

**TRADE AGENCY BUDGET AUTHORIZATIONS
AND OTHER CUSTOMS ISSUES**

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

APRIL 13, 1999

Serial 106-90

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

66-895 CC

WASHINGTON : 2001

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Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

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**TRADE AGENCY BUDGET AUTHORIZATIONS
AND OTHER CUSTOMS ISSUES**

TUESDAY, APRIL 13, 1999

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

The Subcommittee met, pursuant to notice at 11:01 a.m., in room B-318, Rayburn 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

CONTACT: (202) 225-1721

March 29, 1999

No. TR-6

Crane Announces Hearing on Trade Agency Budget Authorizations and Other Customs 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 budget authorizations for fiscal years (FY) 2000 and 2001 for the U.S. Customs Service (Customs), U.S. International Trade Commission (ITC), Office of the United States Trade Representative (USTR), and on other Customs issues. The hearing will take place on Tuesday, April 13, 1999, in room B-318 Rayburn House Office Building, beginning at 11 a.m.

Oral testimony at this hearing will be heard from both invited and public witnesses. Witnesses are expected to include representatives from Customs, ITC and USTR. However, 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:

Budget Authorizations

On February 1, 1999, President Clinton submitted his FY 2000 budget to the Congress. The submitted budget included proposals for Customs, ITC, and USTR. The President requested an increase over FY 1999 of \$2.7 million for ITC, \$2.3 million for USTR, and \$95.5 million for Customs. Additional legislative proposals contained in the budget are described below.

Other Customs Issues

Customs Automation: The current Customs automation system, the Automated Commercial System (ACS), is an aging 14-year-old system which has experienced several "brownouts" since last fall. ACS is operating on the average at 90 percent to 95 percent of its capacity, which is above its design specifications, creating difficulties in accommodating surges in filing Customs entry documentation that may occur daily or seasonally. Many observers, including Customs, have said that ACS is headed for a major system crash which may have an adverse impact on trade. They also believe that any serious failure of ACS could have widespread economic effect on U.S. businesses all along the supply chain including manufacturers, suppliers, brokers, and retailers.

Customs plans to replace ACS with the Customs Automated Environment (ACE) over the next four to seven years depending on funding. Some of the main differences between ACS and ACE are that ACE reportedly will use a single integrated system, modern standards, processes, techniques and language, and will be compatible with commercial software. By contrast, ACS does not have an integrated sys-

tem, uses outdated techniques and languages, and cannot use commercially compatible software.

There are several issues for the Subcommittee to consider relating to ACE: (1) the cost of ACE, projected to be over \$1 billion, (2) the lack of funding for ACE in the President's FY 2000 budget proposal, (3) the access fee for the use of Customs automation in the President's FY 2000 budget proposal, (4) the question of whether Customs' ACE design and architecture will meet future requirements, and (5) the role of the trade industry in building ACE.

International Trade Data System (ITDS): The ITDS is a Federal Government information technology initiative to create an integrated Government-wide system for electronic collection and dissemination of data relating to international trade. The ITDS is designed to be a front-end collection point to submit data and make payments required by all Federal Government agencies that regulate international trade transactions. It is also designed to provide the public with a single point for accessing data on international trade. The ITDS initiative is led by a Board of Directors chaired by the U.S. Department of the Treasury and composed of representatives from Government agencies, including the Customs Service, that are the major participants in government international trade data process. The President's FY 2000 budget proposes to appropriate \$13 million to be available in FY 2001 for the ITDS to be offset by the assessment of an access fee for the use of Customs automated systems.

Customs COBRA User Fees: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (P.L. 99-272) established user fees for certain inspectional services. Under COBRA, passengers arriving in the United States by commercial airline or vessel from a foreign location other than Canada, Mexico, or the Caribbean paid a \$5 fee prior to 1994. 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 exemption for passengers arriving from Canada, Mexico, and the Caribbean. As of September 30, 1997, the fee reverted to \$5, and Canada, Mexico, and the Caribbean regained their exemption. The President's FY 2000 budget proposes an increase in the passenger processing fee from \$5 to \$6.40 and removes the exemption for passengers arriving from Canada, Mexico, and the Caribbean.

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 arbitration decisions, Customs must now pay overtime plus interest to Customs officers for hours not actually worked under certain circumstances: (1) for hours requested but not granted because the officers reached a dollar limit set by port directors, (2) for officers who were inadvertently passed over for a specific overtime assignment, and (3) for officers whose overtime was inappropriately assigned to part-time employees. In the 105th Congress, Chairman Crane introduced H.R. 3809, the "Drug Free Borders Act," which made reforms to overtime and premium pay, and devoted savings to pay for additional enforcement activities. H.R. 3809 was approved by the House on May 19, 1998, by a vote of 320-86. It was approved by the Senate in a different form, and no further action was taken.

In announcing the hearing, Chairman Crane stated: "As we approach the next millennium, we must make sure that our trade agencies have the tools they need to get their job done and done right, and maintain the capability to vigorously enforce our anti-drug and trade laws. However, we must do this in the most cost-effective manner, and continue to pursue needed reforms at Customs and elsewhere to ensure that the taxpayers and others who pay for these services are getting their money's worth."

FOCUS OF THE HEARING:

The hearing will focus on budget authorizations for fiscal years 2000 and 2001 for Customs, ITC, and USTR. In addition, the hearing will focus on other Customs issues, including: Customs automation and modernization efforts and the mechanisms needed to fund them; the need and funding for ITDS; the President's proposed changes to Customs passenger user fees; and the compensation system for Customs officers and related drug enforcement issues.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Pete Davila at (202) 225-1721 no later than the close of business, Thursday, April 1, 1999. 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 Subcommittee on Trade 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, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, of their prepared statement 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 Friday, April 9, 1999. 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 six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the close of business, Tuesday, April 27, 1999, 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, by close of business the day before the hearing.

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 submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. 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, company, address, telephone and fax numbers where the witness or the designated representative may be reached. 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/](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. Will everyone please be seated, and we shall commence since we have a rather long hearing scheduled for today.

And let me first pay tribute—we were a little delayed by a minute because Sandy was kind of slow getting here and Sam Gibbons forgot to come up here and just take that seat, or we would have started earlier.

But Sam is our distinguished former chairman of the full Committee and of the Trade Subcommittee, and I enjoyed the many years we had a chance to work together.

Let me welcome you to the Trade Subcommittee hearing on budget authorizations for fiscal years 2000 and 2001 for the U.S. Customs Service. The U.S. International Trade Commission and the Office of the U.S. Trade Representative and on other customs issues. The Office of the U.S. Trade Representative is responsible for developing, coordinating, and advising the President on U.S. international trade policy. USTR staff and consultants conduct our trade negotiations, seek new markets for U.S. goods and services, and defend our rights in the World Trade Organization. We should be impressed by the breadth and depth of USTR's work and accomplishments. We will also review the customs budget request during our hearing.

As a multi-mission organization, Customs is expected to meet a variety of demands and responsibilities, some of which might be conflicting. Customs is expected to facilitate trade to meet the fast deadlines for goods and services delivery while playing a critical role in border inspection, anti-terrorism, and drug interdiction, which often results in delays.

Also, with the explosion of information technology and trafficking on the Internet, illegal trade and child pornography have moved beyond our land borders and out into cyberspace. To meet these

challenges, customs must not only protect our borders but must create conditions that make drug traffickers and child pornographers know that their efforts will be unprofitable and that they will be caught. We applaud Customs initiative of establishing the cybersmuggling center for enforcing laws against trading in child pornography and illegal goods.

But at the same time, Customs must recognize the need to facilitate the movement of legitimate commerce. This is where technology, such as non-intrusive inspection technology or automated screening systems can assist customs efforts. This is also where modern technology for trade data can also assist Customs' data processing efforts. It is essential to update U.S. Customs automated systems for U.S. industry and the population at large. Any potential slowdown or brown-out in U.S. Customs' electronic entry process system can adversely affect critical imports of health care products. For example, Baxter International, formerly a constituent and now on the border of my district, imports many critical medical therapies which are temperature and time sensitive. Any delay, even a couple of hours, could impact the ability to provide life-saving medical products to U.S. patients who rely on these products.

Today, we will hear views from Customs, the Treasury, the General Accounting Office, and the trade industry about modernizing and funding for automation to meet the increasing volume of trade data. Indeed, Customs faces enormous challenges, and everyday Customs officers rise to meet these challenges. We believe that Customs officers should be fairly compensated for their duties, including overtime duties. But the essential ingredient of fair overtime pay is pay for overtime hours actually worked. Today, we will hear from the Office of the Inspector General and the union on these Customs labor issues.

In addition, Customs must take care that its integrity is intact and that its internal corruption tolerance rate is zero. Our ability to interdict drugs at our borders depends on maintaining sound integrity.

Finally, I would like to recognize Inspector Virginia Rodriguez—Virginia, are you there? Virginia apprehended one of the FBI's Most Wanted Criminals, and we are all a little safer because of your efforts, and we thank you for your service, Virginia.

[Applause.]

But I do want to point out that Virginia made sure she had a cousin here as our first witness.

We will also receive testimony from the International Trade Commission. The ITC has a unique role within the Federal Government as an independent non-partisan, quasi-judicial agency. The ITC conducts trade investigations, provides Congress with technical assistance in developing trade policy, maintains the harmonized tariffs schedule, and offers technical advice to businesses seeking remedies under the trade laws.

The ITC and the Subcommittee have always enjoyed a close and supportive relationship. And now, I would like to recognize our Distinguished Ranking Member, Mr. Levin, for any statement he would like to make.

Mr. LEVIN. Thank you, Mr. Chairman, and a special thank you to you, Ms. Rodriguez, and to you our colleague, Ciro Rodriguez.

I am glad we are holding this hearing in that there are so many of us here in attendance. It shows the importance of this issue, the budget authorization for trade-related agencies. The international trade landscape is becoming increasingly complex. This fact was highlighted by last week's visit to Washington by Chinese Premier Zhu Rongji. The negotiation of a trade agreement that preceded his visit and that is continuing as we speak underscores the challenge of integrating into a single global trading system large economies that operate on different principles.

The new challenges posed by the evolution of international trade translate into new demands on the agencies that administer U.S. trade laws. The U.S. Trade Representative is called upon to monitor and enforce U.S. rights under a growing number of trade agreements, as well as to negotiate new agreements that will further open markets. The greater volume of trade from diverse countries and over a wider range of product sectors requires the U.S. Customs Service to step up its efforts to protect the U.S. market from transshipment and shipment of contraband. And the potentially increased number of trade cases that comes with the greater volume trade is likely to place increased pressure on the U.S. International Trade Commission to monitor the effects of unfair trade practices. These trade-related agencies cannot perform the tasks assigned to them without the necessary resources.

As we consider their budget requests for the coming 2 years, we must bear in mind that while increased trade brings substantial benefits to the American economy, it also brings new responsibilities and costs to the agencies that administer the laws; and we must be prepared to meet those costs.

Additionally, we will be hearing, as the chairman said today, about several important issues concerning the Customs Service, including its acquisition and development of new technology to enable more efficient processing of imports, Customs officers' pay, and increases in the fees charged to passengers arriving in the United States from overseas.

I am hopeful that we will engage in a productive discussion on each of these issues. I expect that today's witnesses will enhance our understanding of the new and evolving demands on our agencies involved with trade, and I look forward to hearing from them on these important matters.

Chairman CRANE. Thank you, Sandy.

Today, we will hear from a number of distinguished witnesses, and in the interest of time, I would ask you to try and keep your oral testimony to 5 minutes or less; and any longer statements, though, will be made a part of the permanent record.

And our first witness, as I indicated before, will be Virginia's cousin, our distinguished colleague from Texas, Ciro Rodriguez. Welcome, Mr. Rodriguez.

**STATEMENT OF HON. CIRO D. RODRIGUEZ, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. RODRIGUEZ. Mr. Chairman, Ranking Members and Members of the Committee, thank you for allowing me this opportunity. I

represent the 28th Congressional District in Texas, which reaches north from San Antonio, and south, 250 miles to the border. I represent two counties on the border, Zapata and Starr. Starr County has three in Rio Grande City, Roma, and Falcon Heights.

I am here today to highlight trade needs along the U.S. Mexico border. Our Nation has seen significant increases in imports. In fact, we have seen nearly a 200 percent increase since the passage of NAFTA. Yet, since 1989, we have not seen an increase in Customs' budget, with the exception of increases on cost of living. I think it is important for us to recognize that this particular agency is on the forefront of our trade relations and makes a difference in the free flow of goods and services.

I think one of the realities that we have to recognize is that we haven't kept our free trade promises. I would propose to you—that we hire an additional 2,000 people at the U.S. Customs Service. I would ask that you study some of the proposed Senate bills that suggest similar personnel increases.

As trade has increases—and I would hope it continues to increase U.S. Customs Service agency is going to be impacted. The agency's people are on the front line examining packages, and opening car trunks as people cross the border. It is the agency that shepards you through the airports and other ports of entry.

U.S. Customs Service has seized more drugs than all of the other Federal agencies combined.

Despite its success, we have failed to increase funding and modernize its technology capability.

I want to stress the importance of equipping Customs with new technology that facilitates trade. Over the last 1½ years—18 months—some of the existing technology experienced failures. Customs backup is paperwork which is just unbelievable. A country such as ours, where businesses are required to pay fees as they bring their products across our borders shouldn't have to wait 4 or 5 hours on paperwork while not being inspected—just waiting is ridiculous. Business should not carry the burden for our fight against drugs. We have a responsibility to facilitate the free flow of legal goods and services along our borders. It is important for us to provide them the necessary equipment.

I serve on the Armed Services Committee, we do not have any major opponents, but there is a fear of terrorism. I fear the transshipment of weapons across our border, and if that happens, our first line of defense is U.S. Customs Service. Customs has been there for us, and we need to be there for them.

As we study trade data and the statistics that are provided us on trade growth, it's obvious the Administration's budget proposal is not adequate. The Senate is considering it's own budget and trying to hire an additional 2,000 Customs employees. And I hope that you seriously consider the Senate proposal.

In addition to that, Mr. Chairman, Customs needs \$1.2 billion for its Automated Commercial Environment. As we start looking into the future, we should fund automated systems to ensure that we are prepared for the global economy. That automated system needs to be funded now, because it takes a while to implement. We need to move now. We need funding for extra staff now, because it takes time to train qualified people. You mentioned Virginia Rodriguez—

you know, back in Texas that next to the Smith's you will find more Rodriguez's in the telephone book than anybody else.

But Virginia, and people like herself, have front line experience and just by asking, "Are you citizen?" or by asking, "What is your purpose in Mexico?" She is able to detect by just the response whether there is some problem. I worked with heroin addicts for 7 years, and I could detect whether someone was using or not. Like myself, Customs agents are able to detect because of the experience that they have had and be able to tell whether people might be hiding something questionable or not.

And so, briefly, you have my testimony before you. I want to ask—No. 1, that you support adding 2,000 additional staff to Customs.

No. 2, look at upgrading automation and technology. We need \$1.2 billion just for the Automation Commercial Equipment. When you look at small ports, don't ignore their technology needs. The ports in my district, Roma, and Rio Grande City have few commercial trucks, yet a lot of drugs go through there. We need that technology at these ports. It does not make any sense for the business community to send trucks through Roma and Rio Grande City and then won't as the vehicles are driven all the way to Pharr, 60 miles away and back, to be examined by x-ray machines. That is not good for business. That is not good for trade. That is not good for the border. And that is not good for America.

We expect the expansion of trade to continue to increase, so I ask your help and your support to increase our primary tool for trade facilitation. And as I see the light, I will stop.

[The prepared statement follows:]

**Statement of Hon. Ciro D. Rodriguez, a Representative in Congress
from Texas**

Good afternoon, Chairman Crane, Ranking Member Levin and Members of the Committee. I am Congressman Ciro D. Rodriguez representing the 28th Congressional District of Texas. It is a privilege to be here discussing the U.S. Customs Service and the important role this agency and its employees play along our nation's borders. On behalf of my constituents and the millions of people who live, work, and depend on a seamless flow of goods and services along the southwest border, thank you for this opportunity.

The 28th Congressional District of Texas is a sprawling South Texas district anchored in the north by San Antonio and in the south by numerous communities along our international border with Mexico. Along the border, I represent Starr County, one of the poorest in our nation, which has three small land crossings at Rio Grande City, Roma, and Falcon Heights. These small ports of entry are sandwiched between two enormous ports of entry at Laredo and Hidalgo/Pharr. San Antonio has many trade resources, including the San Antonio International Airport and the closing Kelly Air Force Base, which the city is transforming in part into an inland port for international trade.

I will put this as simply as I can: if we want to increase trade and stop more contraband at our border points of entry, then we must increase the number of Customs officers to meet the demand and equip them with the best technology we have. To ensure the best and most stable workforce for this critical work, we must support Customs employees with the pay and benefits they deserve. Anything less than this commitment will hamper the flow of goods and people while increasing the likelihood of drugs, weapons, and other illegal items entering our country.

While each port of entry has unique needs, all share a common need for more Customs Service personnel and better enforcement and trade facilitation resources. Increased trade with Mexico is expanding economic growth along both sides of the southwest border. In addition to an explosion of a nearly 200 percent increase in imports over the past five years, the region has seen an expansion of trucking, warehousing, manufacturing, and transportation industries. Although many of the region's communities enjoy growth attributed to expanded trade, the growth is al-

ready straining the region's historically underdeveloped infrastructure. The growth in trade without a growth in resources causes delays and more for area residents and businesses.

As people living and working on the border see it, the U.S. Customs Service is part of the underdeveloped infrastructure. Increasing the agency's budget should be natural in the face of booming trade. However, Customs' budget has not increased beyond the rate of inflation during the past ten years. This static budget is choking business and communities dependent on a seamless border. We need to increase U.S. Customs Service funding to create at least 2,000 new positions, including inspectors, canine enforcement officers, special agents and internal affairs officers. We also need to modernize trade facilitation by funding an Automated Commercial Environment and providing the agency with the most effective technology to ensure trade is not unduly burdened by our enforcement policies.

The U.S. Customs Service is an outstanding agency. Its inspectors are the first line of defense for our nation's borders. They protect our citizens and businesses from smugglers attempting to put illegal narcotics, counterfeit goods, child pornography, and weapons of all kinds onto our streets. Under this enormous pressure to fulfill its enforcement goals, inspectors are also expected to be service-oriented and treat people with courtesy as they process forms, collect taxes and facilitate the speedy transaction of goods and services at every port of entry. This is not an easy task for anyone, let alone workers who face unprecedented growth in demand for their services.

The U.S. Customs Service is the most successful and effective tool against drug trafficking. The agency seizes more drugs and contraband than all other federal agencies combined. Border communities do not want Customs' drug war efforts to relax or be stifled. The border population does want U.S. Customs to have the resources to employ the fastest and most effective means for inspecting cargo without compromising integrity.

Along the southwestern land ports the agency has come under fire from community leaders for taking too long to process the free flow of good, services, and people. The complaint has extended beyond land ports to international airports and seaports. I have visited or contacted every land port between Brownsville, Texas and Eagle Pass, Texas. Nearly half of all commercial traffic from Mexico enters the United States through these ports of entry. At each entry the port director said they needed more personnel and equipment to process traffic more quickly and effectively capture more contraband.

At small land ports such as Rio Grande City, which processes nearly 16,000 commercial vehicles per year, and Roma, which processes nearly 6,000 commercial vehicles per year, U.S. Customs thoroughly inspects 40 percent to 75 percent of all commercial entries. Each inspection of a tractor trailer can take up to four hours if the vehicle is loaded with goods or is difficult to inspect due to hazardous materials. Legitimate businesses are forced to pay the cost of the drug war by having their vehicles sit still for hours at a port waiting to complete an inspection when its commercial cargo could be inspected effectively by X-ray machines in minutes. X-ray machines help inspectors determine wall density, detect false compartments where drugs are concealed, and highlight areas that could be hollow truck parts. The X-ray machines instantly reveal any concealed narcotics, laundered money or other contraband. U.S. Customs Service can streamline trade and strengthen its drugs and contraband interdiction efforts if it has more equipment such as X-ray machines, K-910 Busters, fiber optic scopes, radios, security cameras and more personnel to operate this equipment. This equipment is essential for the efficient movement of legitimate imports across the border.

