business persons need to wait extended periods of time for important documents. In addition, consumers now have the option of receiving international shipments on an expedited basis. Increased reliance on express shipments has propelled the industry to average annual growth rates of 20 percent for the past two decades.

I am very pleased to be able to discuss issues regarding U.S. Customs today, because customs administrations play a critical role in ensuring expeditious movement of goods across borders and consequently are critical to our industry's ability to deliver express international service. To give you a sense of the size of our industry in U.S. trade—and as a customer of U.S. Customs—the express industry accounts for roughly 25 percent of all Customs formal and informal entries. In addition, express operators enter more than 6.5 million other manifest entries on low-value shipments, plus millions of clearances on letters and documents. In short, we are a major part of the U.S. importing community.

I would like to focus my comments on two of the issues being examined today by the Subcommittee: Customs automation programs and the funding mechanisms for these efforts, and Customs' user fees.

CUSTOMS' AUTOMATION EFFORTS HAVE NOT ADEQUATELY ACCOMMODATED THE NEEDS OF THE EXPRESS INDUSTRY AND THE REST OF THE TRADE COMMUNITY

We recognize that enforcement is a critical mission of Customs, but insist that the agency's other critical mission—trade facilitation—cannot be ignored. This is why automation is so important: good, functional automation systems will enable Customs to improve enforcement standards while moving goods more efficiently. ACCA commends Customs for its recognition that automation is essential to its future and for its willingness to undertake automation initiatives.

However, Customs' automation initiatives do not appear to be coordinated with any commercial prioritization. In addition, there appears to be no management structure capable of integrating business concepts into systems design and of delivering a functional product within a reasonable timeframe. We are concerned that Customs' various automation programs are not being adequately managed to avoid duplication and inconsistency, or to ensure connectivity and timely delivery. These inadequacies are costly to both our companies and government. Customs should develop a careful, comprehensive automation program with specific deliverables and a sound, detailed budget. It is also imperative that Customs be held to the deadlines established in its workplan. We urge the Subcommittee to use its oversight authority to guide Customs in this direction.

The express industry has invested tens of millions of dollars in automated systems designed to expedite shipment and delivery of goods within an express timeframe. For our industry to survive and expand, automation is critical and we have been at the forefront of efforts to work with Customs. Unfortunately, these efforts have thus far yielded disappointing results.

An example of our frustration relates to remote entry filing. While ACCA strongly supported the concept of remote filing as an important advance, our industry's unique characteristics were unfortunately not taken into account by Customs in programming the system. We can only use remote filing for a very small portion of the total entries we make because many of our customs entries occur under a procedure unique to the express industry, called consolidated informal entries, and the remote entry system is not programmed to accept consolidated informals. Again, let me remind the Subcommittee that our industry accounts for more than 25 percent of all entries into the United States—and yet a substantial portion of our trade is effectively ineligible for this important automation innovation.

We have also experienced frustrations relating to the development of the Automated Export System (AES) for air shipments, which we have been working on with Customs and Census for more than two years. We are concerned that Customs is attempting to expand AES' coverage to the air mode without first addressing the problems encountered by the current AES users. Customs' haste is propelled in part by the imminent demise of the existing system for reporting exports electronically, the Automated Export Reporting Program (AERP). Customs and Census have not

allocated programming resources to extend AERP's lifespan beyond December 31, 1999 and they seem to assume that air carriers will switch to AES of necessity by that date. In fact, in a letter dated April 17, 1998, the chief of Census' foreign trade division informed our members that we will only have two alternatives from January 1, 2000 onward: use AES or file paper SEDs.

We have repeatedly communicated to Customs and Census that we cannot switch to AES unless it is modified not only to address existing glitches but also to eliminate the current requirement that all data be provided to Customs prior to the aircraft's departure. Providing all data pre-departure is contrary to current practice, under which express air carriers supply most data after the aircraft has departed. We have informed Customs that providing full data pre-departure is impossible in an express module, which requires turnaround times of only a few hours. That is, within hours of arriving at one of our express hubs in the United States, a shipment destined for a foreign market has been sorted, loaded in a container along with hundreds of other shipments, and laden onto a plane. Also within that timeframe, the plane has departed for its foreign destination. If Customs retains the pre-departure requirement, it would cripple the export operations of the express industry and the thousands of American businesses who rely on us to deliver their products to overseas markets.

Since we cannot use AES under its current structure, our only alternative is apparently to file paper SEDs. This would be a significant burden to the express industry, but it would actually be far more detrimental to Customs and Census. The express industry alone would file hundreds of thousands SEDs each month, overwhelming Customs' and Census' ability to process this information.

If the current problems with AES cannot be fixed before December 31, 1999, we believe either of two options would be far superior to inundating Customs with paper SEDs: AERP could be extended beyond 1999, or Customs could develop an interface between AERP and AES. Under the latter approach, Customs would develop a translator that would incorporate into AES the data elements currently provided through AERP. In effect, this would enable the trade community to continue exporting under today's requirements. We urge Congress to direct Customs to take one of these two steps, rather than imposing a choice between AES and paper SEDs.

Our experience with the Automated Manifest System (AMS) and Automated Manifest System Express Module (AMS–X) further illustrates our disappointment with Customs' automation efforts. Notwithstanding the fact that our members have invested almost $10 million in development of AMS over the past eight years, we are still unable to make widespread use of AMS. The system has difficulty reconciling trade data with transportation data, it cannot handle split manifest reporting (a frequent occurrence in our industry), and it is rejected by many USDA officials, who refuse to use it and thereby thwart the achievement of a paperless entry. In fact, AMS has done little to eliminate paperwork—as noted by the Air Transport Association, only one port currently allows paperless processing. In addition, AMS–X has been fraught with problems such as processing time and inexplicable data rejection.

To invest as much money as we have in AMS and get so little from it is very troubling to ACCA members. We cannot afford to reap such a poor return—nor can Customs—from investments in other automation programs such as AES and ACE, which is why we believe greater oversight controls need to be imposed on Customs' automation efforts.

Again, we believe that, before implementing a new slate of automation programs, including ACE, it is imperative that USCS first fix existing systems such as AMS–X. The Subcommittee's advisory for this hearing noted that "Customs now states that the development and implementation of this new system, the Automated Commercial Environment, and the infrastructure needed to run this system will cost approximately $797 million over the next seven years." As we have not seen a business plan or itemized costs for ACE, we are unsure of how Customs arrived at this estimate.

However, speaking on behalf of an industry that has invested millions of dollars in automation, I will say that this cost seems extraordinarily high. As for the Administration's proposal to increase the merchandise processing fee (MPF) and to dedicate the increased funds to modernization of Customs' automated commercial operations, including ACE: we cannot support this proposal at this time, given the absence of a coordinated workplan and budget for Customs' automation programs. Our experience in the private sector indicates that automation programs should be conducted under a fixed budget, with established milestones and careful oversight. We believe that Customs should be held to a more rigorous standard that will deliver usable automation programs within a reasonable time period. In addition, there must be meaningful industry input at every step of automation development.

Once Customs issues a detailed workplan for its automation programs, the express industry will be happy to develop a position on the Administration's proposal.

We would like to emphasize our belief that, in developing its workplan for ACE, Customs should be more innovative than in its previous automation endeavors. Customs needs to utilize technology that exists today and anticipate the key technological innovations of tomorrow, rather than relying on the now obsolete technology that existed when Customs first began developing ACE. In particular, Customs should not continue operating in a proprietary environment when appropriate use of the Internet could significantly reduce the cost of many automation programs to both Customs and the trade community.

Let me emphasize that ACCA is fully committed to working with Customs to develop automated systems that enhance Customs' enforcement abilities while facilitating the flow of trade. We simply hope that Customs will alter its past approach to this issue and adopt a coherent, disciplined workplan for developing its automation programs that includes meaningful and frequent consultation with industry.

THE COST OF REIMBURSABLES TO THE EXPRESS INDUSTRY HAS GROWN BEYOND A REASONABLE LEVEL

Turning now to the issue of user fees, our industry is in a unique situation because we pay for dedicated Customs resources at our facilities. In order to obtain inspectional services whenever needed at our hub and express consignment facilities, the express industry agreed 11 years ago to pay "reimbursables" to Customs. These fees are supposed to cover the costs to Customs of providing inspectors when needed. However, in recent years the cost of reimbursables has escalated well beyond what we envisioned, to the point where reimbursables have become a serious burden on the express industry. In fact, the industry has grown so much in the past 11 years that today collections under the MPF from this industry would more than cover the cost of providing inspectional services when needed to the express operators. We should note, by the way, that the express industry's principal competitor, the U.S. Postal Service, pays no reimbursables.

I am pleased to report that we have opened a dialogue with Customs to explore the inadequacies of the current reimbursables system. We thank Customs for its willingness to discuss alternatives, and we look forward to reaching a mutually agreeable solution. Ultimately, a resolution to this issue may require legislative action.

In closing, I want to thank the Subcommittee for holding this hearing on a subject of great importance to American business. Mr. Chairman, thank you again for this opportunity to comment on the operations of the U.S. Customs Service and their impact on the express industry.

Chairman CRANE. Thank you, Jim.

Carol, why is an Industry Advisory Council needed for Customs COBRA user fees?

Ms. HALLETT. Mr. Chairman, we believe that the ability to work together with Customs has always been very good. However, the formation of an advisory committee and council is what will drive some of these problems forward expeditiously. I congratulate you for doing this. We believe that it is long overdue and that is why we are very optimistic that this will bring about some changes that are necessary. Some of the comments that we have heard this morning relating to the Internet, that is an example of an issue that could be discussed in this Subcommittee, along with the problem of finding support for keeping those inspectors in Canada.

And so, this is something that we really congratulate you and Mr. Ramstad for bringing forth and we are most optimistic that this will become a reality.

Chairman CRANE. Thank you. What are your recommendations for the Automated Export System?

Ms. HALLETT. Well, as far as the whole AES issue is concerned, I would like to just go back to 1993 very briefly when the Mod Act

passed for the second time because it was at that time that the Internet was really little known. Obviously now it is very popular with the trade. The Internet can and will have profound benefit on the impact and the way in which the cargo industry does business and, yet, we don't see any indication from Customs that the Internet will become a part of this system.

We, the airline industry, have communicated forcefully that we believe the Internet should be a part of this system and it is important not only because of the link between hardware and software, but also the immediate access that it provides for information, not only to the trade, but to Customs as well. And, so, until that becomes a part of the current AES blueprint, I think that blueprint is flawed.

The only other comment I would make is that the regulations under AES say that no export declaration is normally going to be required on any exports under $2,500. Now that means that Customs is going to depend on carriers for manifest data that they need for enforcement. But the problem with that is that most export data is actually captured after departure and so a compliance check is impractical under the system that they are currently doing and I think particularly that's the case in the express market field. So export reporting really does belong with the exporter and not with the air carrier. While some of my colleagues may not agree with that, I think it is very important to make that distinguishing point.

And, Mr. Chairman, a lot of good work is being done, but until issues like the Internet are brought forth and made a part of this program, I do not believe it can be effective and it certainly is not going to be cost beneficial.

Chairman CRANE. And, finally, what additional activities or procedures should Customs take to facilitate traffic, both in U.S. airports and at preclearance locations without degrading its enforcement mission or placing the public at risk.

Ms. HALLETT. Well, there are two very exciting programs that are underway right now. One is being done in Los Angeles and it is a test that is called the Targeted Baggage Program. It is a law enforcement program in that it allows the same kind of profiling that is currently used for law enforcement purposes at Customs of people to be done with baggage. It will free up the Customs Service to actually devote their attention to certain bags, allowing the rest of them to go through coming in from the foreign port and ultimately going directly to the domestic port where the passenger will end his or her flight.

That is a key enforcement as well as, obviously, a facilitation move that we are very supportive of. The other one is something similar that is being tested in Vancouver. Where, when a passenger comes in from an international port, they will actually not have to go through Customs in Canada, but will go through U.S. Customs. In other words, Canadian Customs would not have anything to do with that passenger who is going directly on to the United States and staying in a sterile area.

We think this is, again, another example of good work that Customs is doing to provide more effective enforcement but also improve facilitation.

Chairman CRANE. Thank you. Mr. Nemmers, what do you think Customs needs to do to ensure that ACE is implemented on time and within budget?

Mr. NEMMERS. I think we're past implementing it on time. We expected it to be implemented this year or next. Now timing is as fast as possible. We believe Customs has the people and the knowledge and the capability to put together a good system. ACS was a good system, it wasn't elegant, but it worked. It has lasted for a long time, but it's aged and it is coming apart. What they need now are the resources to acquire the hardware, acquire the software, and the network that will connect this distributed environment. They need it quickly. They need the time to install, test, and operate before they open it up fully to the public.

It is a discouraging situation. They need a great deal of money, according to their own documents, although we've never been able to get a good handle on what the numbers are. And there's no money in the pipeline so somewhere we need to get money that they can use to implement it.

Chairman CRANE. Mr. Bobeck, you indicated that sometimes Customs dual roles of trade facilitator and law enforcer can be in conflict. In what ways can Customs better integrate these roles?

Mr. BOBECK. Again, Mr. Chairman, there are problems at the border today. In Canada you can cross the border 24 hours a day and with respect to my friends in the banking industry, essentially bankers' hours are observed at crossing points on the Mexican border. So if you are going to increase the efforts to enforce at the southern border, you need to increase the amount of time that trade can occur across that border. And, in fact, we think there possibly could be a savings to Customs if they did that because they would need fewer inspectors to handle the long, long lines because there wouldn't be long, long lines.

We could better schedule how our shipments are made to account for the longer hours and, certainly, you would be able to handle the immigration issues better.

Chairman CRANE. Given the volume of business your members do across borders, you must be exposed to the whole range of Customs operations and from that perspective, what is your view of the overall strengths and weaknesses of Customs service performance for the NAFTA borders?

Mr. BOBECK. It has improved greatly, but, again, trade has exploded on both borders, certainly for our industry. As I said, trade has increased by approximately 10 percent per year for our members, and for that rate of increase to be sustained certainly there have to be increases in the efficiency of Customs efforts at the border.

And, let me say that the ACE funding question is so important to us because so much is tied to automating these processes and will create the kind of efficiencies we are talking about.

There are really three things that are important for us to see long-term benefits from NCAP and from ACE. First of all, I'd like to say that we are very appreciative of the attention the previous Commissioner, Mr. Weiss, devoted to this issue, and we need to see that the interest is maintained at a very high level in Customs in terms of implementing this program.

Second, as I said, our industry has had a very, very good dialog at the staff level, at the operations level, and at the implementation level to develop the NCAP prototype and, ultimately, the ACE system. That needs to continue. Again, we need to keep our eye on the ball and keep Customs eye on the ball.

Finally, in terms of funding, we do not support an increase in the MPF because we do not believe that it is either appropriate or necessary. However, it is important that the funding stream continue. As we look down the road, this is a four-phase prototype that we expect to see the greatest benefit from toward the end of that phase. That may be, in fact, 1999, or even the year 2000. For us to even see that benefit, we need to keep this effort moving.

Chairman CRANE. Thank you. And, Mr. Schoof, do you live in Peoria?

Mr. SCHOOF. Yes, I do. A lifelong resident.

Chairman CRANE. Lifelong?

Mr. SCHOOF. Yes.

Chairman CRANE. All right, because I moved to Peoria in 1963 and taught at Bradley until 1967 and, let's see, three of our eight children were born in Peoria.

Mr. SCHOOF. Is that right?

Chairman CRANE. And we had a total of seven girls and one boy, who was a Peoria boy, which proves it plays in Peoria.

Mr. SCHOOF. Right, it does. And it's still quite active, that's right.

Chairman CRANE. You indicated that industry has had little input into Customs automation developments. What would you specifically like to see in this regard and do you have any suggestions as to what Customs should do to facilitate industry involvement?

Mr. SCHOOF. You know, I think Customs should be applauded for their efforts in their rewriting of the regulations and coming to the industry on compliance issues. They have been very vocal and very good and very open on that. But they have not been on the automation process and what they are writing it. We have a major concern of what they are doing is not, as we said, with the Internet, with what is going on today. You know, the computer systems, the systems today are so fast-changing that even in industry, we have a hard time keeping up.

And I think it should be a joint effort with Customs and industry to ensure that what they come up with and what they have is compatible with what is going on in industry. We've offered that to the Joint Industry Group on our automation Committee to sit down and review those options and be a partner in doing it. In the very same way that it was done in the past for the statute rewrite regulations—be an open forum and a partnership with industry.

Chairman CRANE. Let me ask you one final, personal, question. That is, does Caterpillar still take August off for vacation?

Mr. SCHOOF. No.

Chairman CRANE. Oh.

Mr. SCHOOF. It's still this year is the last year. It's July, the last 2 weeks in July, which the town shuts down.

Chairman CRANE. OK. Because I was going to say the whole town literally shuts down.