The lack of high-tech equipment plays havoc with the small communities along the border which are trying to attract businesses to their facilities. A 75 percent inspection rate for commercial cargo is ideal against the drug war but the likelihood that 3 out of 4 commercial trucks will be held four hours is a poor economic selling point for a community. We need a high rate of inspections at a high rate of speed.

Large ports along the southwestern border have the same needs for equipment and personnel as do smaller ports. The sheer volume of vehicles and goods coming through our land ports strains resources and burdens businesses using the ports. Customs inspectors in Laredo somehow managed to inspect a whopping 20 percent of the nearly 600,000 of the commercial vehicles entering the port in 1997. Traffic at Laredo is only going to increase.

The math is simple. More traffic with less Customs employees and equipment to facilitate trade and seize drugs is irresponsible and severely hampers trade. Increasing resources for U.S. Customs Service as trade increases is good policy.

In addition to asking Customs to fight the war on drugs more effectively, Congress should not lose site of Customs' service to the business community dependent

on trade. We must broaden our view of the southwest border and bring trade facilitation into focus. Since the 1980s, the U.S. Customs Service has committed to move from paper information flows to electronic information flows. Today, Customs processes more than 90 percent of all import entries electronically. However, the current Automated Commercial System is outdated and in danger of collapsing. System failure would halt the flow of \$2.2 trillion worth of goods at all ports of entry. Our nation would suffer a serious negative economic impact on U.S. businesses all along the supply chain from manufacturers, transportation suppliers, brokers to wholesalers and retailers.

The U.S. Customs Service estimates it will cost about \$1.2 billion to upgrade to a new Automated Commercial Environment while keeping the current system from failing. Congress should authorize and appropriate the money for the new system. Our current back-up system—to log entries by paper—is unrealistic. There is no time to waste. We must fund the solution before gridlock at the nation's ports chokes international commerce.

Finally, I would like to praise the U.S. Customs Service inspectors who actually do the work each and every day. These folks are dedicated to their work. They take great risks at their jobs. Land ports are dangerous places to work. At our border with Mexico, inspectors run the risk of being run over by port runners who try to crash through to the United States. They inspect vehicles carrying hazardous materials for contraband.

Customs employees also work long hours. Like most other Members, I complain about not seeing my family enough because of my busy schedule. But my schedule is not nearly as hectic and volatile as that of a Customs Inspector. They work shifting schedules plus long and odd hours. Today, a Customs inspector may work nine to five but tomorrow could work midnight to dawn the next day. Despite these grueling working conditions, the loyal inspectors stay on board for a salary ranging between \$20,000 and \$40,000 a year. If the committee decides to change the pay structure for Customs employees, I hope it is an effort to increase salaries. I could not support any Customs Authorization bill that attacks the employees doing the job.

Mr. Chairman, thank you for the opportunity to share the views of my South Texas constituents with the committee. As the front line in our war against contraband and facilitation of trade, Congress must authorize and appropriate more funding to provide more personnel and better equipment without shortchanging the people who do this job for us day in and day out. Congress also needs to pull the U.S. Customs Service out of an electronic stone age by authorizing and later appropriating the \$1.2 billion needed to reduce paper work and facilitate trade by building a new Automated Commercial Environment. I look forward to helping the subcommittee pass a Customs Service Authorization Bill that will meet these goals.

Chairman CRANE. Thank you, Ciro.

Mr. RODRIGUEZ. Thank you.

Chairman CRANE. We strongly believe that Customs employees should be well compensated for their tremendous services. However, under current law a Customs officer can receive overtime and premium pay under certain circumstances without working those hours or can receive premium pay while working daytime hours. Do you agree that these anomalies are inappropriate and that it is reasonable to expect that Customs officers should be paid and well paid but only when they work these special hours?

Mr. RODRIGUEZ. I will agree, Mr. Chairman, that if we hired an additional 2,000 people, we would not have overtime. And I think we could do that. Customs agents get paid \$20,000 to \$40,000, and I think that we really need to kind of look at increasing that. And if we hired additional people, we would not have the problems you are describing now with overtime.

Chairman CRANE. Mr. Levin.

Mr. LEVIN. I thank you. We have lots of witnesses, and we can go into that issue and others with them and not burden you with

it. I personally—we have come to know each other—know how hard you work, so when you say that your schedule is not nearly as hectic and volatile as that of a Customs inspector, that is saying a lot. So, thank you for your testimony. We will, indeed, take it very seriously, and I assume if we have further questions, we will be able to talk to you personally.

Mr. RODRIGUEZ. Thank you.

Mr. LEVIN. Thank you for your excellent testimony.

Mr. RODRIGUEZ. Thank you very much.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thanks, Sir. Great to see you. If I understand the Customs Service has 17,000 to 18,000 people, is that right? And you think there ought to be another 2,000?

Mr. RODRIGUEZ. Yes, Sir.

Mr. HOUGHTON. Could you break that down a little bit? Why another 2,000?

Mr. RODRIGUEZ. I think there is a big gap between Customs and other agencies. For example, right now, looking at the INS—Chairman Lamar Smith wants us to begin checking people leaving the country. There is no way that can be done unless you double staff at the ports.

The other reality is that some of these ports could be kept open 24 hours. They are not kept open 24 hours because of the fact that we need additional resources. In addition, right now, there are a hang up in terms of processing. If you visited ports from Brownsville to Eagle Pass, which processes a significant amount of the traffic through Texas, if you go into any of those ports, you will see the number of 18-wheelers has increased. You will notice there is no way that all those 18-wheelers are being examined thoroughly. In Laredo—supposedly up to 20 percent of the vehicles are inspected. That is a high figure for just over 5,000 trucks a day, not to mention the cars and all the traffic.

I think when we deal with drugs and traffic and counterfeit products, we need more staff. Customs is also the first line of defense against terrorism. We need more people that look you straight in the eye, and ask you, “Are you a citizen?” Or, “What is the purpose of your visit?” or, to open your car trunk. I think that this is where our thrust should be. And it has not been there. They have not seen an increase despite the increase in traffic. Other agencies have been some increases and they also deserve to be looked at a little more seriously, but Customs has not. I think that we need to look at this disparity.

Mr. HOUGHTON. Well, the other number I wanted to ask you about was the \$1.2 billion to upgrade the automated commercial equipment. You know, the problem with the Government, of course, is that you do not use the basic philosophy called return on investment. Therefore, we do not have a capital budget; so, therefore, you have to superimpose that up—and I do not know what percent increase that would be, along with the 2,000 people, but it would probably be—

Mr. RODRIGUEZ. This is a \$300 million per year for the next 4 years—in the \$1.2 billion. One of the things that we are also doing by not funding, we are also charging a lot of fees to a lot of the industries and the business. And it hurts the businesses right now,

and I can attest to you that there have probably been some that have gone abroad because of the fact that it gets tangled up in the border, and it makes more sense to go abroad and do some of that instead of waiting for some of those products to come through there, because of the fees and also because of the wait. And so, as we move forward, I think that we are hoping that trade is going to double and triple; and it is expected to.

Mr. HOUGHTON. So you are saying the \$1.2 billion would be spread out over how many years?

Mr. RODRIGUEZ. A 4-year period. I think the proposal is over a 4-year period. And there is a need for some additional technology. I have some ports that do not have any of the updated technology that is needed to seize drugs and facilitate traffic. Instead of those x-rays where agents can take a whole pallet and just check the whole pallet, agents in my district try to examine things item by item. Those x-ray machines are needed and automated commercial technology is needed too.

Mr. HOUGHTON. Thank you very much. All right. Thanks, Mr. Chairman.

Chairman CRANE. Mr. Camp.

Mr. CAMP. No questions.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, just one question for my friend and colleague from Texas. Congressman Rodriguez, gives us a better sense of how this all plays out in the local communities along the border when you have the backup of some of these vehicles and the products that are being inspected. What does this do to the local economies in your district?

Mr. RODRIGUEZ. I represent Starr County, one of the poorest counties in the State, and it is probably the poorest in the Nation. It has a high unemployment rate, usually over 20 percent. It is sandwiched between two counties that are doing extremely well. The poor infrastructure hampers the 18-wheelers crossing there. U.S. Customs is also part of that infrastructure. Their staff has also been hampered by the fact that trade has doubled and tripled, and it is expected to double again. Their staff has remained at the same level and has to work lots of overtime and has not been able to examine as many of the trucks as they would like. And I think that as we proceed on the war on drugs, we should strengthen the front line and facilitate trade which we have not done and need to move on. We have not done enough, especially when it comes to purchasing technology—that quickens flow of traffic. It really hurts tourism, for example, people think twice about going to Laredo, because of the long lines. So it hurts tourism.

And I want to go back again to business. The business community should not suffer because of our war on drugs. We need to facilitate the process of trade. We need to help out in business effort.

Chairman CRANE. Mr. Nussle.

Mr. NUSSLE. Thank you, Mr. Chairman. I thank our colleague for coming here today. I just—I was not sure that you answered the chairman's question, the first question that was asked on the—on overtime pay.

Mr. RODRIGUEZ. I tried to avoid it.

Mr. NUSSLE. You tried to avoid it. Well, that is part of the concern that we have got is that we—you know, the war on drugs is something we cannot avoid. We have got a step up to the plate, and this is a decision that, while it may be uncomfortable, it is a decision we are going to have to try and make. In fact, last year, the chairman introduced a law to try and change this, and I am wondering so your position is undecided or is it—are you in favor of changing it so that we think—

Mr. RODRIGUEZ. I am in favor of overtime. But I am saying that if you really want to solve the overtime issue, then we need to hire additional people. If you are really sincere about fighting the war on crime, we need to add some additional resources and additional technology on the border. We do not have it. We talk about having one x-ray machine to check for drugs. Well, it only checks eight trucks per hour. We have 5,000 trucks in just one port, so there is a real need for us to focus on trade. This is one issue, pay and overtime, that will only divide, in a partisan manner. I hope that we would come together and do the right things for Customs and for us as a nation, because these people are on the front line of defense against drugs and the possibility of terrorism. They are the ones that check the packages for our businesses. They are the ones that make sure the commercial products flow freely. They also have caught more drugs than everyone else combined. And so, we need to be there for them.

When it comes to this specific issue—overtime—I think, it is something that hopefully can be worked out by the Treasury Department. Rather than pay issues, I think we should concentrate on our responsibility to upgrade the computer system and other technology. If it breaks down, Customs goes back to paperwork.

There is no way you can allow that—I mean, this is the United States. We should not let International Trade be slowed by paperwork, truck by truck. We need to provide that technology to Customs and the business community. And hopefully, we can, come to grips on pay issues which turn out to be a partisan.

Mr. NUSSLE. I am wondering—I am just wondering from my constituents' benefit back home in Iowa, why is it a partisan issue that a person is asked to work for the time that they are paid, or not be paid for the time that they do not work. I mean, I do not—you either work—I mean, back in Iowa, if you are going to get paid for something, you have got to work for it. And they are probably wondering why it is that we pay people overtime when they do not work—I mean, certainly everything you just said on this is highly appropriate. These are the people. They do a fine job. They are unsung heroes, because they do not get some of the attention that maybe some of the other law enforcement areas do, and that is why we are having this hearing, and that is why it is so good that so many people show up.

But I think it is just as irresponsible—and I am wondering why is it—why do you think it is a partisan—why is this a partisan issue that if you do not work, you should not get paid. This does not seem to me to be partisan at all. Why is this partisan?

Mr. RODRIGUEZ. I think it is the way that it is interpreted. I want them to have a more livable wage. And Customs agents are,

working out there at bizarre hours earning \$20,000 to \$40,000. And they are working—

Mr. NUSSLE. Well, actually, there is a cap at \$30,000, are you aware of that?

Mr. RODRIGUEZ. The cap on \$30,000 that you talk about is for the pension in terms that they cannot make overtime. But—

Mr. NUSSLE. But the chairman's bill tried to increase the amount of money, and, in fact—

Mr. RODRIGUEZ. Well, that—

Mr. NUSSLE. If I could finish—expand that cap, and then also allow for discretion from the Secretary to pay them more. And I—that is why I do not understand why this is a partisan issue.

Mr. RODRIGUEZ. Well, hopefully, it will not be a partisan issue. Hopefully, we can find a compromise on this issue without cutting pay. I hope you do not lose focus on the real issue. I hope that we focus on the need to upgrade technology and increase customs manpower. We might disagree on this one issue. But I hope that we can agree that something needs to be done to fight drugs and facilitate trade.

Mr. NUSSLE. I guess I would—if I could just ask, you know, two things. First of all, I think you are exactly right in upgrading equipment, on technology. Certainly, technology from 19—let us say 1989 or 1979 or 1969 is not appropriate in 1999. I think the same is true for a law that was written in 1911—probably not as appropriate in 1999. And I—so upgrading equipment, upgrading pay, upgrading the law, upgrading the way things are operating, I think is appropriate to deal with a drug war and with people who understand rotations at the border better than we do; understand the way that people are compensated and the way the game is played at the border better than we do. And that is the people that are trying to smuggle in drugs.

So, I would hope that you would reconsider your position and not make it a partisan issue. I think it is not a—does not have to be partisan at all. And then I would just conclude by suggesting that if you—if—you know, the people that were trying to reform this law last year took into consideration some of those very things that you are talking about so that we can give more support to these folks on the front line. It is just as—it is just as demoralizing to have to work a shift, whether you get paid straight time or overtime for it, and find out that your buddy is at home not doing anything, getting paid overtime or straight time for it. That does not seem to make much sense to them, anymore than it makes sense to my Iowa constituents. So, I would hope that this does not digress to a partisan issue and that we can change a 88-year-old law the same way we want to change 88-year-old technology. Thank you.

Chairman CRANE. Mr. Herger.

Mr. HERGER. I do not have any further questions, Mr. Chairman.

Chairman CRANE. If not, I want to thank you, Mr. Herger, for your testimony. And we look forward to working with you and continuing on this path toward the reforms that so many of us feel are in order given the circumstances.

Mr. RODRIGUEZ. Thank you, Mr. Chairman.

Chairman CRANE. And now, I would like to invite our first panel of witnesses and that includes Deputy U.S. Trade Representative, Richard Fisher; Customs Commissioner, Raymond Kelly; and ITC Chairman, Lynn Bragg. Welcome, Mr. Fisher, and I would personally like to thank you and your staff again for your efforts on trade relations with China. And, Commissioner Kelly, I am pleased to welcome you in your first appearance before the Subcommittee. And we look forward to working with you and helping you meet the demands and responsibilities of the Customs Service. And, Chairman Bragg, we also look forward to working with you to further develop the close working relationship between the Commission and the Committee on Ways and Means, and we took our first giant step by giving you our former Chief of Staff from the Committee here in Thelma Askey, who is with you today.

So, if you will proceed in order, and, as I indicated before, try and keep oral presentations to 5 minutes or less. And all written statements will be made a part of the permanent record. Richard.

**STATEMENT OF HON. RICHARD FISHER, DEPUTY
U.S. TRADE REPRESENTATIVE**

Mr. FISHER. Thank you, Mr. Chairman. I welcome this opportunity to appear before your Subcommittee today to present our budget authorization request from the Office of the USTR. As I always do, I want to thank you and your colleagues for your consistent support for our mission, which is to open markets and expand trade and enforce trade laws and trade agreements. And we sincerely appreciate the close working relationship we have with this Committee.

We are proposing a 2-year extension of USTR's authorization of appropriations for fiscal year 2000 and 2001. Our request recommends a fiscal year 2000 authorization level of \$26,501,000, the amount requested in the President's budget for the fiscal year 2000. The authorization request for fiscal year 2001 is for such sums as may be necessary.

For each fiscal year, the representation fund authority would remain at \$98,000, and the amount available to be carried over from one fiscal year to the next would remain at \$1,000,000. In short, Mr. Chairman, the Administration is recommending straightforward extensions of existing authorizations for USTR.

Now, Mr. Chairman, I regard it as a great privilege to work with the career employees of the Office of the USTR. We are one of the smallest agencies in the Government. Our budget request, as I mentioned, is just \$26.5 million, and our staff request for next year is for 185 full-time employees, including support staff. I think you know, Mr. Chairman, I joined the Administration from the private sector a little more than a year ago, having run an investment firm for 20 years. And I can tell you, Mr. Chairman, I have found USTR to be as efficient and capable as any private sector business I have worked with or owned. And, Congressman Houghton, the Congress gets a superb return on investment in USTR.

With our small staff, we address \$2 trillion in trade volume. That is an increase of over \$700 billion since 1992. We monitor and enforce our agreements, including over 270 trade agreements we have negotiated in this Administration. We navigate our way through

the WTO, and we develop and execute our trade agenda. The budget authorization request reflects our need to upgrade security and add seven additional career, full-time employees to help us address this much larger volume of trade and network of agreements, as well as the level of work required in agriculture and our several regional offices.

At the same time, the request protects USTR's tradition as a lean agency, in which each full-time employee has great responsibility, and in which we can act quickly to deliver tangible results that you expect from us.

Over the past 6 years, we have negotiated 270 trade agreements. Our volume of bilateral trade has expanded by three-quarters of a trillion dollars. This is inevitably meant a heavier workload for the USTR. Our budget request will allow us to meet this workload while protecting our tradition as a small and efficient agency. Our request represents the right resource level for allowing USTR to implement the ambitious work agenda with which we are charged.

For fiscal year 2000, the budget request proposes, as I mentioned, 185 full-time employees—\$26,501,000 in new budget authority. This represents a net increase of \$1.8 million and seven career full-time employees over the last fiscal year. We would use the \$1.8 million increase in five targeted areas.

First, \$1.2 million to fund the expected cost of legislated employee pay raises as well as non-pay inflation areas like rents and utilities and travel.

Second, \$400,000 for seven new career positions in areas with growing workloads. Six of the seven new positions would be trade specialists. One would be a support position. Of these positions, two each are in our agriculture and Africa units; one each in Japan, China, and Western Hemisphere offices.

Third, \$400,000 for negotiator travel, to meet rising numbers of trips to China, as you referenced, Japan, Africa, and other distant and costly negotiating sites.

We need \$225,000 for security-related projects in our Geneva and Washington offices, to guard against the threat of terrorism and to protect sensitive and classified information.

And last, six, we need \$100,000 to meet a growing demand for interpretation and translation services for use in negotiations enforcement proceedings and in renewing country proposals.

This represents a total budget increase of \$2.225 million, which is partially offset in fiscal year 2000 by a reduction of \$498,000 in funding for Y2K improvements made available in the fiscal year 1999, on a 1-year time basis.

Mr. Chairman, USTR needs every penny of the \$26.5 million that we are proposing in our budget request. We are keenly aware of our responsibilities. And yet, we have virtually no further capacity to absorb higher costs in fiscal year 2000. Two-thirds of the USTR appropriation supports the salaries and benefits of employees, and the remaining one-third pays for building rent, utilities, security, and travel. Unlike larger Federal agencies, we do not have the option of cutting back in categories like grants and contracts, nor do we have the option of trimming layers of management or administration.

We have already accomplished an enormous amount of belt-tightening in the last 6 years, and any further budget savings would come at the expense of our core negotiating, policy coordinating, and enforcement programs.

Let me give you some examples of the cutbacks that we have made internally.

First, we rescinded authority for assistant USTRs to approve their own travel. We instituted a rigorous review process that requires the Chief of Staff to approve every single trip.

Second, we mandated use of frequent flyer miles in order to increase the number of trips for the same amount of funds. In the last 5 years, we have funded a 126 trips with bonus coupons, saving the Government \$275,000 in the cost of airplane tickets.

We have also established policies that require all employees, including Ambassador Barshefsky and myself to fly in economy class unless the trip exceeds 12 hours of flying time. This is a more rigid rule than the governmentwide standard. We have reduced the amount of office space we used in the Geneva office, cutting rental costs by several hundred thousand dollars.

And we have reduced our computer staff by more than half, saving more than a million dollars in payroll expenses while, at the same time, upgrading the computer network and installing an innovative system for receiving classified State Department cables.

These are just some of the ways, Mr. Chairman, the USTR has economized over the past several years. These actions have resulted in an agency that is lean and mean, and without imparting any partisan sentiment, we are certainly not trying to be kinder and gentler. But we are one which has been quick to absorb our cuts, and for this reason, we need the support of this Committee and the full Congress in providing the full \$26.5 million and the 185 full-time employees in fiscal year 2000.

I would just like to say one last point, Mr. Chairman. We are a small agency. I believe we have some of America's finest public servants. Our staff is talented. It is working very long hours, and I hope you will conclude, as we do, that it delivers results for the American people. I thank you for allowing me to testify before you.

[The prepared statement follows:]

Statement of Hon. Richard Fisher, Deputy U.S. Trade Representative

Mr. Chairman, I welcome this opportunity to appear before the Subcommittee to present the budget authorization request for the Office of the United States Trade Representative. This morning, I will present our authorization request, describe our program priorities and respond to questions the Subcommittee may have.

Let me begin by offering my thanks to the Subcommittee for your consistent support of our mission to open markets, expand trade, and enforce trade laws and trade agreements. We appreciate our close working relationship, and hope to continue it into the future.

TWO-YEAR AUTHORIZATION

We are proposing a two-year extension of USTR's authorization of appropriations, for fiscal years 2000 and 2001. The Administration's request recommends an FY 2000 authorization level of \$26,501,000, the amount requested in the President's budget for FY 2000. The authorization request for FY 2001 is for such sums as may be necessary.

For each fiscal year, the Representation fund authority would remain at \$98,000, and the amount available to be carried over from one fiscal year to the next would remain at \$1,000,000.

In short, Mr. Chairman, the Administration is recommending straightforward extensions of existing authorizations.

THE TRADE AGENDA

Mr. Chairman, I regard it as a great privilege to work with the career employees of the U.S. Trade Representative. We are among the smallest agencies in government: our budget request is \$26.5 million, and our staff request for next year is just 185 full-time employees.

As you know, I joined the Administration from the private sector a little more than a year ago, having run an investment firm for twenty years. I am here to tell you, Mr. Chairman, that I have found USTR to be as efficient and capable as any private sector business I have worked with. The Congress gets a superb return on its investment in USTR.

With this staff we address \$2 trillion in trade volume (an increase of over \$700 billion since 1992); monitor and enforce our agreements, including over 270 trade agreements negotiated since 1992; and develop and execute our trade agenda for the future. The budget authorization request reflects our need to upgrade security and add seven additional career full-time employees to help us address this much larger volume of trade and network of agreements and the level of work required in agriculture and several regional offices. At the same time, the request protects USTR's tradition as a lean agency in which each full-time employee has great responsibility, and which can act quickly to deliver tangible results for Americans through new job opportunities, higher farm incomes and rising standards of living.

These capabilities are evident in the results we have achieved. The expansion of trade in the past six years has helped create the best economic environment our country has ever enjoyed. Since 1992:

- Our economy has prospered. Our economy has expanded from \$7.1 trillion to \$8.5 trillion in real terms (1998 dollars), and we have the benefit of the longest peacetime expansion in America's history.
- Our country has created jobs. Employment in America has risen from 109.5 to 127.7 million jobs, a net gain of over 18 million, as unemployment rates fell from 7.3% to 4.2%.
- And our families have enjoyed higher living standards. Since 1992, average wages have reversed a twenty-year decline and have grown by 6.0% in real terms, to \$449 a week on average. This family prosperity is reflected, for example, in record rates of home ownership and unprecedented individual investment in mutual funds and other claims of ownership of America's thriving business sector.

Against this background, I am very proud to present our budget authorization request to the Subcommittee today.

Let me now turn to the agenda we have set, in close consultation with Congress, for the future. Generally speaking, our trade policy seeks the following goals:

- Address the trade effects of the financial crisis which now directly affects nearly 40% of the world.
- Continue our progress toward open and fair world markets through a new negotiating Round, as well as our role as host and Chair of the WTO's Third Ministerial Conference, regional negotiations and bilateral talks.
- Advance the rule of law and defend US rights by ensuring full compliance with trade agreements and strongly enforcing our trade laws.
- Encourage the full participation of all economies, including economies in transition and developing nations, in the world trading system on a commercially meaningful basis;
- Ensure that the trading system helps lay the foundation for the 21st-century economy by offering maximum incentives for scientific and technological progress.
- Ensure that trade policy complements our efforts to protect the world environment and promote core labor standards overseas; and
- Advance basic American values including transparency and accessibility to citizens and involvement of civil society in the institutions of international trade.

TRADE AGREEMENT AUTHORITY

As we pursue this agenda, the Administration will consult with the Subcommittee and Congress on the renewal of traditional trade negotiating authority. The President, in his State of the Union address, called for a new consensus on trade. He said we must find the common ground on which business, workers, farmers, environmentalists and government can stand together.

Consistent with that approach, we believe negotiating authority should bolster the traditional bipartisan support for trade policy and allow us to pursue an agenda that reflects consensus goals. It is a tool which can help us negotiate with greater

credibility and effectiveness on behalf of American economic interests, and thus contribute to our goal of opening markets, increasing growth and raising living standards.

TRADE EFFECTS OF FINANCIAL CRISIS

Let me now address our agenda in detail. I will begin with the trade effects of the financial crisis affecting Asia, Russia and parts of Latin America. This crisis has now lasted a year and a half, and its effects on our trade interests have been severe. Countries which have implemented IMF reform programs have seen a number of good results, including currency stability and returning investor confidence. However, economies continue to suffer. Six major economies—Hong Kong, Indonesia, Malaysia, South Korea, Russia and Thailand—are likely to have contracted by 6% or more last year.

As a result of this crisis, the American trade imbalance has widened. This reflects largely a sharp drop of about \$30 billion in American exports to the Pacific Rim, and a consequent break with the pattern of rapid U.S. export growth of the past few years. Our overall import growth last year (with the principal exception of the steel sector, in which imports rose very rapidly in the second half of 1998, affecting thousands of jobs) remained consistent with growth rates in previous years. Thus the larger deficit largely reflects predictable macroeconomic factors.

Our trade policy response begins by ensuring that our trading partners continue to live by commitments at the WTO and in our regional and bilateral agreements. The strength of the trading system is an enormous advantage here—despite the worst financial crisis in fifty years, the world has resisted the temptation to relapse into protectionism. This has greatly reduced the potential damage to our economy, and particularly to American manufacturing exporters and agricultural producers. In addition, other markets—particularly our NAFTA partners Canada and Mexico, to whom U.S. goods exports grew by \$13 billion last year—have in part compensated, thanks to the more open North American market NAFTA has created, for some but not all of these lost exports.

We continue with a policy response covering several areas:

- *IMF Recovery Packages*—We have supported reform packages with the IMF at the center in affected countries. Several of these contain trade conditionalities which we vigorously monitor. These packages are showing results: especially in Korea and Thailand, there are early signs of recovery, including a fairly strong recovery in American exports to both countries in the last quarter of 1998.

- *Restored Growth in Japan*—A return to growth in Japan, Asia's largest economy, is essential for the economic health of the region. The Administration's view is that this will require fiscal stimulus, financial reform, and deregulation and market-opening. USTR's responsibilities lie in this last area. In addition to an aggressive bilateral agenda, the agreement we reached in Japan last May sets out concrete deregulatory measures in telecommunications, housing, medical devices, pharmaceuticals and financial services sectors, measures to strengthen competition policy enforcement, transparency and distribution. Fully implemented, these would create opportunities for exporters and workers in America, other Pacific economies and Japan. We are now discussing new measures in these areas and energy as well and are in the process of negotiating with the Japanese over a second tranche of deregulatory measures under the U.S.-Japan Enhanced Initiative on Deregulation in advance of Prime Minister Obuchi's state visit the first week in May.

- *Steel*—The President's January 7 Steel Report to the Congress laid out a comprehensive action plan on the 1998 steel import surge. The plan provided for a roll-back of imports from Japan—the key source of the import surge—to pre-crisis levels, by stating that the Administration is prepared, if necessary, to self-initiate trade cases to ensure that this roll-back takes place. The plan also outlines actions taken by the Commerce Department to expedite ongoing dumping investigations and apply dumping margins retroactively. In addition, the Administration expressed strong support for an effective safeguards mechanism, and affirmed our commitment to continue to assess the effectiveness of steps taken to date, and to work closely with the industry, labor, and members of Congress, to assess additional steps. To assist in this ongoing review, we also began to release preliminary steel import data which are available about a month earlier than the normally released final import statistics, thus enabling the industry to react to imports on a more timely basis.

This program is being implemented fully. Steel imports began to decline sharply beginning in December 1998. Since the release of the President's Steel Action Plan, the Commerce Department has announced preliminary dumping margins with respect to Japan, Russia and Brazil. We have initialed two agreements with Russia—a suspension agreement on the carbon flat rolled dumping case and a broader agree-

ment under the market disruption article of the 1992 U.S. bilateral trade agreement with Russia. These agreements would roll back and cap steel imports from Russia, the second largest source of our 1998 steel import surge. In Korea, we have expanded discussions on steel with the objectives of real and substantive progress toward permanently getting the Korean government out of the steel business.

Import statistics over the past several months have been encouraging. Between November and February, steel imports of carbon flat rolled products from Japan, Russia and Brazil which the Commerce Department found to be “dumped” declined 99, 100 and 64 percent respectively. At 2 million metric tons, February steel imports were below the average monthly import levels for 1996 and 1997. Substantial progress in addressing unfair trade practices and injury to U.S. steel producers and workers was thus achieved in a manner which enabled us to remain faithful to our international commitments. By sticking to international trading rules in this time of crisis, we have done our share to forestall a protectionist response to the global crisis by our trading partners and retaliation against U.S. exports which could endanger American agricultural and steel-intensive producers and their work force.

I. GROWTH AND HIGHER LIVING STANDARDS

Let me now turn to our negotiating agenda. In this agenda, we seek enduring goals—growth, higher living standards, the rule of law, a rising quality of life, better protection of health, safety and the environment, and the advance of basic values. As President Clinton said in the State of the Union address, we need to find new methods of negotiating and address a broader array of issues to secure these goals in the next century.

1. New Round and WTO Ministerial Conference

This is the basis of the President’s call for a new, accelerated negotiating Round for the 21st century. The Round would begin at the WTO’s Third Ministerial Conference, which Ambassador will chair and which will be held in Seattle from November 30th to December 3rd. This will be the largest trade event ever held in America, bringing government leaders, Trade Ministers, business leaders, non-governmental organizations and others interested in trade policy from around the world. It is an extraordinary opportunity for us to shape at least the next decade of multilateral trade negotiations and to highlight our economic dynamism to the world.

At the outset, I would like to say a few things about funding for the WTO Ministerial. The Ministerial will be the largest international trade event ever held in the United States. Most of the funding for logistical preparations and on site Ministerial operations will be met by the Seattle community, including substantial in-kind contributions from major corporations from Washington State. Even with this local funding, the U.S. Government will bear some of the cost for managing the conference, and the President’s FY 2000 Budget contains \$2.0 million in the State Department budget for that purpose. Over the next month, we will be discussing physical site requirements with the WTO, and appropriate financial contributions with the Seattle Host Committee.

The Round President Clinton has called for would begin at this event. It would be somewhat different from previous Rounds, in that we should be able to pursue three dimensions simultaneously: first, a negotiating agenda to be completed on an accelerated timetable; second, institutional reforms and capacity-building at the WTO; and third, ongoing results in priority areas.

To begin with, we would hope to advance a number of important initiatives in the months leading up to the Ministerial Conference and at the event itself. They may include:

- *“Information Technology Agreement II”* adding new products to the sectors already covered by the first ITA.
- *Electronic Commerce*—Extension of last May’s multilateral declaration not to assess customs duties on electronic commerce, to make sure that the Internet remains an electronic duty-free zone.
- *An agreement on transparency in procurement* to create more predictable and competitive bidding, reducing the opportunity for bribery and corruption and helping ensure more effective allocation of resources.
- *APEC Sectoral Liberalization*—Building consensus on the sectoral liberalization initiative begun in the Asia-Pacific Economic Cooperation (APEC) forum. This would eliminate tariffs and in some cases liberalize services in chemicals; energy equipment and services; environmental goods and services; fish and fishery products; gems and jewelry; medical and scientific instruments; toys; and forest products. Meaningful participation by Japan in the fishery and forest products sectors would be essential to success.

The second dimension of institutional reform would promote transparency, allow the WTO to facilitate trade and participation for less developed nations, help it coordinate more effectively with international bodies in other fields, and continue to strengthen public confidence in the WTO as an institution. Here we would hope to take up such issues as:

- *Trade facilitation.* Most of the world's regional trading arrangements—ASEAN, APEC, the European Union, Mercosur, NAFTA, the proposed FTAA—contain a critical element of trade facilitation, often beginning with customs reform to reduce transaction costs and make trade more efficient. The WTO can help accomplish this on a much broader scale.

- *Capacity-building.* We need to narrow the growing disparity between the rich countries and the poor countries. We have to ensure that the WTO can work effectively with member economies and other international institutions, particularly with respect to the least developed nations, to ensure that they have both access to markets and technical assistance to meet the kinds of obligations that will help them grow into reliable trading partners.

- *Addressing the intersection between trade and environmental policies.* As trade promotes growth overseas, we must at the same time ensure clean air, clean water and protection of our natural heritage, as well as effective approaches to broader questions like biodiversity and climate change.

- *Addressing the intersection between trade and labor.* Again, as in our domestic economy, growth can and should be accompanied by safer workplaces, elimination of exploitive child labor and respect for core labor standards. The WTO in particular can work in more coordination with the International Labor Organization on some of these issues. As the President has announced, the US will provide funds for a new multilateral program in the ILO to provide technical assistance for international labor rights initiatives, and through our own Department of Labor will help our trading partners strengthen labor law enforcement. These and other such efforts should be a focus of renewed cooperation with the ILO.

- *Coordination with the international financial institutions,* in a world where the separation of trade from financial policy has become entirely artificial. The WTO must work more effectively with the IMF and World Bank to achieve their common goals of a more stable, predictable and prosperous world.

- *Transparency.* We will also seek reform, openness and accountability in the WTO itself. Dispute settlement must be transparent and open to the public. Citizens must have access to panel reports and documents. Civil society must be able to contribute to the work of the WTO, to ensure both that the WTO can hear from many points of view including consumer, labor, business, environmental and other groups, and that its work will rest on the broadest possible consensus.

With respect to the expedited negotiating agenda of this Round, we are now consulting with Congress, industry, and other interested parties on a detailed negotiating agenda for talks which would begin after the Ministerial. While the final scope of the agenda is yet to be determined, we believe that at a minimum they should include such issues as:

- *Agriculture,* where we envision broad reductions in tariffs, the elimination of export subsidies, and further reductions in trade-distorting domestic supports linked to production. We must seek transparency and improved disciplines on state trading enterprises, seek reform of the EU's Common Agricultural Policy, and ensure that the world's agricultural producers can use safe, scientifically proven biotechnology techniques without fear of trade discrimination.

- *Services,* in which we hope to see specific commitments for broad liberalization and market access in a range of sectors, including but not limited to audiovisual services, construction, express delivery, financial services, professional services, telecommunications, travel and tourism, and others.

- *Government procurement,* in which purchases are over \$3.1 trillion per year, much of it in sectors where America sets the world standard: high technology, telecommunications, construction, engineering, aerospace and so forth. At present, only 26 of the 133 WTO Members belong to the plurilateral WTO Government Procurement Agreement. We thus look to bring more countries under existing disciplines.

- *Intellectual property,* where our efforts to ensure full compliance with the existing provisions of the Uruguay Round will be combined with campaigns against piracy in newly developed optical media technologies such as CDs, CD-ROMs, digital video discs and others; and end-user piracy of software. This agenda item is particularly vital in the information age.

- *Industrial tariff and non-tariff barriers,* where we will seek to continue our progress in reducing bound and applied tariff levels, and continue to address non-tariff measures in industrials sectors.

- A *forward work-program* on newer issues for the multilateral system to consider, including how competition and investment policies help to assure fair and open trade, how the WTO can help create an international pro-competitive regulatory climate, particularly in services, and how it might further advance our efforts against bribery and corruption.

We are also exploring ways to more fully integrate the least developed countries, particularly in sub-Saharan Africa, into the system. This includes both seeking deeper commitments, and technical assistance in fulfilling those commitments, and the African Opportunity and Growth Act now under consideration in the House.

Finally, I am pleased to state that new market-opening provisions in financial services trade have entered into force, effective March 1, as a result of the 1997 WTO Financial Services Agreement. In the negotiations that concluded in December 1997, we obtained market access commitments in banking, insurance, and securities, from a wide range of countries including the key emerging markets of primary interest to U.S. industry. The agreement covers an overwhelming share of global trade in this sector, including the most important international financial services markets and encompassing \$38 trillion in global domestic bank lending, \$19.5 trillion in global securities trading, and \$2.1 trillion in world wide insurance premiums, accounting for approximately 95% of bank lending, stock turnover, capitalization of stock markets and insurance premiums.

Participating countries had until January 29, 1999, to complete any necessary domestic procedures and formally notify the WTO of their acceptance of the protocol for bringing their commitments into force. Fifty-two countries, including the United States, met the deadline. We are concerned that 18 countries did not meet the deadline. But, in consultation with this Committee's staff, staff of other relevant Committees, and our private sector, we concluded that a two-part strategy best served U.S. interests. First, we want our companies to be able to benefit from legally enforceable commitments in these 52 countries, which account for the overwhelming share of international trade in banking, securities, and insurance. Second, we will work to ensure that the remaining countries recognize that we and other WTO Members expect them to ratify the agreement and bring their commitments into force as soon as possible. We have no information to date that would lead us to believe that they will do otherwise. With this strategy in mind, we have agreed to bring the agreement into force on March 1 with respect to the 52 countries that have ratified to date. We continue to press the remaining countries, in capitals and in Geneva, to follow through on their undertakings and ratify the agreement.

2. *Regional Trade Agenda*

At the same time, we are pursuing an active agenda in each region of the world. A brief review is as follows:

Canada—With Canada, our largest trade partner, we have serious concerns on a range of agriculture matters. We took an important step last December by concluding a market access package opening opportunities for American grain farmers, cattle ranchers and other agricultural producers. We will continue our work in these areas this year. We will also address major market access impediments to our magazine publishers and other media and entertainment industries. We will also continue to enforce our bilateral sectoral agreements. At the same time, we intend to work with Canada on bilateral issues of mutual interest, and on negotiations toward the Free Trade Area of the Americas and at the WTO where we share many goals.

Mexico—Trade with Mexico has expanded rapidly since passage of the North American Free Trade Agreement—Mexico is now our second largest goods export market after Canada. We will continue to monitor implementation of Mexico's NAFTA commitments, scheduled to be complete by 2008, and address bilateral issues including land transportation, corn syrup and sugar, and telecommunications barriers as well as piracy in intellectual property rights. We have also stepped up our efforts in the trilateral work program now underway in more than 25 Committees and Working Groups of the NAFTA signatories, with the intention of maximizing our gains under the NAFTA.

Western Hemisphere—The Miami and Santiago Summits of the Americas have called on us to complete work on a Free Trade Area of the Americas no later than the year 2005. This year, in accordance with Summit directions, we intend to achieve "concrete progress" toward the FTAA in our nine Negotiating Groups and through business facilitation and other measures. At the same time, we will seek approval from Congress of an expanded and improved Caribbean Basin Initiative with benefits similar to those now accorded Mexico and Canada.

Europe—We are working to remove barriers and strengthen trade relations with the EU through the Transatlantic Economic Partnership begun last year. This includes negotiations on seven separate agenda items: technical trade barriers, agri-

culture (including biotechnology and food safety), intellectual property, government procurement, services, electronic commerce and advancing shared values such as transparency and participation for civil society. We are also working to ensure the protection of American interests as the EU expands to include Central and Eastern European nations. At the same time, we are enforcing European compliance with dispute settlement decisions and will address problems in our trade relations both bilaterally and through the new negotiating Round President Clinton has proposed.