Mr. SCHOOF. With our new union contract, that was left open and now the business units which we were organized into, say

you're free to do it, we don't ever shut down. Believe, the town is empty the last 2 weeks in July.

Chairman CRANE. I should say so. Now, finally, Mr. Rogers, why is the issue of predeparture information in AES so important to your members?

Mr. ROGERS. We consolidate thousands of shipments daily in a very short timeframe, 1 to 3 hours, to load into large aircraft to go abroad. We cannot get all the data that you need for predeparture. We can get you the data after departure, we can return the merchandise before it leaves our custody at destination, but to try and give it to you before departure, strip that airplane, get into the container that has the package that you want to check, and then reload the airplane, creates real problems for a system that is trying to give just-in-time delivery to points all over the world.

Chairman CRANE. How much money have ACCA members invested in automation related to Customs programs?

Mr. ROGERS. We have invested about $10 million in AMS in the last few years. Overall we have spent more than $30 million in the various Customs efforts.

Chairman CRANE. Well, folks, I want to thank you for your participation and, hopefully, the issues and the concerns that you referred to are ones that we can address with mutual cooperation between us and you and Customs, of course. And with that, I want to conclude this panel and invite our next panel to join us.

Mr. ROGERS. Thank you, Mr. Chairman.

Chairman CRANE. You're more than welcome, guys.

Next panel, James Clawson, Karen Sager, Darcy Davidson, and William Stephenson. And if you folks will take seats, we will proceed in the order that I introduced you.

We will start with Mr. Clawson.

STATEMENT OF JAMES B. CLAWSON, CHIEF EXECUTIVE OFFICER, JBC INTERNATIONAL; AND CHAIRMAN, INDUSTRY FUNCTIONAL ADVISORY COMMITTEE ON CUSTOMS

Mr. CLAWSON. Thank you, Mr. Chairman, and once again it is a pleasure to be here. I want to start by asking that my written testimony be submitted for the record.

Chairman CRANE. Oh, yes, all of your written statements will be made a part of the permanent record and, if you can, please try to keep your oral presentation to 5 minutes.

Mr. CLAWSON. Absolutely, and, in fact, I am going to deviate significantly from it here because what I want to start with is to thank you very much and the Subcommittee for your continued involvement, not only in having this hearing, but you and your staff for continuing to have the interest in Customs. I have been doing Customs issues for 25 years, and it is refreshing to see the kinds of involvement that you have and the interest that you are taking. It makes a difference.

Chairman CRANE. Thank you.

Mr. CLAWSON. And particularly as tariffs are reducing, the nontariff barriers, the Customs kind of issues become real critical internationally. Most of what I do is exports and foreign Customs tariffs, but what U.S. Customs does leads the way for the world and this is of great interest to us.

On that regard, I fully support your Crane-Ramstad initiative with regard to new positions in technology. I think that is exactly what's called for, innovative ways to use technology. We fully support your initiative and hope that it's successful and we'll do what we can to assist you in that.

Customs has been doing a great job. You've been hearing mixed reviews, I think lots of good things are said. And I'm here to say that even though our testimony is critical in many areas, Customs is doing a great job. There's no question. In today's environment, with all of the problems that we have, they received in the Results Act, very high remarks. They have a good business plan and I would like to go on record to say that under the current circumstances, with all that they have to do, Customs is doing a very good job. Our biggest concern, Mr. Chairman, is what's going to happen in the future.

And I think, for Customs to maintain this, they need the resources, they need the technology and, particularly, this automation plan that you've heard a lot about here today. The Mod Act was this Subcommittee's child, with a lot of effort from others. It isn't being implemented the way it should because the NCAP, the automation, is the key to it. A lot of other good things are there, but they are so reliant on that.

Mr. Camp's discussion about the immigration. You heard Customs Sam Banks say that system is going to run on the same computer system. You know, how can they do that? How can we run everything on the same system? The AES Program is running on the same system. This system, in fact, will collapse unless something is done about it.

And so, in a nutshell, my concern is that we address that need. Customs made some initiative, I was glad to hear the announcement today of a new head for the automation program. It's badly needed. They need a good plan and they need to be funded and it is our strong recommendation that that funding not come from an increase in the merchandise processing fee. We are opposed to that. I think what needs to happen is that the existing merchandise processing fee be earmarked for this need for whatever is required, the first $50 to $80 million in the first year, and then whatever it needs afterward to get this job done.

The money is there. I realize it is being used for other kinds of things, but the money is there, from the users who are paying it. It is my view that to have an increase in taxes at this time doesn't make any sense at all. We just need a reallocation to a higher priority that is going to make the rest of this work. And if we don't do that, we're in for some real difficult problems over the next few years.

Thank you. I'm happy to answer any questions that you may have.

[The prepared statement follows:]

Statement of James B. Clawson, Chief Executive Officer, JBC International; and Chairman, Industry Functional Advisory Committee on Customs

It is a pleasure to be here today and to have the opportunity to testify before the Subcommittee on Trade of the Committee on Ways and Means on issues relating to the US Customs Service. As CEO of JBC International and Chairman of the Industry Functional Advisory Committee on Customs, I closely monitor the activities of the US Customs Service.

The Customs Service is the thin blue line protecting the world's largest economy from fraudulent and illegal imports and exports. It can also be the largest non-tariff trade barrier. Because of decreasing duty rates, Customs must accept the reality that it will never again collect more revenue than it will in 1998. Customs must therefore stop spending dollars to chase pennies and embrace a future in which the activities of interdicting illegal imports and facilitating legitimate imports complement one another. The only way Customs can achieve this goal is through increased automation and innovative use of technology.

Mr. Chairman, we must remember that the preamble to the Mod Act trade facilitation provisions is the National Customs Automation Program, or N–CAP. The language, structure, and the spirit of the Mod Act follow upon the N–CAP. Yet, Mod Act implementation has failed because the automated engine on which it must run has failed in the design phase. N–CAP should not be built on a faulty design. Allow me to express the view that raising the merchandise processing fee to fund Customs automation, as with other funding sources, is not the key problem here. The real problems include a lack of commitment on the part of the Administration to Customs' automation, which has led to a lack of managerial commitment from Customs. The surplus of budgetary fallacies forthcoming from the Administration about how to finance Customs automation is matched by the dearth of ideas from Customs about how to design and implement modern automated systems.

The Mod Act can not be implemented without the engine of the National Customs Automation Program. As my testimony will make clear, we have a solution: Customs should abandon its attempts to develop a monolithic mainframe automated system and run it instead on the Internet.

Implementation of the Customs Modernization Act

When the US Customs Service and US industry worked together with this Committee and Congress to pass the Customs Modernization Act (Mod Act), it ushered in a new partnership of shared responsibility between government and industry. The Mod Act represented significant milestones for both government and industry, including the end of centuries of Customs trying to "catch" industry and industry fearing Customs. It was intended to create this era of shared compliance, with industry agreeing to a measure of responsibility for developing corporate controls to ensure compliance with Customs regulations. Customs agreed to modernize the methods by which it conducted business, and to move from a transaction by transaction method of merchandise clearance to a seamless automated system of account management.

Customs and industry entered this era with high hopes for improving international trade flows and setting new records for enforcement compliance. Industry has accepted the responsibility for compliance by investing in new global automation systems. Major efforts are being made to keep informed about Customs rules and to ensure that those rules and regulations are followed. Many companies have participated in Customs compliance assessment audits including opening their systems and records for review and approval by Customs audit teams. The private sector is keeping up its end of the partnership agreement.

On the other hand, we expected that the Mod Act would enable Customs to have the necessary automated systems to move from a transaction-by-transaction process to an account based, national remote entry system. The legal authority is in place but there is no such automated system. By Customs own estimation, it may be possible to implement such a system by the year 2004, at a cost of almost $1 billion. Customs' current automation system is over 14 years old—an antique by computer standards. By comparison, I am on my 5th computer system in that same time period, just to keep current in my business. By all accounts, the Customs system will begin to fail this year. With the Year 2000 problem, insufficient technical experts, insufficient planning and insufficient funding, I believe we are facing a crisis of epic proportions if we do not act quickly. In addition to no new automation, many of the regulatory changes necessary for Mod Act implementation are yet to be finalized. For example, the increase in the informal entry level directed by this Committee is still not implemented. Also, Customs has yet to implement a system for processing multiple entry changes. Each change must be directly related to the specific entry, a costly and unnecessary process for the government.

In some areas, Customs has performed remarkably. It has implemented NAFTA and the most ambitious re-organization in Customs' history. It has embarked on an effort to keep the private sector informed of regulatory changes. The Mod Act brought about the most open and cooperative discussions about regulatory process in history. Management at senior levels is committed to this new Customs organization and process. Unfortunately, it seems that the National Treasury Employees

Union and its members who provide the backbone for implementation of a re-engineered Customs Service are not similarly committed. Continuing transaction by transaction processing, maintaining outdated beliefs about company compliance, and refusing to accept new techniques for risk management continue to prevail.

Customs enforcement at the borders for import and export can only improve by using high technology tools. Automation will free the customs inspector from his traditional role of examining import forms and documents for each and every shipment and provide that inspector more time to "inspect." If we are to make any dent in the level of drugs and other contraband entering our country, we must free our agents and inspectors from routine administrative duties that can be performed by technology. By using risk assessment techniques, true random sampling, and efficient post-audit processes, the government can assure proper collection of revenues and statistics.

CUSTOMS AUTOMATION PLAN

The Customs Service is on a collision course with the Information Age. Customs, which is a critical part of the trading system, is not evolving along with its customers. Instead, it is tied to a traditional, proprietary, closed system that does not run on the Internet, has tightly circumscribed, dedicated links to other systems, and applies only to the US side of the transaction. The problem is not an unwillingness to change on the part of Customs. On the contrary, Customs management has repeatedly expressed the administration's determination to automate the customs process. The problem is that Customs cannot move fast enough to keep up with the evolution of electronic commerce technology in the private sector, much less close the gap that already exists between the two.

In the private sector, trade information systems are evolving rapidly toward a unified, integrated, open-architecture system in which data is exchanged on a common, Internet-based platform. This evolution will make it possible to move toward a new structure under which the Customs-trader interface is not managed by Customs, but is instead just another part of the larger, private information system. Under this structure, Customs would continue to define what data it needs, when it needs them, and how the data, once in Customs' hands, are to be used by the government to perform the critical governance functions of trade monitoring, revenue collection, enforcement, trade flow analysis, and so on. The International Trade Data System (ITDS) and G–7 efforts will help overcome the obstacle of defining the necessary data elements for trade-related transactions. Customs would not dictate how the required data are to be generated and transmitted to it by the trade community. Instead, data formats and procedures would be set by the trade and electronic commerce community as just another part of trade data system development.

By removing the requirement for Customs to manage primary data collection, reinvention of the Customs-user interface would enable Customs to expand and strengthen its other functions, including compliance monitoring, data analysis, and enforcement. Ultimately, Customs would begin to receive data on an upcoming shipment as soon as it enters the transportation system, whether from the manufacturer, the shipper, the forwarder, or an overseas customs system. The earlier availability of transaction data would enable Customs to improve targeting of potential contraband shipments, for example, and make it much harder for non-compliant shippers to submit different data to different users.

The "privatization" of the Customs-user interface would result in a greatly reduced cost to the Government. Under the reinvented system, all commercially-available electronic commerce systems would be required to be "Customs compliant," that is, to collect the data required by Customs and other federal agencies and to generate reports directly to these agencies in a standard format. The cost of Customs compliance would be built into the cost of the total system, and would therefore be included in the cost charged to the users by the software providers or other systems providers, rather than being borne by Customs. Customs would be required to reconfigure its systems to compile the data provided by the commercial systems into the form needed by Customs and its client agencies (e.g., Census for trade data), but the cost of doing so should be much less than the cost of keeping the whole system in-house.

The shift to a systems user strategy offers a means of achieving immediate improvements in Customs support to the trade community, a way out of a potentially disastrous situation, and a path toward a much more cost-effective and powerful system for the future. True partnership with the private sector is the only way to build a Customs system that can keep up with the explosion of U.S. trade. Industry groups such as the International Electronic Trade Steering Committee stand ready to work with Treasury and Customs to achieve this vitally important goal.

INTERNATIONAL ELECTRONIC TRADE STEERING COMMITTEE

One year ago when it became apparent that Congress would not fund Customs' new automation requirements because of the lack of a detailed and acceptable plan, a segment of the US industry began to get impatient. Customs was unable to develop and articulate a plan, industry was bickering over automation priorities, and Congress halted appropriations for all new Customs automation programs. As a result, various industry representatives dedicated to automating trade transactions came together to form the International Electronic Trade Steering Committee.

The original mission of the Steering Committee was to identify potentially successful electronic trade procedures currently used around the world. Based on the information gathered, an automation model acceptable to both industry and US government was identified. As the ideas of the Committee developed, the group began to realize that the focus of the group should be on solutions to the automation problems that so many other private sector automation committees had already expressed.

The companies participating in this group are dedicating their time and money to automating trade transactions. The Committee believes the solution to the current automation problems begins with the development of a small part of the trade transaction documentation process as a demonstration of what will work. By creating a system with minimal features at the outset, testing and development can continue until it works comprehensively. Additionally, the Committee believes that the Internet is central to any automation effort. This Administration, the US Congress and US industry are committed to electronic commerce, as embodied in the Internet.

Customs is proficient in collecting data from large companies, but has been unsuccessful in its search for an effective means of collecting that same information from small and medium sized enterprises (SMEs). Because of the low cost and easy access of the Internet platform, Customs will be able to reach SMEs without creating new programs specifically for SME use. All of this can be achieved using existing technology, including hardware, software, and security programs. The key technical challenge is the creation of a stable and secure integrator to connect private sector and government functions. Steering Committee members are dedicating resources (personnel, time and money) to solve this problem. We are still in the early stages but believe this will work.

FUNDING

Obviously any enhanced electronic customs process requires significant funding. The current merchandise-processing fee (MPF) collects in excess of $800 million per year, more than enough to fund computer enhancements. The passage of the MPF was supported as a user fee, with the private sector importers and exporters as the "users." There are a couple of points that I need to make about the failure of this tax to continue to be a "user fee."

- Under the terms of the NAFTA, that fee is to be eliminated for all NAFTA border transactions by next year. With Canada being our largest trading partner and Mexico right behind, a major portion of transactions will no longer be covered.
- The fee is collected "by transaction" therefore guaranteeing a disincentive to move to an account basis. A true "user fee" would be used to improve efficiencies for the user, not protect inefficient systems and processes.
- By government cost accounting methods, the inspectors looking for drugs and contraband are included in the definition of "commercial operations" that are funded by the MPF.

It is not my intention to debate the continued existence of the MPF. More importantly I wish to point out that the $800 million is more than enough to cover the "commercial transactions" for which it is intended. That amount will cover funding of Customs automation into the 21st Century but it should be earmarked for the purpose for which it is paid—merchandise processing. It is my recommendation that this Committee authorizes and directs that existing MPF revenues be earmarked and allocated as follows:

- $80 million beginning in FY 1999 each year for two years; and
- $250 million each year for the following three years to fund the necessary improvements to the Customs automated import and export systems.

That funding authorization should be contingent on US Treasury and US Customs developing and articulating a plan for the approval of Congress and acceptance by the private sector. It should be pointed out that the current plan as developed by Customs with assistance from Cambridge Associates is inadequate.

SHIPPERS EXPORT DECLARATION PENALTIES/FINES

With the development of the Automated Export System and elimination of the Commerce Department Automated Export Reporting Program (AERP), US Customs has increased enforcement of the administration of collecting export statistical declarations. Department of Commerce regulations for Shipper's Export Declaration (SED) requirements (15CFR30.95) provide for a late or incorrect filing penalty of $1000 assessed on the shipper for each violation. The US Code (Title 13, Chapter 9, Section 305) further specifies that the Department of the Treasury (Customs Service) is responsible for collecting a penalty fee, also $1,000, from any "carrier" that does not provide the necessary carrier information on the SED. An extremely unfair situation has developed as a result of these regulations and their administration by the Commerce and Treasury Departments.

The carriers must rely on the shipper/exporter to provide the merchandise information for the SEDs on time. If that information is incorrect, the Commerce Department is supposed to take action to collect the fine against the shipper. Because the system requires Commerce to request the Justice Department to file a civil penalty case against the shipper for the $1,000, only one case has been filed in many years. We are told that Justice has too many other "more important" issues than to go after companies for failure to provide accurate and timely statistical information.

Customs on the other hand has authority to collect civil penalties without court action, but only from carriers who are bonded with customs. As a result of this situation, the Commerce Department has requested that Customs use its authority with the carriers to enforce collection of information from the shippers. Essentially, the burden is being shifted from the exporters to the carriers. Customs is currently assessing fines on carriers in the hundreds of thousands of dollars for non-compliance with the data requirements that are not the responsibility of the carriers. The regulations need to be changed. As part of the development of the Automated Export System we would like to work with this Committee to ensure that accurate statistical information is collected but that the party who is the source of that information is held responsible for its accurate and timely filing.