Asia—Under the Asia-Pacific Economic Cooperation (APEC) forum we are looking long-term toward free and open trade in the region. This year, as I noted earlier, we will seek WTO consensus on the nine-sector liberalization package begun in APEC, and begin work on six additional sectors. We will also address bilateral issues with Korea, the ASEAN nations and other Asian trade partners. This will include seeking Normal Trade Relations with Kyrgyzstan, Mongolia and Laos, and possibly negotiating a broad trade and commercial agreement with Vietnam.

Japan—In trade relations with Japan, our largest overseas trade partner, we will continue our intense and sustained effort to open and deregulate the Japanese market. We have concluded 35 bilateral trade agreements with Japan since 1993; we monitor their implementation closely and enforce them vigorously.

We will also address sectoral issues in Japan including steel, insurance, glass, film and other sectors. For example, we will be addressing a wide range of primary and third sector issues in consultations with Japan on insurance scheduled for this week. And as I noted earlier, we are pursuing an ambitious set of goals under the Enhanced Initiative on Deregulation and Competition Policy, both in individual sectors and in broader structural issues. Building on discussions at recent Vice Ministerial-level talks in Tokyo, we are looking to compile a substantive package of measures to deregulate Japan's economy that our leaders can endorse when Prime Minister Obuchi visits the United States in May as well as to agree by then on concrete measures Japan will take to address outstanding bilateral issues. We are also working to eliminate specific market access barriers in Japan through WTO dispute settlement, as well as through APEC and WTO negotiations and other regional and multilateral fora.

China—In our bilateral relationship with China, broadly speaking we will monitor and strictly enforce our agreements on intellectual property and market access with China, and address bilateral trade problems in agriculture, direct marketing and other areas. Most recently, this has included an advance of fundamental importance to American farmers and ranchers: the Agreement on Agricultural Cooperation concluded during Premier Zhu Rongji's visit last week. This will immediately lift unfair bans imposed due to unscientific sanitary and phytosanitary standards on Pacific Northwest wheat, American meats, and citrus. It has the potential to create significant new markets for these commodities. Citrus producers posit that our resolution of this issue last week will lead to \$700 million in new exports per year to China.

At the same time, we will continue to seek broad market-opening through our negotiations toward China's accession to the World Trade Organization, on which we have made significant progress last week in all areas of concern—agriculture, services, industrial goods and the rules issued addressed in the Protocol—and which I address more fully below.

Africa—USTR is implementing the President's Partnership for Economic Growth and Opportunity in Africa by supporting economic reform, promoting expanded trade and investment ties, and encouraging Africa's full integration into the world trading system by negotiating bilateral agreements, technical assistance and other measures, in particular Congressional approval of the African Growth and Opportunity Act.

A sound policy framework in African countries that opens economies to private sector trade and investment offers the greatest potential for growth and poverty alleviation as well as trade opportunities for the U.S.. Last month, for example, we signed a Bilateral Investment Treaty with Mozambique, and Trade and Investment Framework Agreements, or TIFAs, with South Africa and Ghana. We hope to complete a similar TIFA with the West African Economic and Monetary Union. Broader efforts to encourage full integration of developing countries into the trading system will also bolster our Africa policy. In this regard, we will seek renewal of the Generalized System of Preferences.

Middle East—Building upon our Free Trade Agreement with Israel, we have inaugurated a program that aims to bolster the peace process, while advancing American interests. Starting with a framework of bilateral trade and investment consultations in the region and a newly inaugurated industrial zones program, we will help the Middle Eastern countries work toward a shared goal of increased intra-regional trade. Most recently, we expanded the first Jordan-Israel Qualifying Indus-

trial Zone at Irbid, designated another, and completed a Trade and Investment Framework Agreement with Jordan.

OECD—We strongly support passage of the OECD Convention on Shipbuilding Subsidies and will work with you to ensure its success.

II. ENFORCING THE RULE OF LAW

Second, US trade policy will support and advance the rule of law internationally by ensuring the enforcement of trade agreements and U.S. rights in the trading system.

Much of our enforcement work takes place at the World Trade Organization. We have filed more complaints in the WTO—44 cases to date—than any other WTO member, and our record of success is strong. We have prevailed on 22 of the 24 American complaints acted upon so far, either by successful settlement or panel victory. In almost all cases, the losing parties have acted rapidly to address the problems. We will insist that this remain the case in all our disputes, including those with the European Union on beef hormones and bananas, and with Canada on magazines. The WTO arbitration panel's recent decision in the bananas case, finding \$191.4 million worth of damage from EU policies, is an important indication of the success and utility of this system.

At the same time, the U.S. has complied fully with all panel rulings it has lost, although these are few in number. And we will, of course, use our rights under the NAFTA to ensure open markets to our goods and services in Canada and Mexico.

We continually monitor implementation of WTO commitments. All WTO developing country members are scheduled to fully implement their intellectual property commitments, and all members are required to implement customs valuation commitments by January 1, 2000. We will insist on strict compliance with these deadlines.

Likewise, we are vigilant to ensure enforcement of textile quotas and implementation of textile market access requirements overseas. A number of our trading partners clearly have further work to do in market access, including some of our largest and fastest growing textile suppliers. We have and will continue to aggressively pursue our rights, whether through the consultation process or ultimately through the WTO dispute settlement regime.

U.S. trade laws are also a vitally important means of ensuring respect for U.S. rights and interests in trade. We will continue to challenge aggressively market access barriers abroad using laws such as Section 301, "Special 301" and Section 1377, to open foreign markets and ensure fair treatment for our goods and services, ensure nondiscrimination in foreign government procurement and ensure compliance with telecommunications agreements.

To ensure that we have the maximum advantage of domestic trade laws, the Administration has extended by Executive Order the substance of two laws for which authority has lapsed: "Super 301" and Title VII. We will issue a report on these issues by April 30th.

The Administration is also, of course, committed to full and vigorous enforcement of our laws addressing dumping and subsidies, and on injurious import surges.

III. INTEGRATING TRANSITION ECONOMIES

Third, our trade policy will continue our progress toward integrating China, Russia and other economies in transition into the trading system. This will both advance specific American trade interests, and contribute to our larger goal of a more secure peace in the next century.

This task is the last great step in the process which began with formation of the GATT and continued with the admission of Germany and Japan: the creation of a world-wide trading system which ensures respect for fairness, transparency and the rule of law. Specifically, we are pursuing the accession of 30 economies to the World Trade Organization: Latvia, whose accession is complete and awaiting ratification; and Albania, Algeria, Andorra, Armenia, Azerbaijan, Belarus, Cambodia, China, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Jordan, Kazakhstan, Laos, Lithuania, Moldova, Nepal, Oman, Russia, Samoa, Saudi Arabia, Seychelles, Sudan, Taiwan, Tonga, Ukraine, Uzbekistan, Vanuatu and Vietnam. In all cases we seek a commercially meaningful accession with the greatest possible commitments to all WTO agreements.

As you can see, two groups of economies make up the bulk of these accessions: a set of Middle Eastern nations on one hand, and China, Russia and 16 other nations in transition from communist planning systems to the market. Their entry will make membership in the trading system nearly universal; and the accession of the transition economies will be a fundamentally important step in their domestic re-

forms as well. This would remove large distortions in world markets, dramatically enhance market access for American producers, and bolster international stability by giving these nations a greater stake in world prosperity beyond their borders.

Let me say a few words in particular about the transition economies, because these are the largest nations and largest traders outside the system today. To support rather than undermine both domestic reform in these economies and the rules of the trading system, these countries must be brought into the WTO on commercially meaningful terms. The result must be enforceable commitments to open markets in goods, services and agricultural products; transparent, non-discriminatory regulatory systems; and effective national treatment at the border and in the domestic economy.

Central European countries like Poland, Hungary and the Czech Republic have succeeded, and their experience shows that WTO membership has assisted their domestic economic reform policies. The most recent successful WTO applicants, Latvia and Kyrgyzstan, have had the same experience.

In the months to come, we will negotiate intensely with all acceding economies, including China—the largest prospective WTO member. We made significant progress with China in the months leading up to the visit of Premier Zhu Rongji in all our areas of concern. This includes:

- *Agriculture*—Agreement to apply scientific sanitary and phytosanitary standards; major tariff cuts in meats, dairy, fruits and nuts, and bulk commodities (examples include reducing the beef tariff from 45% to 12% by 2004, and reducing tariffs on soybeans to 3%); the establishment of liberal tariff-rate quotas in all commodities of importance to farm exporters, including wheat, rice, barley, soybeans, corn and others; agreement not to provide export subsidies; and rapid phase-ins of concessions, with significant benefits immediately on accession, all benefits phased in within five years, and all tariffs bound.

- *Industrial Products*—Provision of full trading rights and distribution rights; major tariff reductions in all areas, from 24.6% average in 1997 to 9.44%, with the average tariff for our priority products reaching 7.1% (for example, the tariff on autos will fall from 80–100% to 25% within five years, and tariffs on construction equipment will fall by half); Commitment to meet Information Technology Agreement phaseouts of tariffs on high-tech goods by 2004; and abolition of all quotas by 2005.

- *Services*—Grandfathering of all current licenses, contracts and shareholder agreements; participation in the Basic Telecommunications Agreement and the Financial Services Agreement; very broad distribution commitments, significant liberalization of the insurance sector; opening of the telecommunications sector to foreign investment for the first time; and other significant commitments in these sectors along with banking, audiovisual, travel and tourism, the professions, and others.

- *Protocol*—China must also complete negotiations on a Protocol covering rules with respect to safeguards, dumping, investment restrictions and other matters. The commitments addressed in the Protocol must meet our concerns, and must also be acceptable to other WTO members. Here, we have secured agreement to continue use of “non-market economy” methodology for anti-dumping cases; bans on investment restrictions including offsets, technology transfer requirements, local content requirements and others; product-specific safeguards; measures to address unique features of the Chinese economy such as the high involvement of the government in state-owned enterprises and state-invested enterprises; and others.

The negotiations are far from complete, however. Issues remain to be resolved in three service sectors (banking, securities and audiovisual), and we continue to discuss both substantive issues and duration periods on the Protocol. China must also conclude bilateral market access agreements with other trading partners, and complete significant multilateral work at Geneva before accession. We will not accept anything less than an accession which is commercially meaningful in all these areas, and will consult with Congress closely as negotiations proceed, building upon the 55 separate China briefing sessions we have held with Committees of jurisdiction since 1997 and the many individual meetings Ambassador Barshefsky and I have had with Members.

Likewise, at the most recent summit with Russia (September 1998), President Yeltsin agreed to intensify Russia’s WTO accession efforts. Russia’s current economic difficulties clearly present challenges and Russian Cabinet reshuffling has slowed the process, but we will continue to consult with the Russians toward a commercially viable accession package.

IV. THE 21ST-CENTURY ECONOMY

Fourth, trade policy will help lay the foundation for the 21st-century economy by ensuring that the trading system is compatible with rapid advances in civilian science and technology.

In medicine, environmental protection, agriculture, entertainment, transportation, materials science, information and more, science is advancing at extraordinary speed. This offers the world tremendous potential to increase wealth, raise productivity, improve health care, reduce hunger, protect the environment and promote education. These are also areas in which the United States has a significant comparative advantage.

Under President Clinton, our trade policy has made high technology a strategic priority. Consistent with national security, we have aimed to ease the development and commercialization of new technologies, and ensure strong incentives for scientific and technological progress. We have negotiated far-reaching new agreements in sectors like computers, semiconductors, information technologies and many other areas. This work continues in multilateral, sectoral and regional negotiations.

In the multilateral system, the rapid advance of technology requires us to improve the trading system's institutions and negotiating methods. In a world where successive generations of new products arise in a matter of months, and both information and money move instantaneously, we can no longer take seven years to finish a negotiating Round, or let decades pass between identifying and acting on trade barriers. We will have to move faster and more efficiently, which is a significant reason for the President's call for an accelerated Round.

We must also ensure that trade policy, both in the WTO and in our regional and bilateral negotiations, helps ensure that we can take advantage of our comparative advantage in knowledge industries and other new technologies. Three broad issues cut across many sectors:

Intellectual Property Rights—Our success in this field over the past decade owes a great deal to the work of Congress, both in the Trade Act of 1988 with its creation of "Special 301," and on the Uruguay Round. Today, the vast majority of our trading partners have passed modern intellectual property laws and are improving levels of enforcement. In this area, we will spend a great deal of time ensuring that all WTO members comply with their obligation to introduce full intellectual property protection by January 1, 2000. (For countries, like China, which are not WTO members, we will vigorously monitor compliance with bilateral agreements.)

We have also launched campaigns against worldwide piracy of new optical media technologies, and against end-user piracy of software. These issues are integral parts of our regional negotiating agenda in Asia, Latin America, Europe, Africa and the Middle East. Looking ahead, we must extend protection of intellectual property rights beyond basic laws and enforcement to protect new technologies like genetically engineered plant varieties.

Global Electronic Commerce—In accordance with the President's Global Electronic Commerce initiative, USTR seeks to preserve electronic trade over the Internet as duty-free. At the last WTO Ministerial Conference, in May of 1998, we won agreement to a "standstill" for tariffs on electronic transmissions. As I noted earlier, we will seek to extend that agreement this year. Likewise, in our negotiations toward the Free Trade Area of the Americas, at APEC and in the Transatlantic Economic Partnership, we have created special committees to advise us on ways to ensure all participants can take maximum advantage of electronic commerce.

Biotechnology—A third top priority for us in this area is biotechnology. Among the chief sources of innovation in this field are American agriculture and medicine. USTR will seek to ensure that pharmaceutical companies, farmers and ranchers can use safe, scientifically proven techniques like biotechnology to make agriculture both more productive and friendly to the environment, without fear of encountering trade discrimination. This is a priority for us in the Transatlantic Economic Partnership negotiations and in developing our agenda for future WTO negotiations.

Sectoral—We also have an active sectoral high-tech agenda. This includes, for example, the ITA II agreement I discussed earlier. We are also working closely with our civil aircraft industry to ensure its future and combat foreign, particularly European, subsidies and other unfair practices; and with the semiconductor industry on the appropriate next steps for the international semiconductor agreement. This work extends into many other fields.

V. RISING QUALITY OF LIFE

Fifth, U.S. trade policy seeks to ensure that worldwide as in the United States, trade and growth go together with a rising quality of life, including setting high

standards of environmental protection, the observance of core labor standards, and high levels of consumer protection.

As in our domestic economy, we regard environmental quality and protections for workers as essential parts of economic policy. Trade policy has an important role to play, in coordination with our efforts in other fora, to ensure growing respect for internationally recognized core labor standards and sustainable development worldwide.

1. Trade and the Environment

Our Administration believes that prosperity through open trade and the protection of health, safety and the environment need not conflict, and should be mutually supportive. This is the case in our domestic economy, where in the past three decades our GDP has risen in real terms from \$3.7 to \$8.5 trillion—while our percentage of fishable and swimmable rivers and streams doubled, the number of citizens living in cities with unhealthy air fell by half, and many endangered or threatened species, including the bald eagle, the symbol of American pride, are recovering.

The Preamble of the WTO recognizes this in the international setting, stating that sustainable development is a central objective of its work. Where there are potential conflicts, we should strengthen our ability to resolve them in a manner that protects the environment, health and safety and does not undermine the trading system. This includes working to ensure that the proper expertise is brought to bear on complex technical and scientific issues, particularly those with environmental, health and safety dimensions.

In many cases elimination of trade barriers will also contribute to a cleaner environment and the conservation of natural resources. For example, this can help countries gain access to cost-effective equipment and technology. APEC's work toward an agreement to liberalize trade in environmental goods and services, part of which has now moved to the WTO, can help countries monitor, clean up and prevent pollution, and ensure clean air and water. Likewise, the APEC initiative on energy equipment and services can promote rapid dissemination of efficient power technologies, thus allowing production of power with reduced carbon emissions and contributing to international efforts to address climate change.

At the same time, as the trading system ensures that members avoid using environmental standards as disguised trade barriers, in eliminating barriers to trade we must not compromise on the achievement and maintenance of high levels of environmental, health and safety protection. And the system must work together with multilateral environmental institutions.

We continue to support the effective implementation of the North American Agreement on Environmental Cooperation in conjunction with the NAFTA. Cooperative activities that have occurred as a result of this agreement have improved environmental protection in a number of different areas—for example, an agreement on the conservation of North American birds; the creation of a North American Pollutant Release Inventory; an agreement on regional action plans for the phase-out or sound management of toxic substances, including DDT, chlordane, PCBs and mercury; and the creation of a trilateral working group that has improved the enforcement of environmental protection laws. Benefits have also resulted from the implementation of the Border Environment Cooperative Commission (BECC) which was also entered into in conjunction with the NAFTA. The BECC has fifteen environmental infrastructure projects under construction today, funded in part by the North American Development Bank, including the first wastewater treatment plants in Juarez.

2. Trade and Core Labor Standards

Likewise, the trade system must help to assure the dignity and safety of workers. Here again, we can draw lessons from our experience at home, where since 1970, as manufacturing production doubled, the number of workplace deaths fell 60%. Our efforts here include seeking closer cooperation between the WTO and the International Labor Organization, bolstering ILO capabilities to address exploitative child labor and other violations of internationally recognized labor rights as well as ensuring safe and healthy workplaces, and working with individual trade partners to advance our goals.

At the Singapore WTO Ministerial Conference in 1996, the WTO for the first time recognized the importance of labor standards and cooperative work with the International Labor Organization, while clearly separating advocacy of labor rights from protectionist trade policies. We wish to build on this to ensure that the trading system works more effectively with the International Labor Organization, with businesses and with citizen activists to ensure observance of internationally agreed core labor standards—banning forced labor and exploitive child labor, guaranteeing the

freedom to associate and bargain collectively and eliminating discrimination in the workplace.

We have thus proposed in Geneva that the WTO establish a forward work-program to address trade issues related to labor. We also have raised labor standards in country policy reviews under the Trade Policy Review Mechanism. In these reviews each WTO member's trade regime is examined, and other members are provided an opportunity to raise questions. We have used this opportunity, for example in the recent Swaziland review, to seek clarifications about labor practices that we believe are inadequate.

To bolster these efforts, the President recently announced a \$25 million program to help the ILO work with developing countries to put in place basic labor protections, safe workplaces and guarantee worker rights and enforce their own laws so that workers everywhere can enjoy the benefits of a strong social safety net. (The U.S. has already funded ILO child labor programs in Bangladesh, Thailand, the Philippines, Africa, and Brazil.) These are fundamental human rights and common concerns, and trade policy has a place in addressing them.

We are also taking steps in a number of other areas directly related to trade policy. The Administration has directed the Customs Service to step up its efforts to ensure that items made by forced or indentured child labor are not imported into the United States. USTR is enforcing provisions of existing law that impose penalties for clear violations of worker rights. For example, we partially removed GSP trade preferences from Pakistan over child labor concerns. At the same time, however, the Administration has worked through the Labor Department to develop long-term solutions to the problem, by addressing specific Pakistani industries. As a result, 7,000 children have been removed from jobs stitching soccer balls and 30,000 children from jobs knotting carpets.

Likewise, we are finding ways to address core labor standards as we advance our trade policy goals. The North American Agreement on Labor Cooperation under NAFTA is one example. Another is our recent textile agreement with Cambodia, which includes provisions requiring Cambodia to improve the enforcement of its labor laws in the garments sector.

VI. ADVANCING AMERICAN VALUES

We will seek to advance basic American values and concepts of good governance, by making the institutions of trade more transparent, accessible and responsive to citizens.

The President has said that, as trade grows, the rules of trade do more to ensure that markets are open to our goods and services. The trading system coordinates more fully with environmental, labor and financial institutions, and the need for transparency, accessibility and responsiveness grow. This is natural and a development we both support and promote.