CONCLUSION

While Customs is doing an adequate job—revenue and statistics are being collected, goods are being cleared, and contraband is being interdicted—much more can be done. Today's business technology requires Customs personnel to think "outside the box" to process goods to meet ever-decreasing cycle times. Today, smugglers using that same technology require Customs personnel to think more inventively about effective ways to combat those smugglers. Senior management at Customs knows this but needs the tools to make it work. Bureaucratic and antiquated management systems, including union demands on coverage and levels of inspection operations, are thinking "inside" the box. Automation of the commercial merchandise transaction into periodic account based processing will alleviate many of these problems.

Customs should be directed to develop a new automated commercial environment plan for the 21st Century. Based upon approval of that plan, this Committee should earmark $910 million of the merchandise processing fee over the next five years to fund the necessary electronic commerce tools that will allow US business and industry to compete in our global economy.

Chairman CRANE. Thank you, Mr. Clawson.

Ms. Sager.

STATEMENT OF KAREN SAGER, PRESIDENT, NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES

Ms. SAGER. Thank you, Mr. Chairman. On behalf of the National Association of Foreign-Trade Zones, thank you for the opportunity to present this statement. My name is Karen Sager. I am currently the president of the NAFTZ.

The NAFTZ is a nonprofit trade association representing over 650 members. Today there are more than 200 approved zone projects located in 50 States and Puerto Rico. Zones are used by

over 3,600 firms who employ more than 350,000 people. The total value of merchandise processed through foreign trade zones is approximately $200 billion annually.

The NAFTZ publicly supported the Customs Mod Act in the firm belief that increased automation, reduction of repetitive paperwork, and the focus of Customs resources on informed compliance would result in a more effective Customs Service.

We still believe this to be true. However, to date our expectations have not been fully realized. There are several issues relating to the Customs Service that are of vital concern to our members. My oral testimony will focus on one issue and briefly summarize two others.

First, since 1990, the NAFTZ has sought extension of the foreign trade zone weekly entry procedure to nonmanufacturing zones. Section 637 of the Customs Mod Act amended 19 U.S.C. 1484 to provide statutory support for expanding the weekly entry procedure.

This procedure will allow all foreign trade zone users, meeting specific criteria set by Customs, to file one entry covering a 7-day consecutive period, instead of filing multiple Customs entries per day or per week for the same types of merchandise. In 1995, the NAFTZ filed written testimony with this Committee expressing our anticipation that the weekly entry procedure would be implemented in final form in the near future.

Proposed regulations were finally published on March 14, 1997, following the completion of a highly successful pilot program. Customs endorsed the procedure, stating that its principal purpose was to reduce the number of entries from zones and to expedite the processing of such entries. No negative comments were received.

Port directors encouraged zones to apply for this procedure to alleviate the strain on Customs inspection resources.

The NAFTZ once again felt confident that final regulations would be published in the near future. However, in October 1997 the NAFTZ received a letter from the Acting Commissioner of Customs stating that substantial changes to the procedures were being considered by Customs because as currently structured there would be a potential loss in the collection of the merchandise processing fee due to the reduction in the number of entries processed.

Given Customs own statement that this procedure is intended to reduce the number of entries from zones, it would seem logical that any reduction in MPF collected from zones would be accompanied by a reduction in Customs resources required to process these entries.

We have been told that Customs cannot voluntarily process fewer entries if it means they will collect less revenue in the form of the MPF. In short, it seems that Customs believes they must retain operational inefficiencies for the sake of a user fee. Customs refuses to finalize this procedure as currently proposed and has stated that the highly successful pilot program in place since 1994 may be rescinded if the MPF issue is not resolved.

It is unconscionable that a field-tested and proven effective procedure that would enhance a trade program designed to attract and retain jobs and investment in the United States and was provided for in the Mod Act is being held hostage by Customs concern with the collection of user fees.

We need your help to encourage Customs to finalize proposed regulations as published in the *Federal Register* on March 14, 1997.

Second issue: The NAFTZ has been pursuing automation of the FTZ admission process since the early eighties. Last year, Congress directed Customs to automate this process. We are still waiting. Automation of the zone admission process will allow Customs inspectors to spend more time enforcing our trade laws and protecting our borders instead of acting as data entry clerks. Customs inspectors and other government agencies, such as the Census Bureau and the FDA, who rely on zone admission data, need and deserve this tool.

Finally, there is some good news. Under the reorganization of the U.S. Customs Service, port directors were assigned the responsibility for all FTZ functions previously carried out by district directors. At that time, there was no adequate training for the port directors, until this year.

A training program was developed and is taught jointly by the U.S. Customs Service and the NAFTZ, at our own expense. It has been well received and there is currently a waiting list of over 100 Customs employees who want this training. The partnership that led to this successful training program embodies the essence of informed compliance in the Mod Act. Customs is to be congratulated for their effort. We hope that you, Congress, recognize the importance of the continued funding of this, and other, important Customs training programs.

In summary, we believe that expanded weekly entry, automation of the zone admission process, and continued Customs training embody the intent of the Mod Act and will contribute to the efficient commercial operations of Customs. Efficient commercial operations are vital if Customs is to effectively enforce our trade laws and protect our borders.

Thank you for the opportunity to speak today. This is just a summary of our written testimony which has been submitted for the record. And I am also happy to answer any questions.

[The prepared statement follows:]

Statement of Karen Sager, President, National Association of Foreign-Trade Zones

Mr. Chairman and Members of the Subcommittee:

On behalf of the National Association of Foreign-Trade Zones (NAFTZ), thank you forthe opportunity to present this statement before the Subcommittee hearing on U.S. Customs Service issues. My name is Karen Sager. I am the President of the NAFTZ.

The NAFTZ is a nonprofit trade association representing over 650 members, including grantees, operators, users and service providers of U.S. foreign-trade zones. Today there are more than 200 approved zone projects located in 50 states and Puerto Rico. The total value of merchandise received at foreign-trade zones annually is approximately $200 billion. The total value of merchandise exported from foreign-trade zones is over $17 billion. More than 3,600 firms utilize foreign-trade zones and employment at facilities operating under FTZ status exceeds 350,000. The NAFTZ provides education and leadership in the use of the FTZ program to generate U.S.-based economic activity by enhancing global competitiveness.

In 1992, the NAFTZ publicly supported the passage of the Customs Modernization and Informed Compliance Act ("the Mod Act") in the firm belief that increased automation, improved operational efficiencies through the reduction of repetitive paperwork and the focusing of Customs' resources on informed compliance, would result in a more effective Customs Service that could better serve the dual goals of facilitation of trade and improvement of interdiction and enforcement efforts. We still believe this to be true. However, to date, implementation of the provisions envisioned

in the Mod Act have not met the expectations that were the basis for our support of the Act.

There are three specific issues relating to the U.S. Customs Service that highlight our current dissatisfaction with the implementation of the Mod Act. They are of vital concern to our members and have a direct bearing on the subjects that are the focus of this hearing. The issues are:

(1) Expanded Customs Weekly Entry Procedure for non-manufacturing zones;
(2) Automation of the FTZ admission process; and
(3) Training of Customs personnel in FTZ procedures;

(1) EXPANDED CUSTOMS WEEKLY ENTRY PROCEDURE

The NAFTZ has been pursuing U.S. Customs Service implementation of an extension of the weekly entry foreign-trade zone procedure for non-manufacturing operations since 1990. Title VI of the North American Free Trade Agreement Implementation Act (P.L. 103–182, 107 State. 2057), included the Customs Modernization Act, and was enacted on December 8, 1993. Section 637 of the Customs Modernization Act amended 19 U.S.C. 1484 concerning the entry of merchandise, by providing statutory support for expanding the weekly entry procedure.

The implementation of this proposed revision in the current Customs regulations would extend the weekly entry procedure currently in effect for manufacturing zones to all zones including those which admit merchandise to a foreign-trade zone solely for the purpose of warehouse and distribution, providing they meet certain criteria established by the U.S. Customs Service.

The criteria established by the U.S. Customs Service in the proposed regulations requires foreign-trade zone users to employ electronic entry filing and excludes weekly entry of restricted or quota status merchandise. In order to qualify, the particular zone operation must be fairly predictable, continuing and repetitive, and relatively fixed in variety by the type of merchandise and the nature of the business conducted at the site. The Port Director is provided discretion to utilize the weekly entry procedure in approving the application. Once approved, instead of filing multiple Customs entries per day or per week, this procedure allows foreign-trade zone users to file one entry to cover a period of seven consecutive days. This procedure reduces paperwork and document processing by the U.S. Customs Service, minimizes the redundant use of the limited inspection resources for merchandise at Customs, and facilitates the movement of cargo through zones.

In 1995, the NAFTZ filed written testimony with this Subcommittee expressing our anticipation that a long awaited weekly entry procedure would be implemented in final form in the near future. This assumption was based on initial reports that a pilot program extending weekly entry procedures to select non-manufacturing zones was an unqualified success—so much so that additional participants were being added upon request while proposed regulations to implement the procedure were prepared.

Proposed regulations were finally published in the Federal Register on March 14, 1997. In the Background Information section of the proposed regulations, Customs made the following comments:

"Since its inception, there have been no major problems associated with the use of weekly entry. To this end, Customs believes it desirable to expand the use of the procedure by adding a weekly entry procedure to cover merchandise involved in activities other than manufacturing operations."

"The principal purpose of the proposed weekly entry procedures, like the current weekly manufacturing entry procedure, as conducted in a fully paperless environment, is to reduce the number of entries from zones and further expedite the processing of such entries, with the added benefit that zone users would not have to delay their operations pending the acceptance of an entry and Customs examination of the subjects' merchandise."

"A pilot program, implemented in September 1994, to test such an expanded weekly entry procedure at a selected number of zones/subzones has since been evaluated as a success."

Given the endorsement of the procedure in the proposed regulations by Customs itself, the fact that no negative comments pertinent to the procedure were received, and the fact that local Port Directors were encouraging zones to apply for this procedure to alleviate the strain on their inspection resources, the NAFTZ once again felt confident that final regulations would be published "in the near future." However, in October 1997, rather than the publication of the final regulations, the NAFTZ received a letter from Acting Commissioner Sam Banks stating that Customs was considering significant changes to the procedure because, as currently structured with one Customs entry and one Customs release per seven day period, there would be

a significant impact on the collection of the merchandise processing fee due to the reduction of the number of entries processed.

It is our understanding that the merchandise processing fee is a fee that is based on service provided and is used to offset Customs' costs for commercial processing. Given Customs' own statement that this procedure would reduce the number of entries from zones and expedite the processing of such entries, it would seem logical that the reduction in the number of entries processed and the reduction of inspection resources dedicated to zones would justify any reduction in merchandise processing fees collected from zones. We have had several meetings with Customs and Treasury in an attempt to understand what facts or accounting data Customs is using to project the loss of revenue that might occur as a result of extending this procedure. We have been told that in fact there is no cost accounting system in place that could document that weekly entries from zones cost more to process than normal entries processed on a per shipment basis, and that Customs' estimations are based strictly on the fact that if they voluntarily collect fewer entries due to operational efficiencies, they will in turn collect less revenue in the form of the merchandise processing fee. We have also been told that unless we can identify a way to ensure that the amount of merchandise processing fee collected is not adversely affected by the reduction in the number of entries resulting from this procedure, that the extension of this procedure to non-manufacturing zones cannot go forth and in fact may be rescinded for those who have been participating in the pilot program since 1994.

We sympathize with Customs in so far as the merchandise processing fee, as currently structured, is a dis-incentive to their efforts to develop operational efficiencies through the reduction of the amount of paperwork processed in commercial operations. We firmly believe that a properly funded Customs Service is in the best interest of the communities where our zones are located and that we, as importers, should pay a reasonable fee based on service that is assessed across the importing community as a whole. However, we find it unconscionable that implementation of a field tested procedure which has proven to be effective and would enhance a trade program designed to attract and retain jobs and investment in the U.S., is being held hostage while Customs addresses its revenue collection concerns.

The National Association of Foreign-Trade Zones seeks Congressional assistance in resolving this impasse so that final regulations and general implementation of this procedure can be achieved sometime sooner than the "near future."

(2) AUTOMATION OF THE FTZ ADMISSION PROCESS

The NAFTZ has been pursuing Customs automation of the FTZ admission process since the early 1980s. Today, the Customs Form (CF) 214 is the only Customs paper document used nationwide in large quantity, on a daily basis, that cannot be transmitted to Customs electronically.

Because the CF 214 is a paper document, Customs personnel use valuable time acting as data entry clerks, manually typing all FTZ admission data into the Automated Commercial System (ACS). The entry of this FTZ admission information is critical in Customs' determination that merchandise is no longer moving in-bond under a carrier's liability and has arrived at the zone, thereby transferring the liability to the foreign-trade zone operator's bond. In reality, because the manual entry of data is not a priority in light of Customs' other enforcement or trade facilitation efforts, it is often delayed or forgotten, causing carriers and zone operators to appear out of compliance simply because Customs transactions have not been completed by Customs personnel. If the FTZ admission process were automated, all of this data could be transmitted electronically, eliminating Customs' manual entry requirements. In an environment of significant increases in international trade, coupled with a shrinking pool of resources, U.S. Customs Service personnel can and should be better utilized.

Beyond the obvious operational inefficiencies this process engenders, other governmental agencies depend on the U.S. Customs Service for data collection relative to the admission of merchandise to zones. Principal among these is the U.S. Census Bureau which has encountered specific problems and voiced ongoing concerns associated with Customs' manual collection of FTZ admission data. In many instances, the U.S. Census Bureau is not receiving the timely and accurate data it needs from the Customs Service to fulfill its reporting responsibilities. The Food and Drug Administration (FDA) has also indicated a need for admission data to be transmitted electronically. Currently, FDA notification is tied to Customs entry which occurs when merchandise is removed from the zone. The FDA has been unable to link its notification requirement to the admission of FTZ merchandise because Customs has not been able to find the resources to automate this process.

The National Association of Foreign-Trade Zones has requested the immediate automation of the FTZ admission process as part of the existing Automated Commercial System (ACS), or as an initial priority under the new Customs Automated Commercial Environment (ACE) system. As of December 1996, Customs projected that the automation of the FTZ admission procedure would be part of the fifth and final phase of ACE implementation. Customs' delay in automating the FTZ admission process is particularly disturbing in light of the fact that in each application for a new zone since the mid-1980s, Customs has required that zone applicants sign a statement committing the applicant to the electronic transmittal of data to the U.S. Customs Service once an interface has been developed by Customs. Under Customs' own implementation schedule, it is unlikely that the admission process, which involved $42.94 billion in foreign status merchandise in Fiscal Year '96, will be automated in the next seven years. The NAFTZ supports legislation that was adopted by the Ways and Means Committee on October 9, 1997, the Miscellaneous Trade and Technical Corrections Act of 1997 (H.R. 2622), which would require U.S. Customs to automate the CF 214 by January 1, 1999. The Association urges Congress to enact this legislation.

(3) TRAINING OF CUSTOMS PERSONNEL IN FTZ PROCEDURES

Under the reorganization of the U.S. Customs Service, Port Directors were given responsibility for all of the foreign-trade zone functions formerly carried out by the District Directors of Customs. Port Directors have been facing these additional responsibilities with little or no training on specific trade programs, including the FTZ Program. At the same time that Port Directors are being challenged to make decisions without adequate training, Customs Headquarters staff has been reduced by one-third, with possible further reductions ahead in the future. This sequence of events has made it difficult, if not impossible, for Port Directors to receive timely responses to requests for internal advice on foreign-trade zone issues. As a result, foreign-trade zone users have experienced ad hoc decisionmaking by Customs personnel on a port-by-port basis. The effect of this decisionmaking is a lack of uniformity in Customs' administration of the foreign-trade zones program.

To respond to this problem, the NAFTZ actively participated in a joint steering committee with Customs to develop training for Port personnel on FTZ issues. As a result of the efforts of the combined Customs and NAFTZ steering committee, two FTZ training modules have been developed which include lesson plans, overheads and practical training exercises to address the questions and concerns expressed by Customs' officers in a survey circulated in Spring 1997. These modules are presented jointly by Customs personnel and trade representatives over a three day period. This unique approach was implemented because one of the strongest enforcement tools available to local Customs officers is a thorough understanding of: 1) what is being done in the zones in their area; 2) who is responsible for that activity; and 3) how well does the zone operator understand his/her responsibility to be fully compliant with U.S. Customs regulations. This is our understanding of informed compliance as described in the Mod Act. The trade instructors provide a description of the business environment frequently found in zone operations and how Customs regulations are followed in that environment. Customs personnel detail what the Customs regulations are and how Customs regulations can be enforced within this environment in an effective way while still allowing the zone to achieve the economic goals of the FTZ program.