One principal forum here is the WTO, where we are seeking agreements on more rapid release of documents, ensuring that citizens and citizen organizations can file amicus briefs in dispute settlement proceedings, and that dispute settlement proceedings be open to public observers. In the interim, President Clinton has made a standing offer to open any dispute panel involving the United States to the public, if our dispute partner agrees.

A second forum is the FTAA negotiations, in which—for the first time in any trade negotiation—we have created a Civil Society Committee to give business associations, labor unions, environmental groups, student associations, consumer representatives and others a formal means of conveying concerns and ideas to all of the governments involved in the talks.

A third is our encouragement of new Transatlantic Dialogues with the European Union for consumers, labor and environment as part of the Transatlantic Economic Partnership. Through this effort we are promoting our shared values with Europe in the activities and negotiations we are undertaking as part of the TEP and multilaterally.

FY 2000 Budget Level

Over the past six years, as I noted earlier, we have negotiated over 270 trade agreements since 1992, and our volume of bilateral trade has expanded by nearly three quarters of a trillion dollars. This has inevitably meant a heavier workload for the USTR. Our budget request will allow us to meet this workload while protecting our tradition as a small and efficient agency. The FY 2000 budget authorization request will support USTR's FY 2000 work agenda. This request represents the right resource level for allowing USTR to implement the ambitious work agenda I have outlined today.

For FY 2000, the budget request proposes 185 FTEs and \$26,501,000 in new budget authority to support this trade agenda. This represents a net increase of \$1.8 million and 7 career FTEs over FY 1999. We would use the \$1.8 million increase in five targeted areas:

- \$1.2 million to fund the expected cost of legislated employee pay raises, as well as non-pay inflation in areas like rents, utilities and travel;
- \$400,000 for 7 new career positions in areas with growing workloads. Six of the seven new positions would be Trade Specialists and one would be a support position. Of these positions: 2 each are in USTR's Agriculture and Africa units; and one each are in Japan, China, and Western Hemisphere offices;
- \$400,000 for negotiator travel to meet rising number of trips to China, Japan, Africa and other distant and costly negotiating sites;
- \$225,000 for security-related projects in USTR's Geneva and Washington offices to guard against the threat of terrorism, and to protect sensitive and classified information from unauthorized access; and \$100,000 is to meet a growing demand for interpretation and translation services for use in negotiations, enforcement proceedings and reviewing country proposals.

This represents a total budget increase of \$2.225 million, which is partially offset in FY 2000 by a reduction of \$498,000 in funding for Y2K improvements made available in FY 1999 on a one-time basis under the Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277). Thus the net increase is \$1.8 million.

Mr. Chairman, USTR needs every penny of the \$26.5 million we are proposing in the FY 2000 budget authorization request. We are keenly aware of our responsibilities for first attempting to absorb the requested cost increases by reordering work priorities, cutting administrative overhead, improving management or otherwise economizing.

Yet, USTR has virtually no capacity to absorb higher costs in FY 2000. Two-thirds of the USTR appropriation supports the salaries and benefits of employees, and the remaining one-third pays for building rent, utilities, security, travel to negotiating sites and other direct day-to-day operating expenses. Unlike larger Federal agencies, we do not have the option of cutting back in categories like grants and contracts, nor do we have the option of trimming layers of management or administration. We have already accomplished an enormous amount of "belt-tightening" in the last 6 years, and any further budget savings will come at the expense of our core negotiation, policy coordination and enforcement programs.

In fact, between FY 1991 and FY 1997, USTR's appropriations for basic operations rose by less than \$1 million, roughly 4.4 percent over the 6-year period, or about seven-tenths of one percent annually. Over the 6 years, we had to absorb about \$400,000 a year, just to meet the cost of legislated employee pay raises and rising costs in non-pay categories like utilities, office rent, airfares and per diem charges. We absorbed a cumulative total of nearly \$2.5 million through a series of financial management improvements and cuts in administrative overhead. Let me give you some examples:

- We rescinded authority for Assistant USTRs to approve their own travel, and instituted a rigorous review process that requires that the Chief of Staff approve every single trip. Such individual attention has not only reduced the number of trips, but the number of persons going on the same trip;
- We mandated use of frequent flyer coupons in order to increase the number of trips with the same amount of funds. In the last five years, we have funded 126 trips with bonus coupons, saving the Government \$275,000 in the cost of airplane tickets;
- We also established policies that required all employees to fly in economy class, unless the trip exceeds 12 hours of flying time—a more rigid rule than the government wide standard;
- We reduced the amount of office space we used in the Geneva Office, cutting rental costs by several hundred thousand dollars;
- We reduced our computer staff by more than half, saving more than \$1 million in payroll expenses, while at the same time upgrading the computer network and installing an innovative system for receiving classified State Department cables, which reduced the time it takes our negotiators to read cables and the expense of transporting and coping hard copy versions of the cables.

These are just some of the ways that USTR has economized over the past several years. These actions have not only resulted in an agency that is "lean and mean" by any measure, but one that has been cut to the quick, which finds itself unable to absorb the kind of budget needs presented in the USTR's FY 2000 budget request. For this reason, we need the support of the Committee, and the Congress, in providing the full \$26.5 million and 185 FTEs in FY 2000.

One last point. USTR is a small agency. But I believe we have some of America's finest public servants. Our staff is talented, talented, works long hours, and delivers results for the America people. On their behalf, I am proud to present this budget to the Subcommittee today.

CONCLUSION

In conclusion, Mr. Chairman, much has changed in the international economy in the fifty-one years since the United States led 23 countries in creation of the GATT. Our national interest in economic events beyond our borders has grown, our people have found new opportunities and new challenges in trade, and many new nations have become active in trade.

We have developed an agenda that will cement the progress we have made, and take it forward into a new century. I am very proud to be associated with the staff of the Office of the U.S. Trade Representative in this effort. The work ahead is challenging. But I can assure you and the members of the Subcommittee that we are ready for these challenges. With the approval of our appropriation request and the continued support of the Subcommittee, I am confident that we can continue successfully to carry out our mission and meet the challenges before us.

This concludes my formal statement. I would be pleased to answer any questions you may have.

Thank you very much, Mr. Chairman and Members of the Subcommittee.

Chairman CRANE. Thank you, Mr. Fisher.
Mr. Kelly.

STATEMENT OF HON. RAYMOND W. KELLY, COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. KELLY. Thank you, Mr. Chairman, Mr. Levin, other Members of the Committee.

It is a privilege to appear before the Subcommittee today to present the U.S. Customs Services recent accomplishments, future plans, and fiscal year 2000 budget request. I have a prepared statement, which I asked to be included in the record in its entirety.

Chairman CRANE. Without objection, so ordered.

Mr. KELLY. Before I begin, I want to thank the Members gathered here for the strong support you have given to customs, trade, and enforcement activities.

Customs is the oldest U.S. law enforcement agency, one with a proud history and an extraordinary record of achievement. Our mission is not an easy one, serving, as we do, as the front line of defense at our Nation's borders and as the guardian of our systems of lawful international trade, the lifeblood of our economy. But we continue to find ways to rise to the challenges we face every day, using the resources that we have been given to the best of our ability.

Nineteen ninety-eight was an outstanding year for Customs. We seized more heroin, cocaine, and marijuana than any other law enforcement agency—over 1.1 million pounds. That is more than a million pounds of drugs that won't find its way onto our streets or into our schools and communities.

Our trade activity was no less prolific. Customs processed 19.7 million trade entries, 1.8 million more than in 1997, and a total of \$955 billion in goods. We maintained the total trade compliance rate of 81 percent and a compliance rate for imports in primary focus industries of 84 percent. And we are continuing to try to improve this rate. Customs processed almost 460 million passengers

and pedestrians, 13.1 million more than 1997. We also moved 135 million conveyances through our borders and port of entry, 4.4 million more than the previous year.

While 1998 was an extraordinary year for Customs, we are by no means resting on our many positive results. As we look toward the future, Customs has laid out an ambitious agenda to meet the challenges of global trade. One of our most critical issues in this regard is trade automation. Investments in systems modernization remain a top priority for Customs.

On the enforcement side, our successes last year ranged from high-profile narcotics seizures to major money laundering stings, to the successful dismantling of Internet child pornography ring. We continue to build on the success of Operation Brass Ring, our major counter-smuggling initiative of 1998.

Customs set a new precedent for interdiction efforts with this operation, which utilized the many innovative tactics devised by our field personnel to catch drug smugglers. Thanks to our success with Brass Ring, we are headed for another record year for narcotics seizures in 1999. In May 1998, Customs concluded Operation Casablanca, the largest, most comprehensive drug money laundering case in the history of U.S. law enforcement. The investigation spanned 5 years, involved the work and dedication of more than 200 Federal agents, resulted in the arrest of more than 168 individuals, the indictment of three Mexican banks, and the seizure of large quantities of drugs and laundered money.

Customs has also extended its crime fighting expertise into the world of cybercrime. Operation Cheshire Cat led Customs agents via the World Wide Web into the diabolical world of international child pornography and sexual exploitation. What we uncovered in Cheshire Cat was an international alliance of approximately 200 sexual predators operating in 47 countries. Thirty-five search warrants were executed, resulting in 13 arrests in the United States, and more arrests are currently pending.

I mentioned just a few of the many tough, challenging, and successful investigations our agents carried out last year. To describe them would take weeks of hearing.

I provide these examples to highlight the danger diversity and complexity involved in the investigations Customs personnel handle day in and day out. As proud as we are of these accomplishments, we continue to work on areas within our organization that need to be strengthened.

We have developed a document referred to as Action Plan 1999. It identifies the actions under way to improve Customs management and procedures in areas ranging from integrity to training, to automation.

I know many of you may already have copies of the plan, but I certainly can make new versions available for anyone who needs them.

One of the key priorities in our action plan is the intensive review of our passenger processing services. As many of you know, Customs carries out personal searches on a small percentage of the over 70-million airline passengers we process each year. When allegations arose that Customs was engaged in racial bias in the selection of travelers for personal searches, we responded rapidly. Just

last week, we announced the formation of an independent commission to review our passenger search procedures. The Customs Personnel Search Review Commission, made up of prominent public leaders in race relations and government affairs, will have unfettered access to Customs personnel and facilities. My sincere hope that the Commission will air this issue completely. There is simply no place for bias or even a perception of bias in the Customs service.

I have offered you a sense of Customs' recent past and what is happening in our present. Now, let me share with you a sense of our future. One of the most important issues for the Customs Service, as I mentioned, is the movement toward modernization of our automated system. Continued reliance on a 16-year-old automated commercial system, or ACS as we call it, poses great risks for Customs and for the U.S. trade. ACS simply cannot support the business of the future. Recognizing this early on, Congress passed the Customs Modernization Act in December 1993. The Mod Act compelled U.S. Customs to redesign its trade compliance process and the automation that supports it. We responded with the development of the concept of ACE, our commercial system for the 21st century, that is the Automated Commercial Environment.

ACE will help us manage the dynamic growth in global trade. It will allow us to do business the way business does business. It will also support our enforcement efforts by enhancing compliance. Customs will have better intelligence on shipments arriving in our ports, allowing for more focus on high-risk groups and less time spent on costly time-consuming inspections. Customs wants to calm whatever doubts remain as to our ability to manage and maintain this system.

We hired a Chief Information Officer with extensive experience in enterprise architecture and major systems acquisition. We reorganized the Office of Information Technology to improve accountability and program control. And we are seeking the funding to hire a prime contractor to help plan, implement and manage our information technology modernization efforts.

The contractor will be responsible for developing the software programs that customs will adopt. We will also assume the risks involved in delivering ACE components and related software projects. Following the successful path of other agencies, we have also hired a congressionally-chartered, federally-funded research and development center, MITRE, as it is called. The center will help guide every phase of systems acquisition from management of the prime contractor to systems implementation and performance review. We should have this center on board in May. All of these actions reinforce the commitment Customs has made to getting ACE done and getting it done right.

Our biggest challenge now is to keep our current ACS system operational until ACE comes on line. Nothing less than the unimpeded flow of trade is at stake. I am confident that Customs has the support, the experience, and the safeguards in place that we would need to now move forward with ACE. With the continued assistance of the Congress, Customs and the Trade will get the system we both want and the system we both need.

That concludes my remarks, Mr. Chairman.

[The prepared statement follows:]

Statement of Hon. Raymond W. Kelly, Commissioner, U.S. Customs Service

Good morning, Mr. Chairman and Members of the Subcommittee. It is a privilege to appear before the Subcommittee today to present to you our recent accomplishments, future plans, and the fiscal year 2000 budget request. Before I begin though, I would like to personally thank you for the strong support you have continued to provide to Customs. It has been a challenging year for us and I am proud to play a part in the effort we share to protect the Nation's borders and ensure the Nation's prosperity.

Customs is an agency with a long and rich history, many proud traditions, and an extraordinary record of achievement. We recognize that our mission is not an easy one-standing as the front line of defense at the Nation's borders—but we continue to find ways to rise to the challenges that we face every day.

ACCOMPLISHMENTS

Operation Casablanca

In May 1998, Customs concluded Operation Casablanca, the largest, most comprehensive drug money laundering case in the history of U.S. law enforcement. This 3-year investigation conducted by our Los Angeles office exposed a relationship between a large number of Mexican banks and the Cali and Juarez drug cartels. This relationship allowed the drug cartels to launder their U.S. drug proceeds through accounts opened by corrupt bankers.

The case was made possible because of the extraordinary undercover work performed by Customs special agents. They posed as money couriers and Cali Cartel operatives. They were so convincing that members of the Juarez and Cali Cartels introduced them to corrupt Mexican and Venezuelan bankers, who, in turn, introduced the undercover agents to other corrupt bankers. Members of the Juarez Cartel were so confident in the undercover special agents that they introduced the agents to high level members of the Juarez Cartel.

When it was over, 26 Mexican banking officials from 12 commercial Mexican banks were indicted on charges of money laundering. Three Mexican banks, Confia, Banca Serfin, and Bancomer, and five associates of Venezuelan banks, were also indicted on money laundering charges. Through the course of the investigation, Customs special agents arrested 168 people and seized over \$100 million. In addition, Customs special agents seized over four tons of marijuana and two tons of cocaine from both cartels.

Operation Cheshire Cat

Operation Cheshire Cat, a Customs-initiated worldwide investigation into the diabolical world of international child pornography and child sexual exploitation, exposed to the world the dark side of the Internet—a side that is invasive, insidious and incalculable. This one investigative action uncovered an international alliance of approximately 200 sexual predators in 47 countries including Australia, Great Britain and the United States.

Before Operation Cheshire Cat, many people in the U.S. had a tendency to think of child pornography and child sexual exploitation as random acts involving nameless victims in some places far away from where they live. Operation Cheshire Cat proved those thoughts to be false. Forty-one search warrants were executed in big cities and small towns throughout the U.S. To date, 16 suspects have been arrested and more are anticipated. Four suspects committed suicide prior to arrest. One of the most gratifying results of this operation was that 18 children who had been sexually molested by strangers, neighbors and even their own relatives, were located and referred to social services for counseling. The ring of sexual predators identified during Operation Cheshire Cat is indicative of the level of computer expertise possessed by criminals encountered by Customs in cyberspace. This particular ring utilized advanced communication methods and even an encryption technology, developed by the KGB for use during the Cold War, to distribute its morally abhorrent smut. Such expertise and technology have greatly complicated law enforcement's activity in this area.

Operation Brass Ring

Operation Brass Ring was a 180-day enforcement effort intended to dramatically increase drug seizures and the outbound illicit proceeds generated from the narcotics business at high-risk ports of entry. Enforcement action focused on the use

of innovative, unpredictable and random enforcement operations at air, sea and land border ports of entry. It was a multi-faceted partnership effort that included inspectors, special agents, and union representatives. Unique in Customs enforcement history, Operation Brass Ring was field-based and field-driven, with emphasis on local solutions to local problems and sharing of best practices nationwide. Although 42 high-risk ports were initially required to participate in Operation Brass Ring, ultimately 129 ports of entry submitted and carried out action plans as part of this historic operation.

As a result of Operation Brass Ring, total amounts of cocaine, marijuana and heroin seized from February 1 to July 31, 1998, increased by 45 percent over the same time period as the last year. The amount of marijuana seized increased by 47 percent, the amount of cocaine increased by 32 percent and the amount of heroin increased by 13 percent. Controlled deliveries skyrocketed by an incredible 100 percent during the same time period. The controlled deliveries resulted in an 82 percent increase in arrests. Outbound currency seizures experienced a 59 percent increase in the amount of currency seized compared to the same time period in FY 1997.

Operation Brass Ring seizures totaled 548,262 pounds of marijuana, 72,535 pounds of cocaine, and 1,280 pounds of heroin. Customs also seized \$40.6 million in outbound undeclared currency and conducted 220 controlled deliveries, resulting in 414 arrests. Customs will continue to build upon the success of this operation by capitalizing on the creativity and innovation that Operation Brass Ring engendered.

Building upon the success of Operation Brass Ring, Customs established the Joint Narcotics Interdiction Plan (JNIP). The goal of JNIP is to maintain the momentum of Operation Brass Ring and to continue the increase of narcotics and currency seized and controlled deliveries conducted. The long term goal of this initiative is to achieve a 20 percent increase in these areas over the next 4 years. This approach supports the Office of National Drug Control Policy drug interdiction plan.

The JNIP requires each Special-Agent-in-Charge (SAIC) and Customs Management Center (CMC) to submit a comprehensive narcotics interdiction plan and will include a plan for each Resident-Agent-in-Charge and Port Director in their area of responsibility. The JNIP will be agreed to and signed by each SAIC and CMC Director and will have included the National Treasury Employees Union (NTEU) in the formulation of all plans within their respective areas. Field visits and quarterly reports will be used to review the progress of the JNIP.

Financial Management

The General Accounting Office (GAO) removed Customs from its list of high-risk federal government programs this year because of the significant improvements made in our financial management. Customs, in fact, was the only agency to be removed from the list this year.

Customs demonstrated that it had addressed the weaknesses that originally contributed to its designation as a high-risk organization. These weaknesses involved revenue and trade compliance issues; asset management and control issues; core financial system issues; and computer security, access, and development issues.

The corrective actions which influenced the decision to remove the high-risk designation include: (1) receiving unqualified opinions on financial statements for the past two fiscal years; (2) statistically sampling commercial importations at ports of entry to better focus our enforcement efforts by projecting the level of the trade community's compliance with trade laws and associated loss of revenue; (3) improving the ability to detect and prevent duplicate or excessive drawback claims by enhancing the Automated Commercial System to identify those drawback claims exceeding the total amount of duty and tax paid on related import entries; and (4) aggressively pursuing collection of delinquent receivables, resulting in collections of over \$37 million. Customs currently has several ongoing initiatives which will continue to improve Customs financial management.

Performance Goals Met or Exceeded

Customs had an outstanding year in narcotics enforcement results and in currency and monetary instrument seizures. It also continued to make progress in some key trade areas. This is even more significant since the results achieved were made while processing 19.7 million entries, worth an estimated \$955 billion. This is more than 1.8 million entries above last fiscal year. Customs also processed almost 460 million passengers and pedestrians, 13.1 million more than last fiscal year, and 135 million conveyances, 4.4 million more than last fiscal year.

Seizures of heroin, cocaine, and marijuana were above expectations. We seized approximately 1.12 million pounds of these three narcotics which exceeded our goal by 167,000 pounds. These impressive results were, in part, the result of Operation

Brass Ring. Overall, Customs accounted for a record number of seizures—more than 1.3 million pounds of all narcotics or controlled substances. As in past years, Customs continues to seize more illegal drugs than any other federal, state, or local law enforcement agency.

Customs also exceeded its goal for seizures of currency, bank accounts, and other monetary instruments involving financial investigations. It ended the year with seizures totaling \$362.9 million or 166 percent above projections. The culmination of Operation Casablanca contributed to this significant total with the seizure of over \$100 million from Mexican and U.S. bank accounts. Overall, Customs seized or participated in the seizure of \$426 million in currency and other monetary instruments. Of that amount, \$68.4 million was outbound undeclared currency seized at ports as it was being smuggled out of the U.S. in passenger baggage, vehicles, and cargo.