This partnership approach has proven very effective in the three classes held to date in Ocala, FL; Houston, TX; and at the Customs Training Academy housed at the Federal Law Enforcement Training Center in Brunswick, GA. Three additional training sessions are scheduled for Champlain, NY; Norfolk, VA; and a second session at the Customs Training Academy. The "traveling training sessions," taught by a core group of instructors, were developed to provide access to the training for a wider range of Customs Port personnel at a minimal cost to the government. Due to the high demand for this training, eight additional training sessions have been scheduled for Fiscal Year '99.

Training such as this is an important element for the improvement of any organization's operational efficiency. Training becomes particularly critical when an agency is undergoing a massive transition such as that being experienced by the U.S. Customs Service. We also know that, historically, training budgets are a prime target for reductions and elimination. The NAFTZ believes that the continued investment in staff training constitutes the only way the U.S. Customs Service will emerge from this transition as an agency that can perform all of its responsibilities effectively. The need for training will become increasingly important as a number

of Customs officers with a long history of experience retire from the Customs Service.

In order to ensure that this critical need is met, the NAFTZ urges Congress to appropriate adequate funds for the training of Customs personnel. It is only through the presence of well-trained, knowledgeable Customs officers, that the reorganization of the Customs Service to its full potential, as envisioned in the Mod Act, will be realized and the dual goals of trade facilitation and improvement of interdiction and enforcement efforts will be successfully achieved.

Thank you for your consideration of these issues. I will be happy to answer any questions.

Chairman CRANE. Thank you, Ms. Sager.

Ms. Davidson.

STATEMENT OF DARCY A. DAVIDSON, CUSTOMS COMPLIANCE MANAGER, LEVI STRAUSS & CO.

Ms. DAVIDSON. Thank you, Mr. Chairman. Levi Strauss & Co. appreciates the opportunity to express its views on Customs automation efforts and the need to fund the Automated Commercial Environment.

My name is Darcy Davidson and I am Levi's customs compliance manager. Today I would like to briefly summarize the key points of our written statement which we have submitted to the Subcommittee for the record.

Levi Strauss & Co. is the world's largest manufacturer of branded apparel, with $7 billion in annual sales from over 60 countries. We are also the fourth largest importer of wearing apparel and textiles in the United States. With 30,000 employees in our global operations, Levi Strauss is truly a major player in the international arena.

Competition within that arena is increasingly favoring companies that can successfully depend on the quick and accurate sharing of information within their global supply chain.

The U.S. Customs Service plays an integral role in our supply chain and the agency's efforts to modernize their own processes and systems will become important in our ability to remain competitive. The dual mission of the Customs Service, to simultaneously enforce and facilitate trade may seem dichotomous at first. It is our strongly held belief, however, that facilitation and enforcement are complimentary. That the effective facilitation of compliant trade is necessary to have effective enforcement of noncompliant trade.

We at Levi's want to see the Customs Service facilitate imports like ours, which have been tested and proven compliant. Then we want them to leave us to our legal obligation under the Mod Act of maintaining that compliance, while they devote their energies to seeking out and punishing those importers who violate the laws.

But if Customs facilitation processes falter, then our shipments are held unnecessarily, we face costly delays, which prevent us from filling our orders, and, ultimately, providing consumers with the products that they are looking for.

If Customs enforcement processes falter, and commercial fraud and other violations are left undiscovered, then the investment that

we have made to ensure that our own practices are compliant will not be transformed into any tangible benefit.

The Customs Modernization Act was designed and supported by the trade to enable the agency to conduct that difficult act of balancing enforcement and facilitation. And the Mod Act was passed with the understanding that any efforts to modernize the U.S. Customs Service must rely on a comprehensive system of automated support. Without automation, very few, if any, of the new processes that the Mod Act mandates, can be supported.

This is particularly distressing to Levi Strauss & Co., because we have used the Mod Act as a blueprint for the redesign of our own Customs compliance department and its automated support systems. Our import processes, and our accompanying automation, are based in large part on what we felt Customs would do in implementing the Mod Act.

We believe that Customs has made a concerted effort to keep the trade informed of their actions and plans. ACE is being built with an already established understanding of the needs of the trade. Levi Strauss & Co. has made it a particular priority to stay involved in these discussions because the partnership between our company and U.S. Customs is very real and very important.

Now, however, we find ourselves in a situation where the advancements which are possible within that partnership and upon which we have been planning are threatened. Without access to a regular source of funding, it will be impossible for Customs to plan for and to finalize the construction of ACE. Without ACE, the Mod Act and the important changes mandated by it become impossible to support. Without those changes, the competitiveness of Levi Strauss and other compliant companies like it could be eroded. We do not believe compliance and competitiveness should be mutually exclusive.

With that in mind, we urge you to find a way to ensure that the important work Customs has done so far in designing and developing comprehensive automated support for the Mod Act does not have to be abandoned.

Mr. Chairman, I would like to thank you again for allowing me the opportunity to speak before you. This is an important issue for Levi Strauss and for the importing community as a whole. We are confident that you will recognize that continued and consistent funding of the ACE project is essential and we look forward to continuing our partnership with the Customs Service so that we can have an end product that meets the need of the trade and the government as well.

Thank you very much and I am happy to make myself available for questions.

[The prepared statement follows:]

Statement of Darcy A. Davidson, Customs Compliance Manager, Levi Strauss & Co.

My name is Darcy Davidson. I am the Customs Compliance Manager for Levi Strauss & Co. Thank you for the opportunity to appear before the Subcommittee in support of continuing to fund Customs' automation efforts.

Levi Strauss & Co. is the world's largest manufacturer of branded apparel, with 7 billion dollars in annual sales from over 60 countries. We are also the fourth largest importer of wearing apparel and textiles in the United States. With 30,000 em-

ployees in our global operations, Levi Strauss & Co. is truly a "major player" in the international trade arena.

Competition within that arena is increasingly favoring companies that can successfully adapt to an ever-changing marketplace, yet still plan operations around reliable forecasts. This requires the ability to depend on the quick and accurate sharing of information within their global supply chains. Communication between planners, producers, shippers, and sales forces must be regular and instantaneous. At Levi Strauss & Co., we are addressing that challenge by automating as much of that communication as possible.

BOTH ROLES OF CUSTOMS ARE IMPORTANT

The dual mission of the U.S. Customs Service, to simultaneously enforce and facilitate trade, may seem dichotomous at first. Yet both facilitation and enforcement of laws and regulations to protect fair and compliant import practices are critical to our bottom line. It is our strongly held belief, in fact, that facilitation and enforcement are complimentary; that the effective facilitation of compliant trade is necessary to have effective enforcement of non-compliant trade. If Customs cannot accomplish either part of its mission, that ineffectiveness damages the industry.

Customs plays an integral role in our supply chain, and the agency's efforts to modernize their own processes and systems will become important in our ability to maintain competitive advantage. The import practices of Levi Strauss & Co. have been tested by Customs and proven to be compliant. We want to see the agency facilitate our imports by populating an "account" structure with information about us and our processes. Then we want them to leave us to our legal obligation of maintaining those compliant practices, while they devote their energies to seeking out and punishing those importers who violate our trademarks and commit the commercial fraud which damages our competitive position.

If Customs' facilitation processes falter, our shipments are held unnecessarily, and we face costly delays which prevent us from filling our orders and ultimately providing the consumer with the product they are looking for. If Customs' enforcement processes falter and commercial fraud or other violations are left undiscovered, then the investment that Levi Strauss & Co. has made to ensure that our own practices are compliant, will not be transformed into any tangible benefit.

SUCCESSFUL AUTOMATED SYSTEMS ARE VITAL

The Customs Modernization Act was designed, and supported by the trade, to enable the agency to conduct that difficult act of balancing enforcement and facilitation. And the Mod Act was passed with the understanding that any effort to modernize the U.S. Customs Service must rely on a comprehensive system of automated support. Without automation, very few (if any) of the innovative new processes that the Mod Act promises can be supported.

This is particularly distressing to Levi Strauss & Co., because we used the Mod Act as a blue print for the redesign of our Customs Compliance Department and its support systems. We availed ourselves of every opportunity to work with Customs on their proposed direction. Our import processes, and our accompanying automation efforts, are based in large part on what we felt Customs would do in implementing the Mod Act. Account-based processing, paperless entries, annual activity statements and reconciliations, periodic duty payments, etc., are all processes which we have designed our systems to adapt to, and which the Mod Act puts forward as the only viable way for Customs to effectively maintain its position as the administrating agency for import and export laws and activities.

THE TRADE HAS BEEN CONSULTED

The extent to which Customs worked with its partners in the importing community to re-design its business processes is well known. What is not so well-known is that those business processes, based on the stated and confirmed needs of all of Customs' customers, actually form the structure which the agency's automated efforts are designed to support. The Automated Commercial Environment (ACE) is being built with an already established understanding of the needs of the trade.

We believe that Customs has made a concerted effort to keep the trade informed of their actions and plans. For example, Customs holds several regular meetings to discuss technical details and to give progress reports on the status of ACE and the important issues associated with it. The Trade Support Network is one such meeting, where Customs gathers a representative group from the trade (over 50 members of the importing community) to share information and gather feedback. Another more direct example, is the monthly NCAP participant meetings, where Cus-

toms managers and employees of the companies participating in the NCAP Prototype meet on a monthly basis and discuss technical design issues, sometimes down to a level of detail which includes negotiations on message formats for EDI transmissions. Finally, Customs holds public meetings where many of the Mod Act driven processes and their supporting automated systems are discussed.

Levi Strauss and Co. has made it a priority to stay involved in these types of discussions because the partnership between our company and U.S. Customs is another area where we can realize competitive advantage. We see this partnership as a real opportunity to understand and influence the processes and policies that effect our shipment and delivery schedules, our trademark protection efforts, and finally the actual cost of importing via special trade programs such as 9802 (807). Customs has made these opportunities available to most companies that are interested.

THE NECESSITY OF REGULAR FUNDING

Now, however, we find ourselves in a situation where the advancements which are possible within that partnership, and upon which we have been planning, are threatened. Without access to a regular source of funding, it will be impossible for Customs to plan for and finalize the construction of the Automated Commercial Environment. Without ACE, the Mod Act and the important changes mandated by it become impossible to support. Without those changes, the competitiveness of Levi Strauss and other compliant companies like it could be eroded. We do not believe that compliance and competitiveness should be mutually exclusive.

We urge you to find a way to ensure that the important work Customs has done so far in designing and developing comprehensive automated support for the Mod Act does not have to be abandoned. Customs' current computer system is over 10 years old, and the probability that it will collapse under the weight of increased international trade is very nearly a certainty. The agency simply must be allowed to complete and implement this entire project.

Mr. Chairman, I would like to thank you again for allowing me the opportunity to speak before your Committee. This is an important issue for Levi Strauss and Co., and for the importing community as a whole. We are confident that you will recognize that continued and consistent funding of the ACE project is essential, and we look forward to continuing our partnership with the Customs Service so that we can have an end product that meets the needs of the trade and the government as well.

Thank You.

Chairman CRANE. Thank you, Ms. Davidson.

Mr. Stephenson, are you a native of Phoenix?

Mr. STEPHENSON. That's correct, sir.

Chairman CRANE. You've always lived there.

Mr. STEPHENSON. No, I've lived everywhere; my dad was in the Air Force.

Chairman CRANE. Oh, OK, because we have a daughter who has been down in Scottsdale since last year and she said they call Scottsdale "Little Chicago." I also was surprised to learn that a suburb of Phoenix is Peoria.

Mr. STEPHENSON. That is correct.

Chairman CRANE. And I check the obituary page every day and out of 50, you can find maybe 4 or 5 native Arizonians.

Mr. STEPHENSON. There are very few left. I'm knocking on wood here.

Chairman CRANE. A lovely area, though. You may proceed, sir.

STATEMENT OF WILLIAM STEPHENSON, MEMBER, BOARD OF DIRECTORS, BORDER TRADE ALLIANCE; ACCOMPANIED BY STEPHEN GIBSON, MEMBER, BOARD OF DIRECTORS AND CHAIR, INFRASTRUCTURE COMMITTEE

Mr. STEPHENSON. Thank you, sir. Mr. Chairman, I'm Bill Stephenson, past chair and board member of the Border Trade Alliance. I'm accompanied by Stephen Gibson, who is also on our board and chairman of the infrastructure Committee of the BTA.

The Border Trade Alliance is a grassroots organization which was founded in 1986 as a group of individuals, entities, and businesses which conduct legitimate cross-border business. As such, we have a unique perspective on North America relations. We thank the Subcommittee for the opportunity to again appear before it and testify about issues with which we deal each and every day.

Our members want to see the scourge of drugs stopped. It is destroying our neighborhoods throughout the country. We, perhaps more so than others, appreciate how difficult a problem drugs have become for this country. However, when issues surround stopping the flow of drugs arise, it is important not to forget that efforts are also needed to enhance our educational systems and to promote strong social foundations which will decrease the demand for illegal narcotics.

The BTA is an active participant with the U.S. Customs Service and the U.S.-Mexico Chamber of Commerce in the Business Anti-Smuggling Coalition, BASC, a private sector driven initiative to help stem the flow of drugs. Permit us to comment on some current Customs interdiction programs. Operation Brass Ring has caused some disruption to trade along the Southwest border, but has not severely interrupted trade. Nonetheless, our concern is that the focus of Brass Ring has been on commercial vehicles. Our experience tells us that a vast majority of the drugs coming into the United States do so not in commercial vehicles but rather in passenger vehicles, through the air, and seaports between the ports of entry. Therefore, we applaud Customs efforts to expand Operation Brass Ring to such nonborder ports as New York, Miami, and Los Angeles.

An additional effort that could improve interdiction and inspection efforts is uniformity of inspection rates. We were surprised to learn of the wide disparity in inspection rates along the border ports. In 1997 at Brownsville, Texas, nearly 8 percent of the loaded containers were examined, but in Roma, Texas, the rate was 75 percent. In El Paso, Texas, the rate of inspection was almost 21 percent, but in Otay Mesa, California, the rate was only 3.92 percent. It was 8 percent in Nogales, Arizona; 14 percent in Del Rio, Texas; 10.75 percent in Eagle Pass, Texas; but only 1.5 percent in Calexico, California.

In our opinion, the biggest asset Customs has is unpredictability. If the inspection rates differ so markedly from one port to another, such a practice invites port shopping. It simply allows dishonest traders to lower the likelihood of inspection by picking a port where the inspection rates are lowest.

Another step we think would enhance interdiction efforts would be uniformity of staffing. By this we mean that similarly situated ports—that is, size, layout, types, and volumes of cargo—should

have similar rules about hours of operation and number of inspectors required to open and staff a lane. We recognize such a goal requires national standards in the labor contract between Customs and the National Treasury Employees Union. We urge Customs management to seek such standards.

Likewise, port shopping is encouraged by the absence of uniform program development and management. For example, there is the disparity in application and use of line release and border cargo selectivity. Line release has become the subject of much derision. It was originally intended to allow the quick release of high-volume, low-risk cargo. However, at certain points along the border, the Border Cargo Selectivity Program has not developed as quickly nor is it as accessible as line release. Therefore, one program is favored at one section of the border and the other program is favored elsewhere. We think programs should be equally available and accessible at each port of entry.

We also recommend that Customs develop baseline staffing levels. As Members of the Subcommittee know all too well, what often happens is additional staffing is allotted to a port but, in reality, those additional positions simply fill ones vacated by retirements or relocation and, thus, the net gain in staff is lower than intended.

We think additional positions should provide just that—additional people filling new positions.

We also actively support Senator Gramm's proposals regarding an increase in funding for staffing and equipment for Customs and INS with a goal of no more than a 20-minute wait at a border crossing.

And we have just reviewed your proposal, Mr. Chairman, and want to go on record in full support of it also.

In the end, we recognize that good law enforcement comes from the cop on the beat who relates to his community and its needs. Therefore, we urge that this Subcommittee continue to seek ways to eliminate or, at least, minimize needless competition between agencies which seems more budget driven than mission driven.

Thank you, sir.

[The prepared statement follows:]

Statement of William Stephenson, Member, Board of Directors, Border Trade Alliance

The Border Trade Alliance (BTA) is a grass-roots organization which was founded in 1986 as a group of individuals, entities and businesses which conduct legitimate cross-border business. As such, we have a unique perspective on North America relations. We thank the Committee for the opportunity to again appear before it and testify about issues with which we deal each and every day.

Our members want to see the scourge of drugs stopped. It is destroying our neighborhoods throughout the country. We, perhaps more so than others, appreciate how difficult a problem drugs have become for this country. However, when issues surrounding stopping the flow of drugs arise, it is important not to forget that efforts are also needed to enhance our educational system and to promote strong social foundations, which will help decrease the demand for illegal narcotics.