In the area of Trade Compliance, Customs successfully maintained a high compliance rate, and refined the analysis by which noncompliance is detected and addressed. Recognizing that all discrepancies are not equal, Customs convened two task forces, one internal and one in cooperation with the trade community. These groups determined the types of discrepancies to be considered materially significant, as opposed to “letter-of-the-law” discrepancies. The overall import compliance rate was maintained at 81 percent, while the compliance rate for imports in primary focus industries increased from 83 percent to 84 percent. Considering only the materially significant discrepancies, the compliance rate was 89 percent overall, and 90 percent for imports in the primary focus industries.

Customs has also undertaken a new initiative called “Focus On Non-Compliance” (FONC). This initiative analyzes resource expenditures as compared to discrepancies found, and has allowed Customs to see which efforts are paying off and which are not. This improved focus and other improvements have resulted in Customs detecting more noncompliance. Becoming more effective at finding noncompliance has the effect of lowering measured compliance levels, but results in improved compliance in the long term. These refinements make year-to-year comparisons of performance difficult at this time, but the targeted improvements in compliance achieved by Customs are significant and well-supported.

Finally, the air passengers’ compliance rate increased slightly over last year to 97.7 percent. The rate of participation in the Advance Passenger Information System by the airlines improved to 75 percent, which is 10 percent above projected results.

Customs attained these accomplishments with a remarkably high level of support from the trade community and the public. Operation Brass Ring had the support of the trade community, even though they knew that it would mean more intensive examinations of imported goods. In addition, customer surveys from the trade and the public reflect satisfaction with Customs performance.

AMBITIOUS AGENDA

Despite all the areas in which Customs is achieving unprecedented success, we recognize there are areas of our organization which need to be strengthened. The following are some of the areas of responsibility we will be changing in order to produce a more disciplined and effective Customs Service.

Integrity

The Office of Internal Affairs (IA) currently has changes underway to protect and enhance the integrity of Customs through various initiatives, programs, and processes. Most recently, Customs as a whole, with IA as pivotal participants, commenced a “strategy for action” to reshape our capability to swiftly and effectively address integrity violations and other allegations of misconduct. Specifically, the process for reporting allegations of misconduct has been standardized and streamlined. In addition, the manner in which IA intakes, evaluates, and processes cases has been centralized at Headquarters. Specialized training for investigators and fact-finders has been developed and is currently being conducted. Further, we have established a servicewide Discipline Review Board to ensure fair and consistent imposition of discipline in misconduct cases. Finally, we are raising to an appropriate level in the Customs organization, the authority to propose, decide, and settle disciplinary actions; thus, increasing decision-making consistency and accountability.

IA is also working to enhance an automated case management system and integration with the Disciplinary and Adverse Action Tracking System (DAATS). Systems improvements will enhance Customs efficiency in reporting and monitoring investigations and administrative inquiries. Moreover, systems enhancements will permit useful analysis of trends and timeliness and improve identification of corrective actions. The Office of Human Resources Management is making comparable

changes in its DAATS, in tandem with IA. When completed, these changes will allow Customs to track all identified allegations against Customs employees, from initial allegation through investigation, resolution, and the appeals process, if invoked. These changes are a measured step to insure that aspects of timeliness and equity of treatment are components of both the public and employee view of the Customs discipline process. Design work is commencing on a replacement for the IA and Human Resources systems.

Finally, we have recently announced the selection of a new Assistant Commissioner for IA who has proven expertise as a career prosecutor and strong credentials working in the Department of Justice's Public Integrity Sector. This new AC will give Customs the leadership and credibility necessary to ensure the most effective function of our IA operations.

Self Inspection

One of our highest priorities is to build management accountability and strengthen management oversight throughout Customs. We are redesigning our Management Inspection Program to establish a self-inspection framework for our managers and to increase the frequency of on-site inspections by our Management Inspections Division.

Customs has redirected the efforts of our current Management Inspection Program from conducting comprehensive inspections primarily of our ports and Special Agents-in-Charge offices every 5 to 6 years to the development of a self inspection program. We want managers at all levels to evaluate their success in managing, assessing, reporting, and certifying the state of their operations every six months. Our Management Inspections Division will conduct inspections every 18–24 months to verify and validate the self-inspection results of every unit. The redesign is well underway. The first full self inspection by all units began in late March; inspections by our Management Inspections Division will begin in July.

Management Accountability Model

To ensure that the service Customs provides to the trade and the traveling public is delivered in a consistent and uniform manner, we have implemented a Management Accountability Model which strengthens the Headquarters and field organizations by establishing greater management accountability and oversight within the organization. As such, we have created clear and specific service standards for which we intend to hold our employees and managers accountable.

Our initial goal in implementing this model was to clarify managers' roles and responsibilities, improve effectiveness, achieve operational uniformity and enhance levels of service. We have accomplished this by clearly defining roles and responsibilities for Headquarters, Customs Management Centers (CMC) and Port managers; strengthening the Headquarters and CMC organizations in order to clarify lines of authority and provide greater operational oversight; holding managers accountable for their actions and operations; establishing a national Management Inspection Program; and establishing uniformity in policy dissemination, implementation, execution and oversight.

Realigning organizational authorities

Because Customs aviation and marine programs have such complementary missions, it is critical that the activities of these two interdiction components be coordinated. This is essential to ensure the employment of a cohesive interdiction strategy necessary to fulfill the Customs mission in support of the National Drug Control Strategy. In recognition of this, Customs is consolidating its Aviation and Marine Programs. The intent of this consolidation is to provide a better integrated, more efficient, and robust interdiction capability. Beginning in calendar year 1999, the Aviation and Marine Program began implementing an ambitious strategy to improve its efforts to combat marine smuggling through the creation of a unified Air and Marine Interdiction Division. Currently comprised of 114 operational aircraft and 87 vessels, the mandate of Customs Air and Marine Interdiction Program is to disrupt the flow of drugs and other contraband into the United States by vessel and/or aircraft.

This mission will be accomplished through implementation of a three-pronged, intelligence, interdiction and investigative approach. This approach is already in use for aviation interdiction and will now encompass the marine threat as well, which is complemented by our ongoing coordination with the U.S. Coast Guard.

Customs aviation assets and personnel will continue to support the President's International Drug Control Strategy, Ambassadors and Country Teams by providing detection and monitoring, interceptor support and training for employment in Mexico, Central and South America, and the Caribbean.

In order to enhance the effectiveness and efficiency of the Office of Investigations (OI), three new SES Headquarters positions (Executive Directors, East, Central and West) were recently created. Responsibilities include overseeing and directing the investigative activities of all domestic field offices (Special Agent in Charge Offices). Another recent change included the creation of another SES Headquarters position: Executive Director for Investigative Programs whose responsibilities will include overseeing all Headquarters functions (Fraud, Strategic, Cybersmuggling, Financial, Smuggling and Investigative Programs). OI realigned organizational authority by having these four positions, along with the Executive Director, Foreign Operations Division, report directly to the Deputy Assistant Commissioner, OI. This change in itself has strengthened oversight of and coordination between foreign and domestic offices.

Recent changes within the Office of Intelligence and Communications include creating a new Communications Branch to administer and manage the Customs Wireless Communications Program from the Headquarters level; adding line authority over the Area Intelligence Units (AIUs), which currently report to SAIC Offices, and adding functional authority over the Intelligence Collection and Analysis Teams (ICATS).

Training/professionalism

Professionalism means knowing your job, performing it well, and with courtesy. Customs regularly reviews its operations and training programs to ensure that our officers maintain a high level of professionalism. We have developed Passenger Interview and Vehicle Inspection Technique training for our land border inspectors. This program reviews the skills necessary to identify high-risk vehicles and passengers, and officer safety issues. It also provides training on how to prevent search inquiries from becoming confrontational.

Passenger Enforcement Rover Training is conducted for inspectors from all over the country at Miami and JFK Airports to improve observational analysis and interview skills. The training has been developed and is delivered by our most successful enforcement inspectors. This training has generated a number of significant seizures by the inspectors within days of returning to their home ports.

National Outbound Airport Currency Interdiction Training is being conducted to improve outbound inspectors' exam and interview skills. The training was developed and is delivered by the outbound inspectors at JFK. Inspectors attending the training have subsequently been involved in significant seizures upon return to their home ports. One example is the seizure of more than \$1.6 million in outbound currency at Chicago O'Hare Airport. In addition, land border inspectors from Ports of Entry across the country travel to the Port of Nogales, AZ, to receive training that will improve their targeting, examination, and interview skills.

To draw upon outside expertise, Customs has contracted with the International Association of Chiefs of Police (IACP) to provide two major programs to our workforce. The IACP is presenting cultural awareness training to inspectors at the top 15 airports, where 84% of our passengers are processed. IACP has also begun training in decision-making for inspectors along the Southwest Border. This training enhances their ability to respond appropriately to violent, potentially life-threatening situations.

In addition, Customs is establishing an Assistant Commissioner for Training and Development to provide leadership and direction to all Customs training programs and personnel engaged in training activities. All training and development activities, including technical training and support, specialty training, and supervisory and managerial development, will report to the Assistant Commissioner. The office will continue to rely on operating functions to ensure that mission-related training is provided, and on expertise outside of Customs to adapt the best practices for Customs use.

Focus on the Recruitment of the Best

Quality Recruitment provides an effective process for hiring the best qualified candidates. It includes utilizing multiple screening stages which rely upon objective, quantifiable data; using an electronic rather than paper process, and targeting an applicant pool with reasoning skills needed for the new millennium. The process, which is currently being used for entry level inspector, canine enforcement officer and pilot positions, will be implemented for agents in the near future.

Quality Recruitment will result in the availability of a diverse applicant pool of highly qualified candidates for entry level inspector, canine enforcement positions, agent and pilot positions. As a result, the quality of the Customs workforce will increase, thereby better enabling Customs to accomplish its mission.

Customer Service

Customs has begun a number of activities to improve the public's understanding of our processes and authorities. We are developing improved informational outlets and working with airport authorities to put up signs that will better explain our authorities and travelers' rights. We will post instructions for registering complaints at the time of the incident or by mail or phone, and we have made comment cards available in the inspection area. These improvements will also be incorporated at our land border facilities.

As part of the Border Coordination Initiative (BCI) to address our southern land border, Customs and the Immigration and Naturalization Service are working to establish queue time standards that give inspectors sufficient time to accomplish their respective enforcement missions while providing predictable service to the traveling public. We are establishing partnerships with the communities to foster a better appreciation of our enforcement responsibilities and agreement on how the wait times are measured.

At international airports we continue to meet the goal of releasing 95% of compliant travelers within 5 minutes of baggage claim. We continue to enhance the Passenger Service Representative program to ensure that traveler complaints can be handled on-the-spot.

A Customer Satisfaction Unit has been established at Customs Headquarters to monitor all complaint and complimentary correspondence and phone calls. We will track and analyze complaints and ensure that corrective actions are taken if there is a recurring problem or a disproportionate number from a given location. We are also in the process of implementing a 1-800 number for people to call with any questions about Customs matters. The personnel assigned to this unit will have broad knowledge of our processes and will ensure the appropriate routing of a call that they cannot personally answer.

Customs has conducted 356 formal workshops around the country for exporters and shippers (over 11,000 participants) to make them aware of export laws, rules, regulations, and port procedures. Individual contacts are also made with freight forwarders and consolidators, exporters, carriers, etc., to discuss specific and general export issues.

Our responsiveness to information requests from the public will be reflected by the "Contact Us" feature of the Customs Web site, which will permit Web visitors to comment, ask questions, or request information by means of electronic mail. This service will be established in the next few months. Also, the Customs Electronic Bulletin Board (CEBB), long utilized by the trade as an information resource, has been linked to the Customs Web site to make access even easier by more persons.

On the local level, a test program is underway in five ports (Champlain, NY; Charleston, SC; Nogales, AZ; Orlando, FL; and San Francisco, CA) in which Internet electronic mailboxes have been established for port directors at these locations, and these e-mail addresses published on the Customs Web site. The public and the trade are being encouraged to communicate with these port directors on issues of local concern and for requests for locally specific information. If successful, this program will be expanded to all service ports.

PARTNERSHIPS

Customs has established important partnerships with groups both in the private and public sectors. We continue to work in partnership with the National Treasury Employees Union (NTEU) on a number of issues facing Customs. While there are always issues on which union and management disagree, we have found the partnership to be a productive effort. We have gained invaluable employee input into our decision making process, allowing us to tap into the wealth of firsthand experience our people on the front line have. This input has resulted in better decisions on our part, and improved operations.

One of the most successful examples of partnership was Operation Brass Ring which focused on aggressive, unpredictable, multi functional action plans proposed, designed, and implemented at the field level in cooperation with the NTEU. These plans were developed by Port Partnership Councils in conjunction with field offices of the Office of Investigations. Partnerships, such as Operation Brass Ring and the ones discussed below, are critical to the success of Customs mission in securing our borders without impeding the flow of legitimate trade.

Border Coordination Initiative

The Border Coordination Initiative (BCI) is a tactical plan developed by the Immigration and Naturalization Service (INS) and Customs in partnership to increase cooperation on the Southwest Border and to enhance the interdiction of drugs, illegal

aliens, and other contraband. The purpose of the BCI is to create a seamless process at and between land border ports of entry by building a comprehensive, integrated border management system that effectively achieves the mission of each agency.

During the past year, INS and Customs have built a strong platform of cooperation based on eight core initiatives: Port Management, Investigations, Intelligence, Technology, Communications and Aviation/Marine, Integrity and Performance/Budget. BCI will give direction to those efforts over the next five years.

The drug and illegal immigration threat on the Southwest Border is the initial focus. However, as the BCI builds momentum and generates the anticipated results, we will expand it to other locations. A joint Office of Border Coordination has been established with both INS and Customs. Two Border Coordinators are responsible for overseeing border operations and ensuring the implementation of the BCI Action Plans. The unions at both agencies have also been involved, in partnership, in these activities.

Industry

In addition, Customs continued to expand its "Industry Partnership" programs with the development of the Americas Counter Smuggling Initiative (ACSI). Building upon the successes of the Carrier Initiative Program (CIP) and the Business Anti-Smuggling Coalition (BASC), ACSI will strengthen and expand Customs anti-narcotic security programs throughout Central and South America. These programs allow Customs to work with the trade community, both domestic and foreign, to reduce the ability of drug smugglers to compromise legitimate commercial shipments and conveyances. During FY 1998, information from these programs resulted in 136 domestic and foreign seizures and interceptions totaling 63,882 pounds of narcotics.

LONG-TERM COMMITMENT TO THE AUTOMATED COMMERCIAL ENVIRONMENT

Investments in trade modernization remain a priority for Customs. Continued reliance on the sixteen year old Automated Commercial System (ACS) will subject both Customs and the trade to risks of degraded service. ACS relies on old technology that is costly to maintain and is not conducive to supporting the requirements of the re-engineered trade compliance process. In the period from mid-September 1998 through early-March 1999, ACS experienced significant processing slow downs that adversely affected the trade's ability to process entries quickly and cost-effectively. Recent investments at the Customs data center will alleviate the problems in the short term. However, we can anticipate reoccurrences of these problems without additional and substantial investments at our data center; in a modernized data network technology; and in personal computers and desktop software to support our field personnel.

Customs remains committed to the development of the Automated Commercial Environment (ACE) as the commercial system for the 21st century. ACE is necessary to: cope with 10 percent annual growth in international trade; meet legislative requirements for informed compliance and for improved financial controls over the nearly \$20 billion in duties collected annually; and meet the requirements articulated by the trade and Customs field personnel as part of the trade process re-engineering effort.

Given the size of the investment that ACE represents, it has received substantial scrutiny. As a result, a number of issues have been raised about Customs ability to justify such a large project and to manage it successfully.

Customs takes these concerns seriously and has taken or commits to take a series of actions to strengthen its ability to manage ACE and all other information technology projects and to improve the justification for the large investment that is required.

To improve project management, Customs:

- Hired a Chief Information Officer (CIO) with extensive experience in enterprise architecture and major systems acquisition.
- Reorganized the Office of Information Technology to provide for improved accountability and program control. An important element of the reorganization was the establishment of staff offices for Technology and Architecture, Strategic Planning, Program Monitoring, and Resource Management that are responsible to the CIO for: improved investment management; further progress on the enterprise architecture; enhanced controls over software development; and the development and implementation of software process improvement plans.
- Entered into negotiations with a Federally Funded Research and Development Center (FFRDC) to acquire critical support in the areas of strategic management, acquisition support, program management, technical management, and evaluation and audit. Customs expects to be able to have the FFRDC on-board in May.

- Plans to acquire the services of a prime contractor to help plan, implement, and manage its information technology modernization efforts. The contractor will be responsible for implementing mature software development processes which Customs will adopt, and will assume the risks associated with delivering functional components of ACE and other software projects. Modeled after the experience of the Internal Revenue Service in addressing concerns about its tax modernization efforts, Customs will utilize the experience of the FFRDC from initial acquisition strategy development through solicitation development and source selection, award and contract management, to include support to Customs in overseeing prime contractor performance. Customs intends to give this the highest priority with the goal of having a contract in place within 12 months from the time of initiation. However, before the contract process begins, Customs needs a commitment on a reliable source of funding.

To improve the justification for the investment in ACE, Customs:

- Engaged a contractor to update and improve the Automated Commercial Environment (ACE) cost-benefit analysis (CBA) which will be available for external review in the coming weeks. This CBA will incorporate analytical approaches responsive to direction previously provided by General Accounting Office staff, including reflecting use of the International Trade Data System as the trade interface for ACE. However, Customs recognizes that still more work is required beyond the current effort and commits to follow-on work that will (a) analyze the costs and benefits of ACE functional increments; and (b) rigorously analyze alternative approaches to building ACE.

- Engaged Klynveld Peat Marwick Goerdeler Limited Liability Partnership (KPMG) to provide an independent review of Customs methodology and assumptions for software development and infrastructure costs. KPMG's preliminary review found our approaches for cost estimation to be sound and appropriate. KPMG is now reviewing the completed CBA referenced above and advising on the follow-on work.

- Will complete the enterprise architecture work regarding its trade compliance process in May 1999. As part of its investment management process, Customs has initiated a documented review process that ensures that all proposed investments comply with its architecture standards and are not redundant of other information technology projects.

Before leaving the issue of justifying the investment in ACE, an important point should be made. The continuing controversy surrounding ACE is masking the issue of making the necessary investments in infrastructure modernization that are required to meet Customs mission responsibilities. Approximately 54 percent of estimated costs associated with ACE are for software development and maintenance over an eight year period. The rest of the investment is required to replace an outdated and problem plagued data network, to acquire additional computing capacity at the Customs data center, and to provide for regular updating of desktop computing capabilities necessary to stay abreast of rapidly changing technology. Almost all of these infrastructure investments are necessary even if Customs is forced to continue to rely on the outdated ACS.

Customs inability to invest in infrastructure modernization is also adversely affecting its ability to implement targeting systems to better combat narcotics smuggling, better screen international travelers, and provide automated mission support to achieve improved management controls and operational efficiencies.

The actions listed above are in progress and demonstrate Customs commitment to improve its management of information technology. These actions reflect Customs recognition of the concerns and we are working vigorously to correct them.

NARCOTICS ENFORCEMENT

The demand for illegal drugs in the U.S. remains strong. In response, drug smuggling organizations continue to introduce their contraband into our country using every conceivable route and method. Drugs entering the country through the Southwest Border, South Florida, and Puerto Rico are transported to distribution and control centers in major cities like New York, Chicago, Miami, and Los Angeles. Unchecked and allowed to flourish, drug trafficking organizations bring with them violent crime, public corruption, money laundering, and the socially crippling effects of drug abuse.

Drug smuggling organizations are as resilient as they are insidious. Successful dismantling of such criminal enterprises requires a balanced and comprehensive strategy, one that interfaces the functions of all Customs enforcement disciplines: investigations, intelligence, air and marine operations, and interdiction. Our strategy exploits the interrelationship of drug transportation and distribution by building an "Investigative Bridge" between border smuggling activity and criminal organiza-

tions located inland. We build this bridge each time the seizure of illegal drugs at the border leads to the identification of the controlling criminal organization hundreds of miles inland. We build it again when investigation of a trafficking group in an inland city leads to a drug seizure on the border. Controlled deliveries, undercover operations, and Title III investigations are our primary inroads into drug smuggling organizations. These tools complement and solidify the Investigative Bridge.