The BTA is an active participant with the U.S. Customs Service in the Business Anti-Smuggling Coalition (BASC), a private sector driven initiative to help stem the flow of drugs. Permit us to comment on some current customs interdiction programs. *Operation Brass Ring* has caused some disruption to trade along the Southwest border, but has not severely interrupted trade. Nonetheless, our concern is that the focus of Brass Ring has been on commercial vehicles. Our experience tells us that a vast majority of the drugs coming into the U.S. do so not in commercial vehicles but rather in passenger vehicles, through the air and seaports and between the

ports of entry. Therefore, we applaud Customs' efforts to expand Operation Brass Ring to such non-border ports as New York, Miami and Los Angeles.

An additional effort that could improve interdiction and inspection efforts is *uniformity of inspection rates*. We were surprised to learn of the wide disparity in inspection rates among the border ports. In 1997 at Brownsville, Texas 7.8% of the loaded containers were examined but in Roma, Texas, the rate was 75.61%. In El Paso, Texas the rate of inspection was 20.89% but in Otay Mesa, California the rate was only 3.92%. It was 7.95% in Nogales, Arizona, 14.35% in Del Rio, Texas, 10.75% in Eagle Pass, Texas but only 1.54% in Calexico, California. In our opinion the biggest asset Customs has is unpredictability. If the inspection rates differ so markedly from one port to another, such a practice invites port shopping. It simply allows dishonest traders to lower the likelihood of inspection by picking a port where the inspection rates are lowest.

Another step we think would enhance interdiction efforts would be *uniformity of staffing*. By this we mean that similarly situated ports (e.g.: size, layout and types and volumes of cargo, etc.) should have similar rules about hours of operation and number of inspectors required to open and staff a lane. We recognize such a goal requires national standards in the labor contract between Customs and the National Treasury Employees Union. We urge Customs' management to seek such standards.

Likewise, port shopping is encouraged by the absence of uniform program development and management. For example, there is the disparity in application and use of line release and Border Cargo Selectivity. Line release has become the subject of much derision. It was originally intended to allow the quick release of high-volume, low-risk cargo. However, at certain points along the border, the Border Cargo Selectivity Program has not developed as quickly nor is it as accessible as line release. Therefore, one program is favored at one section of the border and another program is favored elsewhere. We think programs should be equally available and accessible at each port of entry.

We also recommend that Customs develop baseline-staffing levels. As Members of this Committee know all to well, what often happens is additional staffing is allotted to a port but, in reality, those additional positions simply fill ones vacated by retirements or relocation and thus the net gain in staff is lower than intended. We think additional positions should provide just that—additional people filling new positions.

We also actively support Senator Gramm's proposls regarding an increase in funding for staffing and equipment for Customs and INS with the goal of no more than a 20-minute wait at a border crossing.

In the end, we recognize that good law enforcement comes from the cop on the beat who relates to his community and its needs. Therefore, we urge that this Committee continue to seek ways to eliminate or, at least minimize needless competition between agencies which seems more budget driven than mission driven. Our members do not want their cargo and people at risk from the drug cartels. To that end, we held our quarterly meeting in D.C. earlier this week and included a presentation by a panel of federal government experts informing our members about how to avoid having their goods and people being dragged into illegal activity.

Finally, we would reiterate an obvious point—drug interdiction is an issue at both the Northern and Southern borders. The recent statistics coming from the U.S.-Canada border regarding marijuana seizures are alarming. Therefore, we must ensure that the dialogue continues between the business sector and the federal agencies charged with interdiction at *all* ports of entry in the U.S.

Thank you for allowing us to make these comments and would be happy to answer any questions you may have.

Again, thanks.

Chairman CRANE. Mr. Clawson, it's encouraging to see private-sector initiatives like the International Electronic Trade Steering Committee. What suggestions and advice has this group submitted to Customs?

Mr. CLAWSON. Thank you very much. Yes, this is an interesting one, because it follows with what former Commissioner Hallett was talking about. What we are doing has the blessing of Customs in a sense—they can't endorse it because they don't yet know all the details. We are trying to develop an Internet-based integrator that

the private sector would use that, in fact, would create the ability to migrate the required information from the private sector anywhere, small, medium-sized, large companies, to Customs as needed.

So, instead of the large monolithic communications computer system that Customs would need to require everybody to hook up to, you would use the Internet as the integrator to provide the information to and from the Customs Service internationally. It's not just the United States, it would be done internationally.

So that is our vision. We actually have a proposal in the works that we are developing as an innovative technology initiative. There are a lot of issues such as encryption that we are trying to deal with, but we've been trying to use a lot of off-the-shelf products so it won't be real expensive and it will be in the public domain. So, it's a private-sector answer to what has been a thorny problem for the Customs Service.

Chairman CRANE. Indeed. Well, keep up the good work.

Ms. Sager, with regard to the processing of weekly entries, what do you see as the biggest obstacle to Customs being able to implement this for all FTZs?

Ms. SAGER. Their belief that zones who process one entry, with one release requiring only one inspection, if any, needs to collect revenue as if five separate entries were being processed. That, quite frankly, is their entire opposition to this procedure; they are for it operationally, procedurally, but they cannot get past the fact that for a single entry, they feel they should collect five times the amount due.

Chairman CRANE. And, Ms. Davidson, what specific suggestions do you have for improving the implementation of the Mod Act and what roles do you see for Customs, this Subcommittee, and the private sector?

Ms. DAVIDSON. Well, in terms of suggestions for implementing the Mod Act, I personally believe that Customs has, in fact, done quite a bit more of the actual design work than maybe everyone else is aware and I think they just need to be left to get on to implement it.

In terms of cooperation between the trade and this Subcommittee and the Customs Service, I think the biggest hurdle again is to ensure predictable funding, so not only can they plan out through the year 2005, but then they can each year go ahead and implement each stage of the Automated Commercial Environment.

Chairman CRANE. And Mr. Stephenson, you stated that Operation Brass Ring was focused on commercial vehicles, whereas your experience suggests that most drugs are actually smuggled in other ways.

Do you think Operation Brass Ring should be modified in this regard and what other ways could Customs improve its interdiction efforts?

Mr. STEPHENSON. I think it's a matter of implementation, sir. I think that more emphasis needs to be placed uniformly along the border to interdict more private vehicles, to look at them harder, and maybe less attention paid to the commercial vehicles, and also, in between the ports as Customs is doing, and that should be in-

creased also. And, at major ports, not along the border; as I mentioned, New York, and Miami, and other ports like that.

Chairman CRANE. Well, you recited those particular percentages in various ports of inspection, doesn't that conform to your recommendation for unpredictability?

Mr. STEPHENSON. Yes, it does, very much so.

Chairman CRANE. Unless they monitor it all and know that 1.6 percent——

Mr. STEPHENSON. Got to try and keep one step ahead, I think.

Chairman CRANE. What could Customs do to enhance the unpredictability of its inspector activities?

Mr. STEPHENSON. Well, I think if the person who is trying to do something illegal, looks and knows that there is uniformity, that the likelihood of inspection is just as great in Brownsville as it is in Nogales, it will make it much more difficult for them to shop, and I think, then, they are going to try other ways instead of trying to go through the borders that have the least amount of inspections or the least amount of hard looks. They may want to try to figure other ways to do it.

Steve, do you have anything to add to that?

Mr. GIBSON. I think, Mr. Chairman, the Border Trade Alliance supports Customs idea of occasional blitzes along the border which are truly unpredictable and that has been part of Operation Brass Ring and I think is a very successful implementation of the concept of unpredictability. Our position is, as Mr. Stephenson stated, that we would like to see Brass Ring expanded to other areas, other ports of entry, as well as enhancing the work of the Border Patrol and other organizations between the ports of entry.

But unpredictability in the sense of a blitz technology is a very effective way of coming in and interrupting the flow, not just of narcotics, but of other illegal and illicit substances.

Chairman CRANE. Well, we appreciate your input always and look forward to a continuing relationship with all of you. Please, keep the input flowing here because it's a major problem and, we're all working together. God willing, we shall prevail in reining in many of these problems that, thus far, have been virtually impossible to control.

And with that, I will let you folks be released for lunch, and our next witness is Dennis Schindel, Assistant Inspector General for Audit, U.S. Department of the Treasury.

Mr. Schindel, your written statement will be made a part of the permanent record and if you can, please try and compress your oral presentation in the neighborhood of 5 minutes.

STATEMENT OF DENNIS SCHINDEL, ASSISTANT INSPECTOR GENERAL FOR AUDIT, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE TREASURY; ACCOMPANIED BY ROBERTA RICKEY, REGIONAL INSPECTOR GENERAL FOR AUDIT, CHICAGO, ILLINOIS; AND BENNY LEE, REGIONAL INSPECTOR GENERAL FOR AUDIT, SAN FRANCISCO, CALIFORNIA

Mr. SCHINDEL. Thank you, sir.

Chairman CRANE. Thank you.

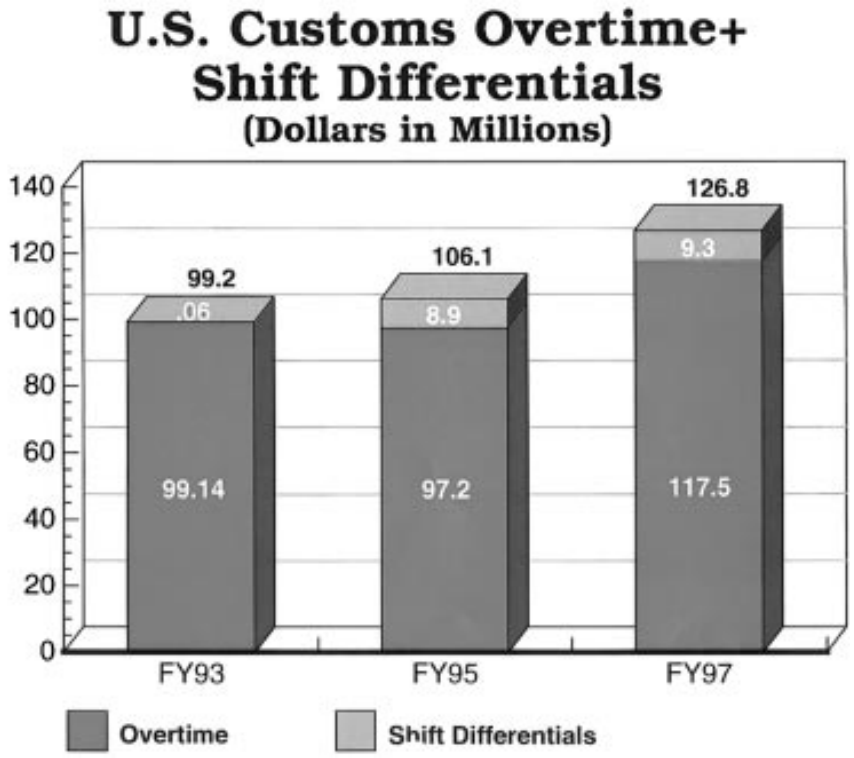
Mr. SCHINDEL. Mr. Chairman, I am pleased to appear before you today to discuss an audit that we conducted of the U.S. Customs Officer Pay Reform Amendments, which I'll refer to as COPRA. With me today are Roberta Rickey, who is setting up the charts, our Regional Inspector General for Audit in our Chicago office, whose staff conducted this audit, and, to my right, Benny Lee who is the Regional Inspector General in our San Francisco office, whose staff has performed a number of audits on other Customs issues that have been the topics of discussion today.

COPRA was passed as part of the Omnibus Budget Reconciliation Act of 1993. It took effect January 1, 1994. This act created a new and exclusive overtime compensation and premium pay system for Customs officers performing inspectional services. The intent behind COPRA legislation was to more closely match earnings to hours worked. House Report 103–111, which was dated May 23, 1993, estimated that COPRA changes would result in overtime savings of $12 million, both in fiscal years 1994 and 1995, with total savings through fiscal year 1998 of $52 million.

After we initiated our audit, what we found when we got behind the numbers was that the premium pay expenses for Customs, specifically the night work differential pay, had substantially increased, so much so that, instead of a significant reduction in Customs overtime costs as COPRA was anticipated to provide, costs increased when both overtime and premium pay were added up.

Clearly, this was not the expected result when COPRA was passed in 1993. The first chart we have up there shows some of the detailed numbers of what we found.

[The chart follows:]



Mr. SCHINDEL. On the left bar, you see that in fiscal year 1993, which was the last full year under the prior pay legislation, which is commonly known as the 1911 Act, overtime, Customs overtime costs, including shift differentials, was $99.2 million. Of this, $51,000 was due to night shift differentials.

Looking at fiscal year 1995, the middle bar, the first full year under COPRA, we found that total overtime costs increased to approximately $106.1 million; of this $8.9 million was specifically attributable to night shift differential.

As you can see COPRA substantially increased Customs costs for night differential pay from $51,000 to $8.9 million.

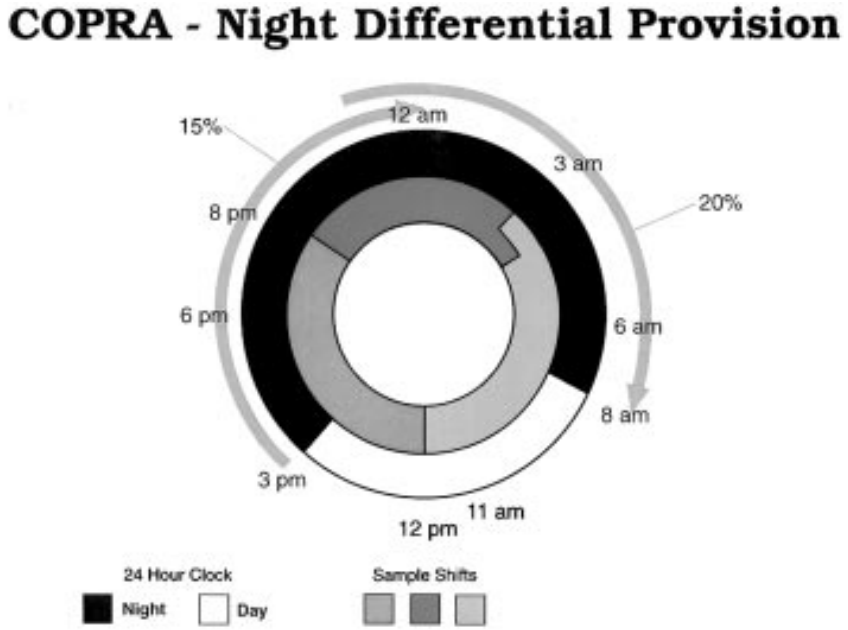
The latest figures that Customs has available, which are for fiscal year 1997, show that the night differential payments continue to be substantially higher than prior to COPRA at $9.3 million and total overtime, including premium pay, has increased to $126.8 million.

Once we pinpointed where the increased costs were coming from, the next logical question to be answered is why? Clearly, one of the major reasons was that the enactment of COPRA greatly increased the number of available hours in which a Customs officer could earn night differential. Also COPRA increased the 10-percent night

differential premium to 15 and 20 percent, depending on the time of day.

Now I have another chart that I'll ask Ms. Rickey to help me with that will attempt to illustrate perhaps some of the impacts of these provisions.

[The chart follows:]



Mr. SCHINDEL. First, let me point out that this is a 24-hour clock, so you need to change your orientation a little bit in terms of what you are looking at. At the top—you'll see the top represents 12 midnight and at the bottom we have 12 noon. Now the outer ring of that clock is broken up into a black and yellow band which shows the time of day that falls into the night differential period under COPRA. The black ring represents the period of time in which night differential pay can be earned. It covers a period from 3 p.m. to 8 a.m., or 17 hours out of the 24 hours in the day. The yellow piece just represents the remaining 7 hours that fall outside of the night differential period. Now prior to COBRA, that black ring would have only covered the top half of the clock, the period from 6 p.m. to 6 a.m., or 12 hours of the day. So, COPRA increased the number of hours in the day that qualified for night differential premium pay from 12 hours to 17 hours.

Also, prior to COPRA, all 12 of those hours were paid at the 10-percent premium. COPRA increased the premiums to 15 and 20 percent and which are represented by the thin blue hours on the outside. The period from 3 p.m. to 12 a.m. qualifies for the 15-percent premium, and the period from 11 p.m. to 8 a.m. at the 20-percent premium.

So, so far we see we've had a substantial increase in the hours that qualify for night differential pay and a substantial increase in the premium. Now, another important provision of COPRA provided that if the majority of a shift falls within a night differential period, then the entire shift qualifies for night differential premium. This is otherwise referred to as the majority of hours rule.

And let me try to illustrate what this can result in by showing a couple of different work shifts. The first shift begins at 12 noon, represented by that blue band, begins at 12 noon and ends at 8 p.m. Now, a Customs officer working this shift would earn 8 hours of night differential pay at the 15-percent premium because 5 of those 8 hours fall in the night differential period. The majority of hours rule would provide that all 8 hours qualified for night differential.

Now, a second shift, which we'll illustrate, is a 9-hour shift, represented by the green band, this runs from 3 a.m. to 12 noon. Now again, because of the majority of hours rule, a Customs officer would earn 9 hours of night differential pay, this time at the 20-percent premium, since 5 of those 9 hours fall within the night differential period. And, again, the majority rule would apply.