It sounds simple and it really is. Customs recognizes that neither interdiction nor investigations individually add up to effective drug enforcement. Only by integrating the two processes can we put forth our best efforts in stemming the flow of drugs across our borders.

Between our regular appropriations and the emergency supplemental, Customs received substantial additional funding in FY 1999 to enhance our counterdrug operations. In the investigative area, this money will enable us to fill 27 new agent positions and to purchase radios, firearms, protective vests and vehicles for these new positions. The funding we received for our Marine Program will allow us to repair and outfit two Bluewater Vessels in inventory in South Florida, outfit one 47' Bluewater Vessel in New Orleans that was acquired from the Coast Guard and develop and construct a NightCat 40' Interceptor Vessel. The \$80 million received for Non-Intrusive Inspection Technology enabled Customs to accelerate its Five Year Technology Acquisition Plan for the Southern Tier. In addition, the \$10 million provided for Port Integrity will be used to not only stop the flow of drugs, but combat internal cargo conspiracies and cargo theft.

The 1999 emergency supplemental provided \$186 million for Air Program enhancements; \$153 million of which is to fund the procurement of 6 additional P-3 aircraft. The current schedule calls for an October and December 2000 delivery of the two P-3 AEW aircraft. Delivery of the 4 new P-3 "Slicks" is scheduled to begin in early-to mid-FY 2001 at a rate of one every four months.

CHILD LABOR

Addressing the illegal importation of merchandise manufactured or produced with forced or bonded child labor is one of the most difficult tasks faced by Customs. Customs is pursuing a thorough, impartial and aggressive policy towards imports suspected of being produced with forced child labor.

In recent months, special agents have visited Indonesia, Nepal, India, and Pakistan to meet with foreign government officials, non-government organizations and industry representatives on this very sensitive issue. Foreign law enforcement and other government agencies have stated their desire to work with Customs.

Our public outreach program thus far has included mass mailings to U.S. importers of merchandise, often associated with forced child labor, advertisements in trade publications, participation in trade shows, presentations on the Customs Webpage and various press releases in print and television in the U.S. and several other countries. Additionally, our forced child labor special agents are meeting regularly with various non-government agencies that monitor child labor and other human rights violations in an effort to address issues as they arise.

Our actions are beginning to bear fruit. Customs has identified some manufacturers of hand-knotted carpets who are believed to have produced carpets with forced child labor. Detention orders are in place to stop imports from those manufacturers at our borders. Should an importation from one of these manufacturers be attempted, Customs will require a certificate from the manufacturer stating that the goods were not produced with forced child labor. Customs will investigate the validity of the certificate submitted by the manufacturer. If the investigation substantiates the certificate, the goods will be allowed into the U.S. If the certificate proves to be false, we will not allow the goods to enter the U.S and will continue our investigation for any potential criminal or civil violations.

Increased staffing will soon be in place in several of our foreign offices. Special agents have been added to our Bangkok, Hong Kong and Montevideo offices. These additional special agents will be dedicated to investigating allegations, and training and working jointly with foreign law enforcement agencies to address the child labor issue.

MONEY LAUNDERING

Customs has a broad grant of authority to conduct international financial crime and money laundering investigations. Jurisdiction is triggered by the illegal movement of criminal funds, services, or merchandise across our national borders and is applied pursuant to the authority under the Bank Secrecy Act, the Money Laundering Control Act and other Customs laws. Combined with our border search au-

thority, Customs formidable enforcement efforts focus on the most significant international criminal organizations, whose corrupt influence often impacts global trade, economic and financial systems. Customs enforcement efforts are not limited to drug related money laundering; they extend to the proceeds of all crime.

Customs has implemented an aggressive strategy to combat money laundering. Our approach involves interdiction efforts by Customs inspectors, criminal investigations by Customs special agents, and in partnership with Treasury, FinCEN, and others, the design and implementation of innovative regulatory interventions, unique to Treasury, that dismantle and disrupt systems, organizations and industries that launder ill gotten gains. Applying these techniques, New York's El Dorado Task Force, led by Customs, had tremendous success in removing and preventing the wire remitter industry from being exploited by drug kingpins to launder money.

Customs also continues to pursue an aggressive program of undercover investigations directed at money launderers. The two largest single seizures of cash in the history of Federal law enforcement were made as a result of Operation Casacam in Miami and Operation Omega in Los Angeles. Together, these two seizures totaled over \$41 million in cash. Moreover, it was Customs undercover operations that first exposed the criminal laundering activities of both Bank of Credit and Commerce International and American Express Bank International. And last May, Customs concluded Operation Casablanca, the largest, most significant drug money laundering investigation in the history of U.S. law enforcement.

Customs operates the Money Laundering Coordination Center (MLCC) which has gone on-line this year. Physically located at FinCEN, and staffed by special agents and intelligence analysts, the MLCC is designed to coordinate intelligence between all U.S. Customs undercover money laundering investigations. It will be opened up to other agencies in the future. The MLCC will also be instrumental in developing a strategy to combat the black market peso exchange which has been described as the single most efficient and extensive money laundering system in the Western hemisphere.

With funding approved by the Treasury Executive Office of Asset Forfeiture, Customs has trained and equipped 19 highly specialized Asset Identification and Removal groups consisting of special agents, auditors and data analysts. These groups, established throughout the United States, are designed to identify, track, and seize the assets of criminals and their organizations. They are responsible for the seizure of over \$172 million in the past three years and have been integral to high profile investigations such as the Ruiz Masseiu case and Operation Casablanca.

As we look toward the future, Customs plans on continuing to work in concert with other Treasury and federal agencies to dismantle and disrupt the systems used by international criminal organizations.

ANTI-TERRORISM

Equally challenging is our responsibility to protect the American public from the threat of international terrorism. Easier access to sophisticated technologies, including weapons of mass destruction, means that the destructive power available to terrorists is greater than ever. Customs is the first line of defense at our Nation's borders to prevent the introduction of weapons of mass destruction and other instruments of terror into the U.S. from abroad, and to prevent international terrorists from obtaining weapons of mass destruction technologies and materials, funds, and other support from sources in the U.S.

Customs is active on a number of fronts to combat this threat. We are developing and deploying examination technologies, such as radiation detection equipment, to our ports for use in detecting and interdicting nuclear, chemical and biological materials in international shipments. We work in partnership with the Federal Aviation Administration and the airline industry to enhance security on international flights originating in the United States. We aggressively enforce U.S. export laws to prevent the illegal export of arms, military equipment and dual use technologies to proliferous countries and terrorist groups, and enforce U.S. economic sanctions to deny funds and other support to international terrorists. We actively participate in Department of Justice-sponsored Joint Terrorism Task Forces.

Among the results of our strategic investigations this year, were the convictions of two weapons traffickers who not only had negotiated the sale of Russian-produced, shoulder fired surface to air missiles to undercover Customs special agents, but who had indicated they could also supply tactical nuclear weapons stolen from the Former Soviet Union. Also, indictments were handed down against seven individuals for weapons smuggling charges after members of the group were intercepted en route to South America in an attempt to assassinate Cuban president Fidel Castro.

Customs also has a leadership role in working in partnership with our counterparts in foreign customs and law enforcement agencies in strengthening export control and law enforcement programs to deny weapons of mass destruction and other support to international terrorists. We provide training and technical assistance to the countries of the Former Soviet Union and South East Europe under the U.S. Customs/Department of Defense Counter Proliferation Program. And we co-chair joint U.S./Russian working groups coordinating customs and law enforcement matters related to non-proliferation and export control.

The threat of international terrorism is perhaps one of the most serious national security threats emerging as we enter the 21st century. Customs is at the forefront of our Nation's efforts to address this threat. We are committed to providing the tools and the training necessary to our Customs inspectors and special agents to enable them to meet these challenges.

CYBERCRIME/CHILD PORNOGRAPHY

As we are all aware, technology, particularly in the realm of electronic information and communication technology, continues to advance at an astonishing rate. We see the results of such advancements in everything we do. We can talk to virtually anyone anywhere via e:mail; we can research any topic via the Internet from the warmth and comfort of our living rooms; and we can even order groceries from the neighborhood food market without ever leaving our homes. The same technology that provides us with the seeming sense of security that we get from being able to do so much over our home-based personal computers is the very same technology that allows the criminal element to penetrate even the most secure of our homes. Cyberspace recognizes no borders, no sovereignty, and no walls or doors. Neither does cybercrime.

Without exception, violations of all of the over 400 laws enforced by Customs can, in some way, be abetted through the use of cyberspace. Indeed, three violations investigated by Customs, money laundering, Intellectual Property Rights violations, and child pornography/child sexual exploitation, can actually be committed via the Internet. Although money laundering and Intellectual Property Rights violations impact greatly the economic fabric of our Nation, it is child pornography and child sexual exploitation that tear at the moral fabric of our Nation and our future.

For this reason, Customs has established the Customs CyberSmuggling Center in Fairfax, Virginia. The Customs CyberSmuggling Center is tasked with conducting all cyberspace-based investigations on behalf of Customs. In addition, the CyberSmuggling Center is providing training to thousands of Federal, state, local, and foreign law enforcement officers annually. In FY 1998 alone, the CyberSmuggling Center trained over 3,000 law enforcement officers from four continents.

Cybercrime is the newest challenge for law enforcement. Hardest hit by cybercrime are the holders of trademarks and copyrights. The actual losses attributed to counterfeiting and piracy can severely impact our economic stability if the problem is not adequately addressed. Customs and FBI co-chair the National Security Counsel (NSC), Special Coordinating Subgroup on Intellectual Property Rights and Trade Related Crime. As a result of the work being conducted by the subgroup, the NSC has requested a proposal for a single agency to be responsible for the coordination of all U.S. government activities in this area.

Customs has proposed, through the NSC, to take the lead and responsibility for coordinating these efforts. We are proposing a multiagency effort to address law enforcement, training, intelligence and policy for the U.S., both domestically and internationally. This coordination effort will also include representatives from industry and trade groups as appropriate.

TECHNOLOGY FOR BETTER ENFORCEMENT AND TARGETING

In implementing our Five-Year Technology Acquisition Plan for the Southern Tier, we have sought to steadily increase the risk of detection across the Southern Tier from San Diego to San Juan. Without this across-the-frontier approach, our enforcement efforts in one area will be mitigated by the smugglers' ability to rapidly shift operations to an area where the threat of detection is lower. What remains however, is to begin installing this technology at high-risk ports elsewhere in the country, ports like Charleston, SC, where last fiscal year we had a seizure of almost 3,100 pounds of cocaine; and Newark, NJ, where we have historically seen commercial quantities of both marijuana and cocaine. We have started to look beyond the Southern Tier, to install automated targeting systems and other technology.

With the increased funding we received in FY 1999, Customs is aggressively pursuing a mix of technologies designed to complement one another and present a layered defense to smuggling attempts. Some of the technologies we are currently test-

ing and evaluating include a mobile truck x-ray which has the same or better capabilities as our fixed-site truck x-rays and has the added benefit of over-the-road mobility allowing us to use it at several ports. This introduces more unpredictability into our operations since the smuggler can never be sure where the x-ray will show up next. In addition, a gamma-ray inspection system has been developed for trucks, other vehicles and railcars.

Customs has been a good steward of the funding provided by the Congress. We are nearing completion of the truck x-ray system installation program. Seven of the nine systems are installed and have proven to be an effective law enforcement tool for the interdiction of smuggled drugs. In fact, the top five seizures made using these truck x-ray systems amount to almost 13,000 pounds of drugs. Customs is also seeing a decrease in the number of inspections per seizure giving us a preliminary indication that the x-rays are becoming the force multiplier we envisioned them to be. We have also fielded two mobile truck x-rays with two more prototypes in development.

Land Border Automation

We are working with our counterparts in the Immigration and Naturalization Service to install license plate readers (LPRs) and automated permit ports (APPs) and replace the terminals used by the inspectors to query the Interagency Border Inspection System (IBIS) database. Southwest Border ports and the major crossings on the Northern Border will also receive this LPR equipment. LPRs have the capability to count the number of vehicles, identify stolen vehicles, and identify vehicles which are positive IBIS hits. LPRs will allow Customs to gather intelligence from the data, plus data mining will enhance inbound and outbound targeting.

One type of APP being tested at several locations along the Northern Border is the Remote Video Inspection System. This combination of card reader, video and audio technology allows travelers to cross at small, remote locations when there is no inspector on duty. Canada is installing a similar system at the adjacent ports to our test sites.

Inspectors have at their disposal a wide range of technology and tools including the large truck x-rays, pallet x-rays, optical fiberscopes, laser rangefinders, and portable contraband detectors (a.k.a. busters) to name a few. What must be remembered is that without the consistent funding to operate and maintain these technologies in Customs base, the benefits will be short-lived.

Compliance Measurement Examination Data Collection Process (COMPEX)

Customs uses the Compliance Measurement Examination data collection process (COMPEX), a random selection program in operation at major airports and nearly all land border ports to determine the overall compliance rate of arriving passengers and the threat at each location. We continue to work with the ports to reduce the burden of collecting the information and improve the data quality. We will be working to develop COMPEX for passengers arriving at small airports and by vessel, train, or bus, as well as COMPEX for outbound airport passengers.

Anti-proliferation / Anti-terrorism

Using the Nunn-Lugar anti-proliferation funding, and working jointly with the Department of Defense, Customs is evaluating technology to provide our inspectors with a device that not only quantifies the presence of radiation, but can classify the source of the radiation against a database to tell the inspector if the source is medical, industrial, or weapon-related material.

We have also fielded approximately 1,500 personnel radiation detectors (a.k.a. radiation pagers) with the eventual goal of deploying 3,800 around the country. We are installing radiation detector equipment in all Customs x-ray systems thereby providing a simultaneous screening for contraband and drugs as well as undeclared radioactive material.

Better technology will allow Customs to maximize the efforts of the limited number of outbound inspectors. Better technology will allow inspectors to "target smarter" and with less wait-time for the traveling public and trade. Technology can be utilized to target undeclared outbound currency, stolen vehicles, munitions, and items which may pose a risk to aviation safety and security.

To support antiterrorism and aviation safety and security efforts at 17 of the largest international airports, Customs has spent approximately \$18 million of the \$35.2 million authorized under the 1996 Omnibus Appropriation to purchase and so far deploy the following equipment: 24 mobile x-ray vans equipped with explosive and radiation technology; 18 mobile support system airport tool trucks that provide inspectors the necessary tools to inspect cargo; 11 portable x-ray systems and 12 particle detectors capable of detecting trace amounts of explosives for mail/courier

facilities; and 675 radiation pagers to address the threat of nuclear smuggling. Customs is currently working toward identifying additional non-intrusive inspection systems that can be purchased with the approximately \$17 million remaining in "no year" funds to support aviation safety and security.

Automated Targeting Systems

The Automated Targeting System for Anti-Terrorism (ATS-AT) is a rule-based expert system designed to facilitate the targeting of high-risk outbound cargo. This could include terrorist devices, weapons, undeclared hazardous material and other contraband. The system was prototyped at John F. Kennedy International Airport and will be deployed to 14 additional airports in FY 1999. ATS-AT allows inspectors to review more outbound documentation for potentially high-risk shipments, in less time.

ATS is also being used in the air passenger environment. Customs is in the process of migrating a data base which will enhance the capability of the Passenger Analysis Units and line inspectors in the targeting of suspect travelers. The enhanced capability will ultimately result in more effective interdictive measures and passenger processing and will increase the opportunity of locating and positively identifying high-risk travelers involved in drug smuggling, terrorism and other transnational criminal activity. However, failure to provide funding to this project, which is funded out of base resources, will result in decreased connectivity to the first line inspectors in the field.

FY 2000 BUDGET REQUEST

Customs proposed funding level for FY 2000 totals \$1,929,735,000 and 17,389 Full Time Equivalents (FTE), of which \$1,617,335,000 will be directly appropriated, and \$312,400,000 will be derived from a proposed increase to the passenger processing fee. Also, \$35,000,000 is requested from the Treasury Forfeiture Fund Super Surplus Fund.

Integrity (6 million, 0 FTE)

Corruption and unethical behavior results in serious repercussions to law enforcement, including an erosion or destruction of public confidence, which is difficult to restore. While there is no systemic problem of corruption in the Customs Service, this initiative is required to increase the likelihood that new hires to Customs will possess honesty and ethical principles, ensure that Customs complies with statutory provisions concerning periodic reinvestigations, and reinforce the awareness of all agency employees to possible integrity threats, e.g., bribery attempts and unethical behavior. Specifically, the funding is required to conduct polygraph examinations, upon Office of Personnel Management approval, for candidates applying for positions which are most susceptible to corruption (criminal investigators, Customs inspectors, canine enforcement officers, and contractors). This request will also fund the contracting out of the required periodic investigations, as well as fund the corruption prevention awareness efforts of the agency.

Training (\$5 million, 8 FTE)

In order to attain the highest level of training, integrity and professionalism, Customs is requesting additional resources to establish a new office at the Assistant Commissioner level. This office will manage and direct the establishment of a comprehensive education, training, and workforce development program which covers the entire career of Customs personnel with an emphasis on law enforcement positions. In-service training and development will be provided on a regular and recurring basis, and programs will be implemented to maintain and improve on-the-job effectiveness. Special attention will be given to continuous training for law enforcement personnel on the day-to-day application of the unique border search authorities granted to Customs officers (including, but not limited to: 19 U.S.C. §§ 482, 1461, 1467, 1496, 1581, 1582, and 1646b, 22 U.S.C. § 401, and 31 U.S.C. § 5316).

Non-intrusive Mobile Personal Inspection Technology (9 million, 0 FTE)

International commercial air travel is increasing each year and the numbers of narcotics couriers who ingest or conceal narcotics on or within their body are increasing dramatically. Detection of internal carriers can only be accomplished through the use of x-ray. Current procedures require that the suspected courier be transported from the international arrivals area of the airport, accompanied by two Customs officers, to a medical facility where the x-ray is administered. This procedure is time consuming and an inefficient use of staffing due to the time required and the safety precautions which must be observed (i.e., handcuffing the suspect for

transport), and the procedure is exceedingly unpleasant for those suspects whose x-rays are negative.

Therefore, as the fight to deter drugs and other contraband from coming into the United States continues, so does the development of new non-intrusive detection technology. Customs has developed a way to examine a suspected courier, with less embarrassment (in the likelihood of a pat-down and/or strip search), by using a facility staffed with an x-ray technician and equipped to digitally transmit the x-ray to a radiologist at a medical facility who will determine whether the x-ray indicates the presence of a foreign substance in the body. The facility will either be a fixed building in, or immediately adjacent to, the international arrivals area of the airport or a bus which is designed to fit into a custom docking facility built as an extension to Federal Inspection Services (FIS). Thus, the suspected courier could be transferred without handcuff restraints and through U.S. Customs Service corridors to avoid loss of control of the subject as well as public exposure. Customs is seeking a contractor who will provide a "turn key" operation.

Land Border Blitzes (\$1.4 million, 0 FTE)

The additional funding requested would allow Customs to conduct "blitz" type operations at land border ports. This initiative implements some of the lessons learned from last year's successful Operation Brass Ring. Blitz operations are characterized by the rapid, unpublicized deployment of a team of Customs Inspectors, Canine Enforcement Officers, and Special Agents into a targeted port or base port for varied durations (a day to several weeks) to conduct intensive inspectional and investigative operations. The size of the port being blitzed, the duration of the operation, and the objectives of the operation would determine the actual makeup of each team. The teams would perform the blitzes at unscheduled times moving from border crossing to border crossing, from one port to another, and within a port among passenger primary, secondary inspection, cargo inspection, and outbound areas. This flexibility will maximize the unpredictability of the operations to Drug Smuggling Organizations (DSOs). Unpredictability is a corruption deterrent as well. Use of non-intrusive technology would also be maximized. Mobile or transportable systems would be utilized at ports which do not have fixed NII technology. In other instances, suspect conveyances would be convoyed to other ports which have fixed NII technology.