The final shift on the chart shows that—covers another 8-hour shift from 8 p.m. to 4 a.m. Now because all 8 hours fall within the night differential period, this shift would also earn 8 hours of night differential pay and this would also be at the 20-percent premium.

Now, what does all of this mean?

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

Another factor increasing Customs costs for night differential was an arbitration ruling which was issued at the conclusion of our audit. In December 1995, a panel arbitrator ruled in favor of the National Treasury Employees Union which protested the Custom Services' refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer.

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

While this situation was addressed in fiscal year 1997, and again, partly in 1998, through language in the Customs appropriation, it makes sense to correct this situation permanently through a revision to the COPRA pay legislation.

The bottom line is that the overall cost to Customs for overtime has increased, not decreased. I stated earlier overtime and premium pay costs went from $99 million prior to COPRA in 1993 to $106 million in the first full year after COPRA and the latest figures, again, show that this increased to $126.8 million. This is clearly not the expected outcome. As a result, we recommended that Customs seek legislation that would lessen the impact of the COPRA provisions that have significantly increased the cost of night differential payments.

These changes would create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as done previously under the Federal Employees Pay Act, FEPA.

Mr. Chairman, this concludes my remarks regarding our COPRA audit. Before answering any questions that you might have, I'd like to mention that our office has several other ongoing, planned, and some recently completed audits that may also be of interest to the Subcommittee and we'd be happy to share those with you as they are completed with this Committee.

[The prepared statement follows:]

Statement of Dennis Schindel, Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of the Treasury

Mr. Chairman, members of the Subcommittee, I am pleased to appear before you to discuss the results of an audit we conducted on the impact of the U.S. Customs Service Officers Pay Reform Amendments (COPRA). With me today are Roberta Rickey, the Regional Inspector General for Audit in our Chicago office and Benny Lee, the Regional Inspector General for Audit in San Francisco.

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

After we initiated our audit, what we found when we got behind the numbers was that premium pay expenses for Customs, specifically, the night work differential substantially increased, so much so that instead of a significant reduction in Customs overtime costs as COPRA was anticipated to provide, costs increased when both overtime and premium pay were added up. Clearly, this was not the expected result when COPRA was passed in 1993.

Using the best available data from Customs budget account summaries, we determined that in FY 1993, the last full year under the prior pay legislation, commonly known as "1911 Act overtime," Customs total overtime costs including shift differentials was $99.2 million. Of this, $51,000 was due to night shift differentials. Looking at FY 1995, the first full year under COPRA, we found that total overtime costs increased to approximately $106.1 million. Of this, $8.9 million was specifically attributable to night shift differential. As you can see, COPRA substantially increased Customs cost for night differential pay from $51,000 in 1993 to $8.9 million in 1995. The latest figures Customs has available, which are for FY 1997, show that night differential payments continue to be substantially higher than prior to COPRA at $9.3 million, and total overtime, including all premium pay, increased to $126.8 million.

Once we pinpointed where the increased costs were coming from, the next logical question to be answered was why. Clearly, one of the major reasons is that the enactment of COPRA greatly increased the number of available hours in which a Customs Officer could earn night differential. Also, COPRA increased the 10 percent night differential to 15 percent and 20 percent depending on the time of day.

Specifically, the time period that qualifies for night differential premium pay extends from 3 p.m. to 8 a.m. or 17 out of the twenty four hours in the day. The period from 3 p.m. to 12 a.m. qualifies for the 15 percent differential and the period from 11 p.m. to 8 a.m. qualifies for the 20 percent differential. The night differential provision in the COPRA legislation also provides that if the majority of a shift falls within the night differential period, then the entire shift qualifies for the night differential premium. For example, a Customs officer can earn a 15 percent night differential for the entire eight hours of a shift that starts at 12 noon and ends at 8 p.m. In addition, that officer can earn a 20 percent night differential for an entire 9 hour shift that starts at 3 a.m. and continues through 12 noon. Likewise, a shift that runs from 8:00 p.m. until 4:00 a.m. would also qualify for night differential pay, at the 20 percent rate.

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

Another factor increasing Customs night differential expenses was an arbitration ruling which was issued toward the conclusion of our audit. On December 9, 1995, a panel arbitrator ruled in favor of the National Treasury Employees Union which protested the U.S. Customs refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer. The ruling essentially required the U.S. Customs Service to pay officers COPRA night differential even when they are on leave, if those leave days would normally qualify for night differential had the officers been at work. This created a situation where officers got night differential premium even if they were on vacation. While this situation was addressed in FY 1997 and again partly in FY 1998 through language in the Customs appropriation, it makes sense to correct this situation permanently through a revision to the COPRA pay legislation.

The bottom line is that the overall cost to Customs for overtime has increased not decreased. As stated earlier, overtime and premium pay costs went from $99.2 million in 1993, prior to COPRA to $106.1 million in 1995, the first full year under COPRA. The latest figures for FY 1997 show a further increase to $126.8 million. Clearly not the expected outcome. As a result, we recommended that Customs seek legislation that would lessen the impact of the COPRA provisions that have significantly increased the cost of night differential payments. These changes would create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as was done previously on the Federal Employees Pay Act (FEPA).

Mr. Chairman, this concludes my remarks regarding our COPRA audit. Before answering any questions you or other subcommittee members might have, I would like to mention that our office has several ongoing, planned or just recently completed audits that may also be of interest to the subcommittee. The focus of these audits cover various aspects of Customs' drug interdiction efforts, user fees, and Customs Modernization Act and NAFTA implementation. We would be happy to provide additional information to the Subcommittee on any of this work.

Chairman CRANE. Well, we appreciate that very much, Mr. Schindel. I didn't realize what a ripoff this is, and I'm curious why Congress, if it has this kind of creative talent, didn't guarantee that we got this kind of extra pay for putting in hours past 4 p.m. I remember when I first came down here, and that was almost 30 years ago, we were legislating during that guns and butter era many nights well past midnight and so, gee, we could have lined our pockets if we'd been more creative.

Why has the Customs Officer Pay Reform Amendments not resulted in reducing Customs overtime expenditures as originally estimated?

Mr. SCHINDEL. Mister Chairman, I think that when those estimates were put together, I think the focus was primarily on the impact that COPRA would have on the straight overtime pay and dealing with some of the egregious situations that existed under 1911 Act overtime. And, in fact, that straight overtime pay did decrease, I think it went down from about $99 million in 1993 prior to COPRA to $91 million in the first full year after COPRA.

However, again, I think that it was not anticipated, some of these unintended impacts of the night differential provisions that were put in there and that cost so dramatically increased, as we showed, that it more than offset the savings that was occurring in the regular overtime and, as a result, costs overall have gone up rather than down.

Chairman CRANE. You mentioned that you currently have two ongoing user fee audits. Could you provide any preliminary observations?

Mr. SCHINDEL. We've looked at Customs COBRA user fees from two different aspects, one is their ability to collect the user fees that are due and owing to Customs and we've also looked at it from the other end, how they manage the use of those COBRA user fees.

Now, I think that we feel that we've identified some opportunities for Customs to maximize their collection of the fees that are due and owing to them and, also, to get a greater return of their investment of their audit resources that they use to audit the industry to determine whether they are getting paid all the dues that are due, and also to reduce the burden on the industry a little bit. There are two other agencies that are involved in collecting air passenger user fees, the Agriculture Department, the Animal Plant and Health Inspection Service of Agriculture, APHIS, and also, INS.

Now, all three of those agencies independently audit the carriers to try to identify whether all of the fees have been remitted. They look at pretty much the same records and it really is a duplication of effort and we've found also that one of the agencies seems to have a better audit approach and get much better results from their audit effort in terms of identifying additional fees that are due and so we are about to recommend to Customs that they get together with the other two agencies and work on a coordinated approach and, in fact, Customs has been very responsive in reacting to our findings. They've already put in place a memorandum of understanding and they've got a coordinated effort underway and we estimate that, just for Customs alone, that that would result in an additional $23 million in collected fees from a better audit approach.

On the other end, on how they use the fees, we also do have some concerns about how they manage the use of those fees. Some of this gets back to a question that was asked earlier about when are they going to have a cost-accounting system and that's one of the problems they have in being able to effectively account for how those fees are used, and whether they are effectively managing the use of the fees and following the legislation that provides how those fees should be used. So we will be making some recommendations in that area also.

Chairman CRANE. When you did your audit, did you find that Customs needed to do a better job of managing overtime and that this has, in part, resulted in overtime going up instead of down as was expected with the passage of COPRA?

Mr. SCHINDEL. I think there probably are opportunities for Customs to better manage the overtime. I think that they need the tools to do that. I understand that they are developing a new Customs officer pay system, known as COPS and that, perhaps, will provide the managers with a better system for being able to manage and distribute the use of overtime. What we found in our audit was really that their focus was not so much on managing overtime in general, but try to manage the pay cap.

Now, notwithstanding that, in some of the limited work that—we looked at certain port schedules, it didn't appear to us that those schedules had changed from what they were prior to COPRA, so that there was any shift that was trying to take advantage of the COPRA pay legislation provisions.

For example, at Chicago's O'Hare Airport, there is a 12 p.m. to 8 p.m. shift, which is a regular shift, and it pretty much matches up with the air traffic patterns that O'Hare has, so it is a shift that is necessary, yet under COPRA, now, that shift earns, the entire 8 hours earn night differential at the 15 percent. Under the prior pay legislation, only 2 hours of those 8 hours would have earned night differential and only 10-percent premium rate.

Chairman CRANE. Well, sir, we thank you for your input and we also look forward to a continuing working relationship with you to get further information. Some of these problems, we, I feel confident, can start addressing, but it is a source of concern and we thank you very much.

Mr. SCHINDEL. Thank you, sir.

Chairman CRANE. And, with that, we will call our last witness, Mr. Tobias, president of the National Treasury Employees Union. And, Mr. Tobias, if you can try to keep your oral testimony to 5 minutes, it would be appreciated and all written testimony will be made a part of the permanent record.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Mr. Chairman, and thanks for providing NTEU an opportunity to testify today. First, I'm extremely proud to report that the Customs Service-NTEU labor management partnership effort has been able to produce, through its collaborative effort, a significant increase in the bottom line results of an important Customs mission, and that is increasing the amount of narcotics seized. There have been many critics of the partnership effort sponsored by President Clinton and Vice President Gore but in this case the critics are wrong.

We created Operation Brass Ring in 2 months and in the first 2 months of its operation, we've increased drugs seized by 29 percent. The Customs Service is doing good work in this arena because it is working with, and listening to, the people who do the work.

Second, Mr. Chairman, I'd like to add my voice in support of the President's fiscal year 1999 budget request. There are more passengers, more air cargo, more truck cargo, more boat cargo, more discrepancies of inbound cargo, more drug seizures, more currency seizures, more examinations in bonded warehouses, and more examinations of outbound cargo. In short, more law enforcement effort.

More work and more achievement, I believe, is a justification for more funding.

Third, NTEU supports the increased merchandise processing fee to fund the needed Customs technology. If Customs is ever going to realize the potential for increased efficiency envisioned by Congress when it enacted the Customs Modernization Act, it must have additional technology.

The Customs technology will not only help the Customs Service, but also the brokers and importers. The MPF fee can fund what is extremely important to a Customs Service of the 21st century.

Fourth, with respect to H.R. 2262, there are some provisions we support and others we believe are counterproductive to an effective Customs Service. One, we believe the overtime cap should remain

at $30,000 because it allows the Customs Service to more effectively manage the allocation of its resources. Two, NTEU also supports the provision which would allow for the payment of one assignment beyond the pay cap. This provision, plus the automatic tracking system, will eliminate the high administrative costs incurred to ensure persons don't go over the cap in violation of the Anti-Deficiency Act which provides criminal penalties for violations.

Three, NTEU strongly opposes the provision which has the effect of prohibiting arbitrators, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, or courts, from providing a remedy to a violation of law, regulation, or collective bargaining agreement.

I believe that Congress should leave the task of providing an appropriate remedy to the appropriate adjudicatory body. There is no logical reason to treat Customs officers any differently than other public- or private-sector employees when it comes to making them whole for wrongful acts of their employer. With all due respect, Congress cannot anticipate, nor should it try to anticipate, all of the possible violations which might occur.

Remedies should be left to adjudicators who are in the position to fashion an appropriate remedy based on the facts and circumstances as they are presented.

Finally, the proposal to change the premium pay provisions would significantly undermine the total package of overtime pay which was enacted by Congress in 1994 to replace the 1911 overtime pay package. This package was put together with the goal in mind of what is needed to effectively manage the Customs work force.

In addition, Congress promised to Customs employees that it would not come back at a later time and undo pieces of the package. I hope that Congress would stay true to its promise and maintain the COPRA package of overtime pay.

Thank you, very much, Mr. Chairman.

[The prepared statement follows:]

Statement of Robert M. Tobias, National President, National Treasury Employees Union

Chairman Crane, Members of the Subcommittee, I am pleased to be here today to discuss issues affecting the U.S. Customs Service. The National Treasury Employees Union, of which I am National President, represents approximately 150,000 federal employees, including all eligible bargaining unit employees at the Customs Service. Your hearing today is concerned with several important issues currently facing the Customs Service and I would like to comment on several of them.

OPERATION BRASS RING

Last fall NTEU enthusiastically joined with Customs management to come up with new and effective ways of increasing drug seizures. On October 22nd, 1997, the Customs-NTEU National Partnership Council decided to work in "partnership" to address the issue of narcotics interdiction and the recent decrease in the weight of narcotics seizures at ports of entry nationwide. On December 8th, 1997, a memorandum was sent to all NTEU local chapter presidents, under my signature, that stated: "Local NTEU chapters are to immediately begin working with local managers to develop and implement, in partnership, innovative, flexible and unpredictable narcotics enforcement operations."

Many of the principles that are common in labor-management partnerships, as opposed to traditional adversarial labor-management postures, have been successfully adopted in Operation Brass Ring. They include keeping formal bargaining to

a minimum and acting in consensus whenever possible, also replacing positional bargaining with interest based bargaining. Providing that changes would not be considered precential has made risk taking, which is necessary in order to find innovative solutions, but always difficult in large organizations like Customs, more palatable. Other partnership principles that are successfully being followed in Operation Brass Ring include leaving other issues aside, not bringing old baggage to the table and urging that as many issues as possible be solved at the local level, but providing for rapid response facilitators when problems do arise.

Comparing drug seizure levels since Operation Brass Ring began on February 1, 1998, through March 31, 1998 to the same time period in 1997, the total amount of narcotics seized has risen from 167,396 pounds to 216,003 pounds, an increase of 29%. NTEU is proud to have been a part of this successful effort and we pledge to continue our support and involvement in the critical work of increasing illegal drug seizures.

CUSTOMS FY 1999 BUDGET

Mr. Chairman, the President's FY 1999 budget request provides $1.7 billion and 16,655 FTE for Salaries and Expenses for the U.S. Customs Service, an increase of $117.8 million and 111 FTE over the FY 1998 enacted levels. In addition, the President has submitted a legislative proposal for $48 million to increase of the Merchandise Processing Fee (MPF) to offset the costs of modernizing Customs commercial operations.

NTEU believes this request is the bare minimum to meet Customs' responsibilities to interdict illegal drugs and perform its many other responsibilities, including the inspection of high-risk shipments to assure proper manifest recording and duty payment; resolution of discrepancies related to inbound shipments; trade enforcement at bonded warehouses and foreign trade zones; non-proliferation related export enforcement; anti-money laundering enforcement, and the protection of domestic intellectual property rights. The new positions requested for FY 1999 will be used to strengthen Customs' ability to disrupt normal smuggling channels, enhance investigative and intelligence capabilities and improve the child labor enforcement program.

In FY 1999, Customs estimates it will process 379.4 million land border passenger arrivals, 81.5 million air passenger arrivals and 10 million sea passenger arrivals. Customs estimates that 122 million vehicles, 136,000 aircraft, and 225,000 vessels will enter our ports during the current fiscal year. Most significantly, Customs expects an increase of 13.5 percent in the number of railcars coming into the U.S. and an increase of 9 percent in the number of commercial aircraft arrivals (420,000 railcars and 850,000 commercial aircraft).

In FY 1999, Customs estimates it will seize more than 160 thousand pounds of cocaine (2500 seizures), 780 thousand pounds of marijuana (13,000 seizures) and 3 thousands pounds of heroin (1,250 seizures). In contrast, Customs in FY 1995 seized 158.3 pounds of cocaine (2,228 seizures), 658.6 pounds of marijuana (10,221 seizures) and only 2.2 thousands pounds of heroin (928 seizures).

Despite the record of achievement in so many law enforcement areas, the vast majority of Customs employees still do not qualify for law enforcement status. As in past years, NTEU will continue its efforts to enact legislation to end this disparity in this Congress. While we appreciate the significant budget implications, we believe that denying the brave men and women of the Customs Service the same employment rights of other federal employees who risk their lives every day to combat the trafficking of drugs and other dangerous illegal import activity is unjust.

PRECLEARANCE SERVICES AND H.R. 3644

On September 30, 1997, provisions of the North American Free Trade Agreement that authorized funding for preclearance services in Florida and 11 locations in foreign countries expired. Legislation was enacted in December of 1997, which authorizes that customs user fees can be used to provide preclearance services in Florida through September 30, 1998. H.R. 3644, authored by Chairman Crane, would authorize the use of customs user fees to maintain up to 50 positions to provide preclearance services at 11 foreign locations. NTEU supports H.R. 3644 and efforts to permanently maintain both the Florida and foreign preclearance services on a permanent basis.

H.R. 3644 provides for an advisory committee to be established, which would advise the Commissioner of Customs on issues related to the performance of inspectional services, time periods during which inspectional services should be performed, the proper number and deployment of inspectors and other matters. NTEU would support the inclusion of an employee representative on this advisory board.

I believe the input of frontline employees would be of great benefit to the other members of the committee and to the Customs Commissioner.

COMPENSATION SYSTEM FOR CUSTOMS OFFICERS AND H.R. 2262

In 1993 this Committee rewrote the law that provides for Customs officers compensation. The Customs Officer Pay Reform Amendments of 1993 (COPRA) instituted significant changes in the Customs overtime system that had been in place since 1911. Chairman Crane's bill, H.R. 2262, would make further changes to that system. As introduced, the bill would cap Customs inspectors' overtime pay at $25,000 per year. The FY 1998 Treasury Appropriations bill raised the Customs overtime cap from $25,000 to $30,000 effective October 1997. NTEU believes that any annual cap must be at least $30,000 and should be allowed to rise to reflect increases in inflation. The cap on a similar overtime compensation system for the Immigration and Naturalization System was raised from $25,000 to $30,000 in 1996. The Customs Service has found it difficult to administer staff assignments under the restraints imposed by a $25,000 cap and I believe it would be extremely difficult to revert to that level since the $30,000 limit has now been in effect for approximately six months. Discussions with Committee staff have indicated that there may be an interest in changing the cap amount from the $25,000 in the original version of H.R. 2262 to reflect the $30,000 in current law. NTEU would support such a change.

NTEU also supports the provision in H.R. 2262, which would allow the Customs Service to pay customs officers for one work assignment over the cap once the Commissioner has certified that there is a system in place that provides accurate and reliable data on the overtime and premium pay that is being paid to individual employees. This approach would make it easier for Customs to administer an overtime cap. It is my understanding that a reliable overtime tracking system is on the verge of being operational at this time.

NTEU strongly opposes provisions in section 2 and 3 of H.R. 2262 that provide that overtime pay (section 2) and premium pay (section 3) "shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay." Two clear examples of legitimate payment of premium or overtime pay when an individual has not performed work are paid leave and back pay awards. With regard to paid leave situations, section 5545(a) of Title 5, which applies to the vase majority of federal employees, but not Customs employees, provides that premium pay is allowed for 1) periods of absence with pay during these hours due to holidays; and 2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours. NTEU would support having section 5545(a) apply, rather than a blanket denial as in section 3 of H.R. 2262.

Of even more concern to NTEU, than being denied premium pay for legitimate paid leave situations, is that the language of sections 2 and 3 would prohibit the payment of overtime or premium pay in a back pay award rendered by an arbitrator or other adjudicative body. The reasons for such back pay awards include the intentional or unintentional violation of a collective bargaining agreement, which could include having supervisors performing non-supervisory work when non-supervisory employees are available, bypassing one employee in order to give a management favorite a "plum" assignment or bypassing an employee due to anti-union animus. Back pay awards, which might include overtime, are also common for violations of statute, such as wrongful suspensions or removals under the Title 5 civil service provisions or Title 7 discrimination provisions. In fact, a recent ruling of the Equal Employment Opportunity Commission, issued on September 18, 1997 (EEOC No. 04960030), specifically held that a victim of discrimination on the basis of disability was "entitled to the overtime pay she would have received if she had been hired" and ordered the U.S. Postal Service to include such overtime in a backpay award.

The press advisory issued by the Committee with regard to this hearing points to arbitration decisions that required the Customs Service to pay overtime as part of a back pay remedy for violations of the NTEU/Customs collective bargaining agreements. I would first like to point out, as stated above, that the language of H.R. 2262 with regard to limitations on overtime and premium pay, goes well beyond the specific cases cited in the advisory. In addition, it is important to keep in mind that disallowing the inclusion of overtime or premium pay in back pay awards takes away any incentive for an employer to comply with statutory rules or collective bargaining agreements. It is conventional legal wisdom in employment law that if the remedy does not cost the employer more than the illegal action, the employer can flout the law at no economic risk. Certainly the arbitrators in the cases cited could have ruled that the appropriate remedy would have been to give the wronged

employee the opportunity to work another overtime assignment and the Committee may disagree with the arbitrators' decisions in these cases, but the provisions of H.R. 2262 would legislate away not only an arbitrator's ability to include overtime or premium pay in a back pay award no matter how egregious, but would prevent other adjudicative bodies such as courts from doing so as well. NTEU opposes these provisions.

NTEU also opposes the proposed changes to the night work pay differentials in H.R. 2262. Customs inspectors were led to believe that the major revisions to the Customs overtime pay system that were made in 1993 were a long term, comprehensive package. Many aspects of the system were changed to provide less overtime pay. I believe that the night differential hours set in the 1993 bill are fair and should not be changed at this time.

Thank you for this opportunity to appear before this Committee and to comment on these issues that are so important to the Customs employees NTEU represents. I would be happy to answer any questions you may have.

Chairman CRANE. Thank you, Mr. Tobias. Can you tell this Subcommittee why you defended and effectively were instrumental in reinstating an admitted cocaine and marijuana user back into the U.S. Customs Service employment in New York? I say that because it is a little troubling, given that narcotics enforcement is such a high priority.

Mr. TOBIAS. Well, I—could you tell me a little bit more about the person that you have in mind, Mr. Chairman.

Chairman CRANE. Well, I don't have the name of the individual in front of me, but he worked as a Customs Inspector up there. You're not familiar with the case?

Mr. TOBIAS. No, I'm not familiar with the case.

Chairman CRANE. We can get you more information.

Mr. TOBIAS. I'll be happy to answer the question and I'd be happy to provide the rationale why we supported, if we did support the reinstatement of any person that we defended.

[The information was not available at the time of printing.]

Chairman CRANE. We understand that the U.S. Customs Service has tried repeatedly to align the staff with the workload. Additionally they are under increasing pressure to focus more effectively on narcotics interdiction. Can you articulate why your officers are picketing in Miami and refusing to implement the strategic problem-solving initiatives like primary lane denial in El Paso and refusing to implement revised shifts at JFK in New York?

Mr. TOBIAS. Well, I can speak to why people are picketing in Miami and it has nothing to do with shifts. It is very clear that shifts are currently an impasse and the Federal services impasses panel is going to render a decision about what the appropriate shift ought be in Miami, but picketing in Miami has to do with a series of working problems and the working conditions in the Miami airport. I was in Miami on Monday. I am hopeful that the problems are going to be addressed in a timely and an appropriate manner. And I think that it is important to remember what the Inspector General said in the prior testimony when he said that the work is properly aligned and that this issue of whether or not work is properly aligned is an important issue, and he said that, based on his study and his analysis, the work is properly aligned.

Chairman CRANE. Could you please describe some of the labor management partnership's principles that have been successfully adopted for Operation Brass Ring?

Mr. TOBIAS. Well I think that the key—there are several things that are key. First, in the past, when presented with a problem, I think the Customs Service would have reacted by creating a solution at the national level and then directing that it be implemented locally.

In this case, what we did was task the local partnership councils with the responsibility for coming up with their own plans and figuring out how best to create a less predictable system to assist in drug interdiction, but also to listen to employees who have ideas about how to increase enforcement efforts and to implement them and to implement them timely. And I think that is what has happened across the country in the ports where we are operating Operation Brass Ring.

Chairman CRANE. Mr. Schindel's presentation just before you, as to what constitutes night shift, was interesting and a little revealing. I'm curious if you believe that a person working noon to 8 p.m. should be paid night pay.

Mr. TOBIAS. Yes, I do. And I think that the reason that Congress enacted that provision was for two reasons, one to more effectively manage the Customs Service. These are folks who are constantly changing shifts, they are moving from one shift to another. It isn't like someone has a constant 12 to 8 shift or a 1 to 9 shift or a 2 to 10 shift. These folks are constantly moving from shift to shift as the workload changes in these various ports, as planes change their arrival schedule, as cargo changes its arrival schedule.

So the Customs Service, in conjunction with Congress, said we need to more closely link overtime payment with overtime worked and, as the Inspector General testified, that is exactly what has occurred. But there was also a recognition that in enacting this legislation, that it was going to result in a significant decrease in the pay of the people who were doing the work.

So in order to make the total package available to these Customs inspectors relatively the same, and to encourage these folks to continue to work on ever more complex rotating shifts, this premium pay system was put into place and, in fact, I think it has achieved its exact purpose and that is to reduce the number of overtime shifts to allow for the alignment of work and to compensate people at a premium pay level rather than an overtime level for the amount of time they work.

Chairman CRANE. In the schedules, are there any 8-hour shifts that are not night time, that are not getting the premium pay? I mean in the course of the day?

Mr. TOBIAS. I think there could be. It depends on when they start and when they stop, and whether or not people are on overtime or not. I mean, it's not an easy system to keep track of. I mean if I have already worked 5 days and I come to work on a Thursday and I'm working from 1 p.m. to 9 p.m.——

Chairman CRANE. That's night pay.

Mr. TOBIAS [continuing]. It would be an overtime shift, so there are few times, Mr. Chairman, when someone is not receiving either the 15- or the 20-percent differential.

Chairman CRANE. OK. It's an interesting concept.

Well, I want to thank you for your presentation and we look forward to working with you on an ongoing basis, Mr. Tobias, and the people that you represent in the employees union.

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

Chairman CRANE. And with that, our hearing is finished for today and we thank all of the witnesses and we stand adjourned.

[Whereupon, at 1:38 p.m., the hearing was adjourned subject to the call of the Chair.]

[Submissions for the record follow:]

Statement of Brother International Corporation, Bridgewater, NJ

This statement is submitted on behalf of Brother International Corporation ("BIC"), an importer, distributor and exporter of business machines, home office machines, sewing machines and related parts and accessories. BIC is currently in the process of constructing a one million-square-foot, state-of-the-art distribution facility in Bartlett, Tennessee. The company's headquarters is located at 100 Somerset Corporate Boulevard, Bridgewater, New Jersey. Approximately 800 people are employed in the United States by BIC. The new Bartlett facility is expected to employ 270 people in Tennessee alone.

Among the considerations in BIC's decision to build this new facility was the availability of foreign trade subzone benefits which, under Customs Service policy, would allow those who wish to enter merchandise from the subzone whether a manufacturing or storage subzone into the customs territory of the United States, to file a formal entry (CF7501) on a weekly basis, rather than for every physical removal of the merchandise from the subzone. This practice benefits Customs by reducing the amount of processing activity it must undertake, and benefits the company operating in the subzone by reducing both its paperwork and the total customs merchandise processing fees (MPF) it must pay, which are otherwise assessed on each transaction. In the case of BIC, which normally files in excess of 3,000 entries per year, the benefits that can be realized in savings of MPF and reduced administrative burden are significant.

The Customs Service is currently considering withdrawing the privilege of filing weekly CF7501's by non-manufacturing subzones, so as to be able to collect MPF on each release of merchandise from subzone. In the interim, Customs apparently issued an internal directive late in 1997, instructing the customs ports not to permit any more non-manufacturing foreign trade subzones to commence weekly entry filing, pending a decision on whether to continue or withdraw the benefit entirely. The major impetus for this proposed change of policy is the anticipated loss of total customs revenue that presumably results from allowing non-manufacturing subzones to file entries only once per week. Alternatively, the Customs Service is considering allowing non-manufacturing subzones to continue to file weekly entries on merchandise leaving the zone, but collecting MPF on each release of merchandise from the zone.

To the best of our knowledge there has been no calculation of the customs revenue impact if the current Customs policy is continued.

The proposed changes in policy would be improper for the following reasons:

- It would be discriminatory and contrary to the foreign trade zone laws to treat entries from manufacturing and non-manufacturing subzones in a different manner, with significant cost consequences to the subzone operator;
- The act of increasing total Customs income from a transactional user fee (which is designed to offset only Customs transactional processing costs) by increasing the number of required entry transactions, is a transparent bureaucratic absurdity, which suggests that Customs calculates the fee to more than offset its actual transactional processing costs. It suggests that the fee is relied upon by Customs to help fund its overall operational responsibilities, which should be covered by the agency's annual budget appropriation;
- A policy change which would allow all subzones to continue to file weekly CF7501's but would collect MPF on each release from a non-manufacturing subzone is discriminatory and legally deficient as well:

—(1) The foreign trade zones law is designed to enhance U.S competitiveness in world markets. It does not distinguish between manufacturing and non-manufacturing zones in this regard, nor should it.

—(2) The assessment of MPF is only permissible within the strictures of the World Trade Organization Agreement and the predecessor GATT, as clarified by

previous successful foreign challenges to the U.S. customs user fee. The fee is permissible only if it is reasonably calculated to cover the actual cost of services; excessive fees constitute an illegal deviation from U.S. tariff bindings under successive GATT and WTO multilateral agreements. The importer pays the MPF to compensate Customs for actual costs of the entry processing. If the Customs Service is allowed to collect MPF on some other basis, such as releases from the subzone, which involve no Customs "service" or processing, the fee becomes disassociated from entry processing and impermissible for the same reasons found by a GATT panel in 1992, when the MPF was assessed purely on an ad valorem basis without a cap. The only proper basis for collection of MPF is the filing of a Customs entry, and the number of such filings cannot be artificially set by administrative policy solely to boost aggregate agency income.

The Customs Service is currently seeking support from the Committee for implementation of an increase in the overall level of the MPF, primarily for the purpose of funding automation improvements, Y2K modifications, and similar general operational needs. BIC supports the comments of the National Foreign Trade Zones Association and others, in opposition to such an increase. In addition, BIC and similarly situated foreign trade subzone operators urge the Committee:

(1) To direct Customs to withdraw the policy directive prohibiting additional nonmanufacturing FTZ subzones from filing weekly entries, and

(2) Not to legislate or otherwise endorse any such efforts to increase the MPF, in light of the agency's apparent willingness to take actions which are contrary to both the Mod Act and the FTZ Act, by intentionally increasing, or preventing a decrease in, the number of transactions on which they can collect a "user" fee. Any additional funding needs should be addressed in general appropriations, and not through the imposition of fees and taxes which defeat the objectives of the FTZ program in the first place.

Statement of General Motors Corporation, Detroit, Michigan

General Motors Corporation (GM) is pleased to have the opportunity to submit this written statement for the record. This statement relates to the hearing held on April 30, 1998 regarding U.S. Customs Service issues. During this hearing the American Automobile Manufacturers Association (AAMA), of which GM is a member, gave testimony related to the National Customs Automation Program (NCAP) being undertaken by the Customs Service.

GM has for more than two years been working in partnership with the Customs Service to develop a prototype release and entry system which is a fundamental part of the Customs Services Automated Commercial Environment (ACE). The prototype on which GM has been working went into operation on May 4, 1998 in the Ports of Detroit and Port Huron, Michigan and Laredo, Texas.

GM is pleased with the progress the Customs Service has made on the ACE system as it was designed to support modern business practices which are needed in the global economy in which we compete. The system which has been developed will ultimately include the release, entry, periodic payment, remote entry filing and reconciliation processes envisioned in the Customs Modernization Act. The ACE system emphasizes pre-importation review, account management and post entry verification processes that are critical to the effective and cost efficient management of international trade.

While GM is pleased that significant progress has been made on ACE by the Customs Service, GM is concerned about the level of funding support the project has received. To ensure that ACE is completed in a timely and effective manner, the Customs Service needs a consistent funding source. In addition, it is important that Congress provide the funds necessary to keep the Customs Services current Automated Commercial System (ACS) operating at full capacity.

GM appreciates the attention the subcommittee has given this important issue. Again thank you for the opportunity to provide these comments.

JCPENNEY PURCHASING CORPORATION, INC.
DALLAS, TX
May 14, 1998

The Honorable Philip M. Crane
Subcommittee Chairman
House Ways and Means Subcommittee on Trade
1104 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane,

These comments are being submitted by JCPenney Purchasing Corporation, Inc. (JCPPC) in response to the request for public comments regarding various United States Customs Service issues as published in TR–24, dated April 21, 1998.

JCPPC would like to specifically address the proposal to increase the Merchandise Processing Fee to cover expenses to develop, program and implement the Automated Commercial Environment system, commonly referred to as ACE.

JCPPC is in complete support of the US Customs Services attempt to automate however, JCPPC strongly opposes an increase in a user fee to cover the development of the ACE program. The development of a system that is designed to automate a branch of the government that is cross functional and one that supports a diverse user base should not be borne by only a portion of the users.

As no technical development plan has been submitted, it is difficult for JCPPC to endorse an increase in the user fee to develop a system that may not allow for automation within a good portion of the areas it does business. As an importer of retail type merchandise, the merchandise itself is varied and the sourcing vast. The import requirements vary by merchandise and country of origin. Some types of merchandise lend themselves to easy automation within the import environment. Restricted (quota class) merchandise, however is very paper intensive and requires a substantial amount of verification for accuracy by the importer and US Customs. Quota class merchandise is therefore very difficult to bring into an automated environment. Although the US has made some progress in automating the transmission of visa information via a government to government database known as ELVIS, great strides will still be required to eliminate or automate information contained in a variety of other paper documents required for textile and apparel imports. Additionally, such programs as paperless entry and releases, remote entry filing and electronic transmission of commercial data will need to be available to importers of quota class merchandise. As quota class merchandise is a good portion of a department stores merchandise mix the ability to automate the majority of its business becomes minimal under current plans for automation in this area of trade. Under these conditions, it is unfair to expect importers of quota class merchandise to pay for a system that will be of little benefit to them.

Importers are required to pay the merchandise-processing fee when merchandise is entered into the United States. To increase a user fee that applies to importers to help fund a system that benefits only a portion of the users is inappropriate. Because of diverse functionality, all US Customs transactions are not specifically importer related, therefore increasing the user fee to cover funding for automation could be subject to judicial review and WTO scrutiny

If it is decided that importers will pay for the development of ACE, via an increase in the user fee, it should be mandated that US Customs work with representatives from all areas of trade to develop innovative programs that facilitate compliance and clearance within all trade groups. This should include importers whose main business is quota class type merchandise. Additionally, US Customs should be required to provide a detailed business plan for the development and implementation of ACE with oversight by another government entity or an industry trade committee to monitor incremental progress for the duration set forth in the business plan.

JCPPC would like to see Congress find the necessary funds through congressional means to allow US Customs to complete and implement a system that supports and benefits all import industries. The US Customs Services collects a large portion of revenues generated for the US Department of Treasury, therefore, it is reasonable to expect funds for automation to be available through Congressional appropriations.

JCPPC is appreciative for the opportunity to express their concerns regarding the issue of increasing the merchandise-processing fee to pay for US Customs automation. Thank you.

Sincerely,

PETER M. MCGRATH
Vice President
Director of Quality & Sourcing

NATIONAL CUSTOMS BROKERS &
FORWARDERS ASSOCIATION OF AMERICA
May 7, 1998

The Honorable Philip M. Crane
Chairman
Committee on Ways and Means
U.S. House of Representatives
1104 Longworth House Office Building
Washington, D.C. 22515

SUBJECT: Customs Automation and the Merchandise Processing Fee

Dear Chairman Crane:

The dual and sometimes conflicting roles of Enforcement and Facilitation which are at the core of the Customs Service's mission are made all the more difficult by today's growing volumes of trade. Coupled with limited increases in staffing levels, the role of Automation in helping the Service to carry out its mission grows ever more crucial. It is the critical state of Customs Automation, and specifically it is the *Automated Commercial System* (ACS) that I wish to bring to your attention.

The Automated Commercial System is the information management backbone of today's Customs trade processing operations. The system has been evolving over the last decade, adding new modules and complexity as it has had to deal with the growing volumes of trade reaching our shores. While far from a perfect system, ACS has been doing a yeoman-like job in the face of these surging numbers.

With the hope of correcting the deficiencies in its ACS system and as a means of implementing the vision which is embodied in Title VI of NAFTA, the Customs Service has been striving to develop a new information management architecture, the *Automated Commercial Environment* (ACE). Nearly four years of concentrated effort have hit a wall in the form of Congress' reluctance to fund ACE development in light of GAO's rather damning report of the ACE system and its uncertain deliverables. In this roadblock lies the crux of the dilemma facing both the Service and the international trading community today—specifically, that while focusing all its efforts and funding on ACE, the ACS system is in danger of collapse due to a consequent lack of attention. I do not believe that I would be exaggerating to state that such a crash would be nothing short of catastrophic for the world's trading systems, given the United States pivotal role.

In light of the circumstances which I have outlined above, I would like to propose the following options for consideration. Working closely together, the Service and the international trading community should strive to identify and implement those modifications which could:

- strengthen the ACS system immediately for its handling of current and near-term demands;
- use those elements and modules of the ACS system which would be employed to help the Service move towards obtaining and delivering the parts of its "Mod Act" vision that might be obtainable in the near-term without having to wait on the radical redesign proposed by the ACE project; and,
- create a "modified" ACE system for the 21st Century that would assure all parties (Congress, Customs and the Trade) of its abilities to deliver reliably the mission-critical visions found in Title VI of NAFTA.

I of course understand that all of the steps which I am proposing for your consideration require increased funding levels from Congress. I believe that these funds should come from the regular appropriations process and not from an increase in the Merchandise Processing Fund (MPF) as is currently being proposed in the President's Budget Proposal for FY99.

Listening to our members and their importer clients proves them to be very leery of seeking any increase in the MPF. We need only to look at the strong opposition

expressed by the American Association of Exporters and Importers to understand how our clients feel about the matter. Given these facts, I feel that there is no support for increasing the MPF as a funding vehicle.

I hope that you can support the steps which I have outlined in this letter. I believe that they offer the best solutions available at this time to correcting the automation troubles found in the Customs Service's current management information systems. They also provide us with a strong base for working together to develop and implement the automation program that our nation will require in the future.

Finally, on another note, let me advise the Committee of NCBFAA's continued support for the Automated Export System (AES). Recognizing that there can be improvements to Customs' plan that can evolve through the negotiation process that is presently underway, we urge the Committee to keep an open mind about a system that may be immensely valuable to Customs and the private sector alike. Automation of our export flow can facilitate rather than impede U.S. trade, a result we can all support.

Thank you for your kind attention and consideration of any suggestions and concerns.

Sincerely,

PETER H. POWELL, SR.
President

ROBERT BOSCH CORPORATION
CAROL STREAM, IL
May 12, 1998

Mr. A.L. Singleton
Chief of Staff, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Singleton,

The Robert Bosch Corporation wishes to provide written testimony relating to your current hearings on the U.S. Customs Service, notably on the ACE Development program.

Bosch is a $5 Billion U.S. subsidiary of Robert Bosch, GmbH, with manufacturing and administrative locations in Illinois, North and South Carolina, Georgia, Wisconsin, Texas, Michigan, Connecticut, Indiana, Tennessee, and several other states. Our dollar volume of imports also puts us in the top 100 importers in the United States. Over the last four years Bosch has made significant investment in compliance procedures relating to the U.S. Customs Modernization Act. We have created a corporate level International Trade Department staffed by highly trained individuals and have invested heavily in automation software in order to meet our compliance requirements. Bosch is committed to bringing our import/export procedures well into the 21st century and therefore is extremely dependent on having the Customs Service being able to meet us there.

While the current ACS environment may have gotten international trade into the computer era, it does not have the level of sophistication and functionality needed to handle global business requirements beyond the year 2000. The only hope lies with a successfully implemented ACE system, as detailed in the Customs Modernization Act. While I do understand that Congress has had some questions relating to Customs' development of this system, that does not remove the need for this program. The importing community has committed far too many resources at this stage to be left with nothing to connect to. ACE can work. ACE must work. What it requires, more than anything else, is a predicable and consistent source of funding in order to reach its completion. Congress has to understand that this is a long term, complicated development process that can not be undertaken effectively if Customs has to consistently wonder whether it will be able to pay and retain it's contracted programmers.

Bosch is just one of a number of major importers that have established a close working relationship with the Customs Service in order to mutually improve the way business is conducted. It is the goal of both sides to automate as many functions as possible, thereby reducing costs and expediting the movement of cargo. Through monthly management meetings, Customs and the trade community have

worked in partnership to design an improved import process. For example, Bosch is one of five participants of the NCAP prototype (highly ACE dependent). While this program is mostly driven by the "Big Three" automakers, Bosch does continue to be an active participant in the management meetings. We anticipate that, as the program is expanded to ports where Bosch has higher volumes, our input will have a greater role in the development of this program. As it stands right now we feel that our input has been highly regarded by Customs.

There are numerous other initiatives that we have become a major player in, among which are Remote Location Filing, National Reconciliation, Compliance Assessment Review (CAT), Biweekly Statement Processing, Account Management, Paperless Entry Processing, and Violation Billing.

The redesigned import process supports modern business practices in a global economy. This process will do away with antiquated practices of entry pre-files, which require handling of paper and the physical presence of a Customhouse broker at the port. Cargo-laden trucks can now head directly for U.S. Customs clearance upon release from Mexican Customs. This can save up to several hours in redundant communications between U.S. and Mexican brokers.

The biweekly statement-processing component also enhances the modernization of the clearance process. The trade community, as well as Customs, benefits from this as it removes the entry-by-entry focus to the process and becomes more of an account management process, with all of the inherent efficiencies associated with it. For example, we need only make one financial disbursement every two weeks rather than several individual payments.

Paperless entry processing, coupled with the ability to file all of our entry documents at one port, will allow Bosch to reduce transit and clearance time on air shipments by nearly one third. In a tight manufacturing environment, where the concept of "just-in-time" is a religion, this is of utmost importance.

All of the above programs can not function outside of the ACE environment. Therefore it is imperative that Congress actively support this initiative. The international trade activities of U.S. corporations will only become more complex over future years and Customs must have an electronic infrastructure that can function in conjunction with those of the private sector. I urge your committee to give Customs the tools that it needs without further delay.

Sincerely,

KARL J. RIEDL
Manager, International Trade Dept.

Statement of United States Association of Importers of Textiles and Apparel, New York, NY

This is the written statement of the United States Association of Importers and Textiles and Apparel ("USA–ITA").

USA–ITA is a voluntary association of 200 importers and retailers of textiles and apparel products as well as related service industries and transportation concerns. The importer and retailer members of USA–ITA import textiles and apparel with a first cost in excess of $44 billion. USA–ITA appreciates the opportunity to submit a statement on U.S. Customs Service issues. This is a topic of great significance to the members of USA–ITA.

The particular issue of concern to USA–ITA is the proposed increase in the merchandise processing fee (the "MPF") to 0.025 percent with a new cap of $575 from $485. Customs indicates that these increases are necessary to cover the expenses associated with the modernization of the automated commercial operations.

Imports of textiles and apparel account for as much as 20 percent of all entries and, since the applicable duties are among the highest imposed by the United States, represent a substantial percentage of revenues collected. Clearly, imports of textiles and apparel are an important segment of United States trade and of the national economy.

USA–ITA supports modernization. Unfortunately, the Customs Service, for reasons which are explained below, has not extended to importers of textiles and apparel the benefits of modernization and automated commercial processing.

USA–ITA objects to any increase in the MPF. If the members of USA–ITA are to be excluded from the benefits of modernization, they should not be required to pay for it in the form of an increased MPF.

The members of USA–ITA recognize that because much of what they import is subject to quantitative restrictions, there will be some variance from normal entry

procedures. However, the procedures currently in place are far more restrictive than is reasonable and necessary.

The Customs Service operates two distinct sets of entry procedures, one for all importers, another for textile and apparel importers. The first set of rules is forward looking, technologically advanced, and characterized by cooperation with commercial interests. These procedures incorporate the benefits of modernization and automated commercial processing. On the other hand, the procedures applicable to importers of textiles and apparel are much the same that were in effect at the turn of the century. Much of this is an unnecessary burden on the Customs Service and the import community.

Textile and apparel imports are subject to the entry/entry summary procedure. This means that goods are not released into commerce until responsible Customs officials have reviewed various paper documents. This is in contrast to what is now the normal procedure for other commodities. Imported merchandise is released frequently without examination, without the filing of paper documents, and in many cases before the merchandise actually reaches this country. Also, importers of other commodities have 10 days after release to complete the filing. Although the Customs Service has devised procedures for paperless entry, and a large percentage of imports are entered under these procedures, importers of textiles and apparel are denied access to this benefit on the basis only of the commodity imported and not because they, as importers, would not otherwise qualify for the program. This discrimination applies to importers of textiles and apparel alone. No other commodity, regardless of how sensitive, is subject to the same set of restrictions. The consequences of these procedures is increased delay and increased expense.

The Customs Service understandably is moving away from reliance on paper filings. This is viewed as a way to cope with an ever-increasing level of entries. Nevertheless, importers of textiles and apparel are being saddled with additional documentary requirements.

At present, importers of textiles and apparel must file the following documents with each commercial invoice included in an entry: 1) origin statement; 2) export license; and 3) quota statement. These documents are unique to textile and apparel entries and are in addition to the documents such as invoice and packing lists filed with all entries. These are paper documents, with a few exceptions, and must be presented to and reviewed by Customs prior to release of the merchandise. No other commodity is subject to these restrictions.

To make matters worse, additional documentation is required in some shipments from Hong Kong and Macau and we understand that the requirements will be extended to Jamaica. All this makes it more unlikely that importers of textiles and apparel will enjoy the benefits of modernization.

Importers of textiles and apparels now pay among the highest duties assessed by the United States. They also are required to pay the same MPF fee as other importers.

The Customs Service has requested an increase in the MPF for the extensible purpose of funding modernization. It is unjust to require that importers of textiles and apparel pay an additional fee for modernization when they are not eligible for the benefits of modernization. If the purpose of the MPF is to fund modernization, importers of textiles and apparel should be exempted from paying the fee at all.

The Customs Service has an annual budget of approximately $1.6 billion. We calculate that the duties paid on imports of textiles and apparel at approximately $6 billion. The duties paid by importers of textiles and apparel exceed the Customs budget by over $4 billion. Importers of textiles and apparel pay sufficient duties. They should not be required to pay the MPF and, in any event, should not have to pay an increased MPF. It would be quite another story, if importers of textiles and apparel were eligible for the benefits of modernization. Since they are not, USA–ITA opposes any effort to require that importers of textile and apparel be required to finance it.

It would be quite another matter if the Customs Service had developed a plan to integrate imports of textiles and apparel into the modernized systems. It has not. Congress should require that the Customs Service develop a plan to integrate textiles and apparel fully before it authorizes additional funding for modernization. It makes no sense for Customs to work on a system from which approximately 20 percent of imports are excluded for dubious policy reasons.

Funding to complete automation should come from general revenues, to which importers contribute over $19 billion in duties annually. Automation of Customs' operations will benefit the revenue, trade programs and other national interests. The private sector is not the only, or even the principal, beneficiary. In fact, as noted above, an important segment of the private sector will derive little or no benefit from automation. For these reasons, USA–ITA opposes any increase in the MPF.

USA–ITA and its members appreciate the opportunity to comment on this important topic.

VOLVO CARS OF NORTH AMERICA, INC
ROCKLEIGH, NJ
May 11, 1998

A.L. Singleton
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Regarding: U.S. Customs Service automation and modernization efforts and the mechanisms needed to fund those efforts

Gentlemen,

We offer this statement in support of the United States Customs Services' efforts to improve and modernize the commercial processing of legitimate cargo interests through the replacement of the Automated Commercial System (ACS) with an appropriate information architecture that supports the requirements of legitimate business interests.

Since the enactment of the Customs Modernization Act as part of the North American Free Trade Agreement in 1993 we have seen a shift in the manner in which importers are treated by the Service. We have seen a shift towards "account" management principles and away from a transaction based processing environment. Legitimate importers welcome these new directions and an opportunity to work together, with the Customs Service, towards common goals. Those goals include a minimum amount of information at time of entry, a rapid release of cargo and a confidence of fair and equitable treatment. They also include a commitment by legitimate interests in maintaining a high level of compliance with US import regulations as evidenced through Customs programs such as Compliance Assessment Audits and Stratified Compliance Examinations.

Importers who have established a confidence level that meets or exceed ambitious targets established by the Customs Service should expect to receive a minimum of governmental intrusion and a rapid release of cargo, while those who fail to commit resources in this area should expect a higher level of examinations and resultant delays in securing release of merchandise.

We applaud the measures that the Service has implemented to maintain the current systems enabling rapid releases. We, however, are concerned that the current system is outdated and is rapidly approaching obsolescence. We are aware that the administration is proposing an increase of the Merchandise Processing Fees as part of the 1999 budget to a level of 0.25 percent of value from 0.21 with a cap of 575 dollars per entry from a present level of 485 dollars. We ask that any increase in the Merchandise Processing Fees that may be approved be segregated and released to the Customs Service for the sole purpose of funding the replacement commercial system.

Respectfully submitted,

TIMOTHY J. UPTON
International Traffic Manager

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