Customs Air Operations Support is vital to the rapid, fluid deployment of the teams. The use of air assets will allow the teams to maintain the element of surprise and maximize their time in the port instead of in lengthy transits between geographically dispersed border crossings. During Operation Brass Ring, the use of aircraft was shown to disrupt the normal activities of Drug Smuggling Organizations (DSOs) at the ports of entry. In addition, air assets provide enhanced security measures for ground personnel in the event of any escalated incidents.

Forced Child Labor (\$2 million, 3 FTE)

The Customs Service is continuing its efforts to address the issue of forced child labor. Customs intention is to establish regional offices in Asia and increase staffing in foreign countries where there is significant potential for goods to be produced by forced child labor. This funding would provide for the hiring of special agents/representatives and a staff assistant.

The need for foreign-based agents rather than domestic agents is crucial to the success of this initiative. Regular interaction with foreign governments and non-government organizations (NGOs) ensure that Customs can maintain an enforcement presence and exert pressure because ultimately verification of the use of child labor will require inspection of the suspect foreign facility and its records.

Money Laundering (Outbound) Technology (\$2 million, 0 FTE)

The majority of undeclared currency going out of the U.S. involves proceeds from narcotic trafficking activities. The ever-increasing volume of cross-border traffic means that Customs should conduct more examinations more effectively, in order to keep up with the activities of the drug cartels. Outbound enforcement examinations are currently conducted on a very limited basis. In FY 1998, although outbound exams were conducted only intermittently and with minimal resources, Customs seized more than \$68.4 million in outbound currency. In order to maximize Customs enforcement efforts, non-intrusive technology and equipment (and infrastructure) are necessary to efficiently interdict undeclared currency.

Technology will strengthen outbound enforcement efforts, while facilitating the public and legitimate trade. Due to the vast amount of cargo being exported out of the United States, Customs can only examine a percentage of these shipments. The procurement of mobile x-ray vans, tool trucks, and contraband detection kits will as-

sist Customs in the examination of more cargo and conveyances at seaports, courier hubs, and on the Southern land border.

USER FEES

The FY 2000 budget request includes two new user fee proposals. They are:

Passenger Processing Fee

The Administration proposes to increase an existing fee paid by travelers arriving by commercial aircraft and commercial vessel from a place outside of the United States, and to remove certain exemptions from this fee. Proceeds of the fee increase would partially offset Customs costs associated with air and sea passenger processing. Subsequent to the budget, authorization legislation will be transmitted to allow the Secretary to increase the fee paid by air and sea passengers and to remove existing exemptions from this fee. In order for Customs to be able to collect \$312.4 million for FY 2000, collections would have to begin on July 1, 1999.

Automation Modernization Fee

The Administration proposes to establish a fee for the use of Customs automated systems. The fee will be charged to users of Customs automated systems. Proceeds of the fee will offset the costs of modernizing Customs automated commercial operations and an international trade data system, and will be available for obligation after FY 2000. Subsequent to the budget, authorization legislation will be transmitted to allow the Secretary to establish a fee for the use of Customs automated systems.

This concludes my statement for the record. I appreciate the opportunity to appear before you today. I particularly want to express my appreciation to this Subcommittee for its tremendous support in providing Customs with increased funding in FY 1999. This funding will provide Customs with the much needed tools to accomplish our mission, and I assure you that we will use these resources in the manner in which Congress intended them to be utilized, in the furtherance of international counterdrug efforts and our critical mission to protect the Nation's borders and to reduce the flow of drugs into the United States.

Chairman CRANE. Thank you, Mr. Kelly.
And now Ms. Bragg.

STATEMENT OF HON. LYNN M. BRAGG, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION

Ms. BRAGG. Mr. Chairman, Mr. Levin, and Members of the Subcommittee, I am pleased to have this opportunity to discuss the budget request of the U.S. International Trade Commission for fiscal year 2000 and fiscal year 2001. I also would like to recognize Commissioner Askey and thank her for accompanying me here today. She has been extremely supportive of my chairmanship and I guess I could say your loss is definitely the Commission's gain.

I would like to express my appreciation also to both the leadership and individual Members of the Committee for their support regarding the agency's appropriations last year. Those letters of support on our behalf were extremely helpful. Hopefully, our work continues to merit your interest and confidence and that you will be inclined to provide similar support this year. I believe my written testimony submitted earlier presents a persuasive complete picture of our needs which corresponds to our increased responsibilities in administering the trade laws of the United States.

The agency's budget request represents a consensus proposal and has the unanimous support of all members of the Commission. For fiscal year 2000, we are submitting a request for \$47,200,000, which represents a 6.1 percent increase over the fiscal year 1999

appropriation of \$44,495,000. At the request of the Subcommittee, the Commission has also estimated its funding needs for fiscal year 2001. We propose a fiscal year 2001 authorization level of \$49,750,000, an increase of \$2,550,000 or 5.2 percent over our fiscal year 2000 request.

This budget request reflects that the Commission has undertaken substantial belt-tightening and streamlining in the past. It continues the Commission's commitment to doing more with less. But on balance, it is a conservative request for a modest increase which basically allows us to maintain our personnel status quo and fulfill our commitment to producing a quality and timely work product, but, at the same time, take on significant workload increases.

We continue to be conservative in our staffing practices. First, our personnel levels now stand at about 365 full-time personnel, much lower than in fiscal year 1993 when the agency employed almost 100 more employees. Put another way, over the past 6 years, the agency has reduced its employees by almost 25 percent, an important downsizing accomplishment for a small agency.

Furthermore, the agency has consistently sought to avoid adding career employees to meet peak workloads. For that reason, we actively pursued the option of hiring limited-term employees because of the anticipated short-term nature of the increase in our workload due to the Sunset Review investigations. As part of this policy, we have also reassigned or detailed a number of employees to other offices facing the heaviest workload demands.

My prepared testimony provides important details regarding our current caseload, which emphasizes our increased resource needs related to the additional 324 Sunset Reviews mandated by the Uruguay Round Amendments Act which we started this fiscal year and must finish by June 2001. Also, I note that our caseload in other areas, such as section 201 and section 337 intellectual property investigations continues to increase or hold steady. We also have more anti-dumping petitions being filed than expected as well as additional 332 studies being prepared for the executive branch and our congressional oversight committees.

Since so much of our current situation reflects the impact of Sunset Reviews, I thought you might be interested in a brief snapshot of the progress in reviewing the outstanding orders and what the results of the initial reviews are. To date, we have instituted a total of 154 Sunset Review investigations, which are now in different procedural stages. Of this total, 78 have been fully processed through the initial phase which determines whether there should be an expedited investigation or a full investigation. Of those 78 cases, 33 have been revoked by the Department of Commerce because of no domestic response or interest. Of the remaining 45, 33 have been continued by the Commission and will receive a full investigation. Twelve will be, or have been, expedited without a hearing. The Commission has made its determination in seven of these expedited reviews, voting to revoke the order in one and not revoke the order in six.

As you know from my written testimony and the testimony of past chairmen, historically personnel costs account for almost 75 percent of the Commission's budget, with building rent accounting

for another 12 percent. Therefore, only about 12 percent remains to be allocated for administrative needs such as computers, travel, and training. We have few other options in adjusting to diminished funding except to reduce personnel levels.

Finally, we continue to take important initiatives to make information resources available more widely to our key customers, Congress, and the executive branch, the public we serve, and our employees. In particular, I want to mention two pilot projects underway on electronic initiatives discussed in further detail in my prepared remarks.

The first is our electronic document imaging system. All of our filings are scanned electronically to provide self-service public access to submissions in trade cases in our onsite meeting room. The second pilot is our trade and tariff data web. This system enables the user to custom design retrievals of the trade information about specific products and countries.

Thank you again for the opportunity to appear this morning. Business is brisk, but we are meeting the challenge at the Commission. We continue to pursue innovative, cost-effective strategies in administering our statutory responsibilities. I am prepared to address any questions you may have.

[The prepared statement follows:]

Statement of Hon. Lynn M. Bragg, Chairman, U.S. International Trade Commission

Mr. Chairman and Members of the Subcommittee, I am pleased to have this opportunity to be here today to discuss the budget request of the United States International Trade Commission for fiscal year (FY) 2000 and FY 2001.

The U.S. International Trade Commission is an independent, nonpartisan agency with a wide range of trade-related mandates. Because of its independence and bipartisanship, the Commission acts as a focal point in government for receiving views of the public and private sectors on international trade issues. The trade laws administered by the Commission encompass quasi-judicial investigations of import injury and unfair practices in import trade; major trade studies, research, and economic analysis; trade monitoring; data collection; development of uniform statistical data; and issues concerning the Harmonized Tariff Schedule of the United States. While the Commission is not a policy-making entity, through information and analysis provided to the President and the Congress, the agency contributes objective trade advice and policy support to the Congress, the President, the Office of the U.S. Trade Representative, and other interagency groups.

BUDGET REQUEST

The Commission's FY 2000 budget request is \$47,200,000, which represents a 6.1% increase over the FY 1999 appropriation of \$44,495,000. At the request of the Subcommittee, the Commission has also estimated its funding needs for FY 2001. We propose an FY 2001 authorization level of \$49,750,000—an increase of \$2,550,000 or 5.2 percent over our FY 2000 request.

Before addressing the details of our request, please let me begin by briefly reviewing the Commission's five major operations as identified in our strategic plan. First, are the import injury investigations which include antidumping and countervailing duty (AD/CVD) cases, conducted under Title VII of the Tariff Act of 1930. These investigations involve products that are unfairly traded in that they are either sold at less than fair value, or are subsidized in their production, manufacture, or export. Further, beginning in July 1998, we began five-year sunset reviews of all outstanding AD/CVD orders, as mandated by the Uruguay Round Agreements Act of 1994, to determine whether to retain or revoke the old orders if no longer necessary. As I will detail later, our FY 2000 budget request is considerably impacted by our resource needs related to these new review investigations.

In addition, there are several other types of import injury investigations we administer. Chief among these are Section 201 (of the Trade Act of 1974) or so-called "escape clause" or global safeguards investigations. Such cases are generally initi-

ated by a petition from a domestic industry which alleges injury as a result of increased imports. The Commission conducts a six-month investigation—four months for the injury phase, followed by a two-month remedy phase (if injury is determined)—in which remedy recommendations are proposed to the President. It is then up to the President to determine what action, if any, will be taken.

The second Commission operation is the conduct of intellectual property-based investigations, more commonly referred to as Section 337 (of the Tariff Act of 1930) investigations. These investigations address allegations of infringement of intellectual property rights by imported items. The Commission has three administrative law judges (ALJs) who consider these cases; their initial determinations are subsequently reviewed by the Commission. Generally these cases encompass very technical issues, and most involve products having multiple patents. Many cases involve the high tech sectors of computer hardware and software.

The third operation is the Commission's research program. The most important element of this activity is Section 332 (of the Tariff Act of 1930) investigations which we prepare at the request of Congress and the President; the probable economic effects studies (pursuant to Section 131 of the Tariff Act of 1930); and the overall function as a resource for the gathering and analysis of international trade data. For these activities, the Commission draws on its economic and industry sector expertise which covers the spectrum of these disciplines. Another component of this function is to provide "quick response" research, technical advice, and analysis for policy makers in the executive branch and Congress.

The fourth Commission operation is trade information services. This comprises trade remedy assistance to small businesses; legislative reports; library services; maintenance of the Harmonized Tariff Schedule; Schedule XX; U.S. Schedule of Services Commitments under the General Agreement on Tariffs and Trade/World Trade Organization; preparations to the Integrated Database of the World Trade Organization; preparation of Presidential proclamations; and certain other information gathering, processing, and dissemination activities. The Commission is a member of an interagency committee, the International Trade Data System, established to coordinate and streamline trade data collection and dissemination. In addition, the ITC actively participates in interagency measures to streamline data preparation for international forums.

Trade policy support is the final agency operation. Although the Commission itself is not a policy-making body, it plays an active role in providing objective expertise to the executive branch and Congress for the formulation of trade policy. The trade policy community draws on the Commission's technical proficiency and factual advice in a variety of trade issues, ranging from commodity-specific matters and industry sectors, to the impact of international trade agreements.

CONSERVATIVE BUDGET REQUEST

We believe that our budget request is very conservative—especially given the sizeable expansion in the Commission's workload. The International Trade Commission has entered one of the most challenging eras in our 83-year history. Chief among the challenges is to address a considerable expansion in the agency's workload within a very modest increase in resources. The increase in our budget request this year is modest by any standard. It reinforces past belt-tightening, streamlining, and re-focusing of priorities. The Commission is now operating with a smaller budget and less staff than in FY 1993.

The FY 2000 increase is attributable solely to the new sunset review requirements and the mandatory cost-of-living adjustment for salaries. Since we are a personnel-intensive agency, there is little margin. Personnel costs account for 74% of our budget, and rent for 12%. No programs, loans or grants are administered by the agency. Therefore, there is virtually no discretionary spending in the Commission's budget. With only a 6.1% increase, we plan to manage a more than twofold increase in our AD/CVD workload—as well as absorb a COLA for our personnel-intensive operation.

Similarly, our estimate for FY 2001 reflects our continuing conservative approach to resource needs. The estimate basically funds anticipated increases in salaries and benefits due to mandated Federal pay raises and the usual grade and step increases that occur in the course of any year. This figure assumes no net increase in Commission personnel or total funded permanent positions. In fact, we anticipate some easing of staffing levels and workload towards the end of FY 2001 as the term appointments start to expire and the transition sunset cases diminish. This requested funding level assumes that funds available for operating needs in FY 2001 will not change from FY 2000 levels, and that non-personnel expenditures will be funded from savings and reallocations from existing resources.

NEW SUNSET REVIEWS—BUDGETARY IMPACT

As with last year, the entire increase in this year's Commission budget request is related to the Congressionally-mandated five-year sunset reviews of all (AD/CVD) investigations, as well as mandatory cost-of living adjustments for personnel.

The 1994 Uruguay Round Agreements Act requires that five-year sunset reviews be conducted for all outstanding AD/CVD investigations—past, present, and future. That provision of law, which became effective as of July 1998, instructs the Commission to review all the outstanding AD/CVD orders (324 past cases) to determine whether those orders should remain or be revoked. A 3-year “transition” period calls for reviews of all orders in place before 1995 to be completed by June 2001. Beginning in FY 2000, the Commission must initiate five-year reviews on all orders put in place after 1995. Further, all future orders must be reviewed every five years to determine whether they should be maintained or repealed.

This new review requirement also has substantially increased the Commission's workload—particularly during the 3-year transition phase. This enhanced authority means more than a doubling of the workload for AD/CVD cases during this 3-year time frame, as well as a tripling of the litigation workload related to these cases. Over the long term, the net result is a permanent increase in the Commission's workload (by an anticipated 30%), as new orders are put in place and reviewed every five years thereafter.

EFFORTS TO CONSERVE AND WISELY USE COMMISSION RESOURCES

Ever-cognizant of budget constraints, the Commission consistently makes a concerted effort to safeguard and wisely utilize Commission resources—particularly in an era of diminishing appropriations and rising workloads.

The Commission has undertaken substantial belt-tightening and streamlining in the past. Both voluntary downsizing of personnel and other cost-saving measures were undertaken, beginning in 1995. Reductions in personnel and rental space, as well as consolidation of offices and elimination of management layers were implemented. Paring administrative directives by more than 50% has also helped to simplify agency procedures and operations. All of these measures have contributed to streamlining and greater efficiency of the Commission's operations.

Streamlining, along with re-prioritizing of activities, has enabled the Commission to creatively refocus energies and resources to the most critical needs. As a result, the Commission is better prepared to address our own internal resource requirements and also improve the delivery of services to our key customers and the public. We regularly review all our activities to ensure that the most efficient and effective processes are in place.

Importantly, however, not all of our resource needs are focussed on the demands of sunset review investigations. We are also mindful of the need to attend to the resource demands posed by section 332 fact-finding investigations, which have been rising significantly over the past few years. There are now more requests for investigations on increasingly more complex and difficult topics, to be completed in shorter time-frames, often 6 months or less, instead of the more customary 9–12 months.

So far in FY 1999, we have 30 section 332 reports underway, of which 17 are requests concerning new, previously unaddressed subject matter by us, up from the average of 13 at this time of the year. Among the studies currently underway are China's WTO accession, India/Pakistan sanctions as a follow-on to the previous sanctions overview, Africa trade flows, and APEC tariff and non-tariff barriers. In connection with WTO and FTAA negotiations, the Commission is conducting a comprehensive probable economic effects study of possible tariff modifications on U.S. industries and consumers under multiple scenarios.

In terms of resource allocation, this 332 probable economic effects study is likely to be one of the largest we have undertaken; it is an eight-month study crossing all areas of the Commission's expertise, involving economists, attorneys, and nearly all of our industry analysts. Staff anticipates that this will be a three-volume study, in excess of 3,000 pages total, requiring more than 10 work years to complete, at an estimated cost in excess of \$660,000.

Similarly, our section 201 global safeguard investigations have increased. Usually, we anticipate one, or perhaps no petitions in a year for section 201 investigations. In FY 1998, we conducted two safeguard-related investigations. In the first 6 months of FY 1999, we have already received two petitions, with the prospect of more. These cases are handled by our Office of Investigations, which also conducts all Title VII cases and sunset reviews.

LIMITING THE BUDGET INCREASE

As was the case last year, the Commission has continued to work hard to restrict the size of our budget request for FY 2000 and our FY 2001 estimate, despite the impact of sunset review investigations and other case load demands I have just described. First, we established a policy of hiring fixed-term employees in targeted offices most affected by review-related activities; this avoids committing future valuable resources to fund career Federal employees for whom there may be insufficient work to perform, as our workload surge runs its course. Next, in lieu of hiring a larger number of people, we shifted a number of permanent personnel internally to those offices in order to meet the heaviest workload demands of the agency. However, that means that those employees, largely from the Office of Industries, are not available to perform their normal trade monitoring, policy support functions, and other work on trade studies, in particular 332 studies. The Commission will continue to reassess and reorder its priorities to ensure that the most important needs are met first.

As a measure of the past and current efforts to limit our resource needs, our overall personnel levels are down considerably from the FY 1993 level of 461. At the end of February 1999, the Commission had 365.5 full-time personnel on board. Even with the contemplated additional employees to address the increasing sunset review caseload, the Commission's staff will remain well below prior levels during the rest of FY 1999 and FY 2000. And, most of the new employees will not be career employees, but instead one- to two-year fixed-term employees to handle the short-term upsurge in workload. Therefore, we expect the staff level to peak in FY 2000 and early FY 2001, then to decrease as the AD/CVD workload trends subside.

ENHANCED COMPUTERIZATION AND ELECTRONIC ACTIVITIES

The Commission has explored important new technological ways of doing business; in doing so, we have helped our employees to do more with less, and have improved our outreach to our customers and to the public we serve. At the same time, we hope that we have enhanced the transparency of our administration of the trade laws and the decision-making process.

We are continually working to make information resources available more widely to our own staff, our key customers, and the public. The main ITC website posts many Commission publications, general trade law and investigative information, press releases, trade resource information and links to other relevant sites. Use of the website has enabled broader dissemination of publications, and reduced some production and mailing costs. Efforts are underway to enable greater public access to information produced and compiled by the ITC. The Commission has operated under a fundamental philosophy that information collected at public expense should, to the extent feasible, be made publicly available.

Specifically, pilot projects are underway on two electronic initiatives to determine the best means of providing the public with helpful information. The pilot projects will explore and assess various aspects of these initiatives, including costs, benefits, resource demands, and user fees.

- EDIS (and EDIS Online, its web companion)—the electronic document imaging system of our Dockets Section currently provides self-service public access in our on-site Reading Room to filings and submissions in trade cases. Over the next two years (FY 1999 and FY 2000), we are pilot testing the costs and benefits of providing access to these public documents from anywhere, via the Internet through our general website [www.usitc.gov]. This web-based version of EDIS is EDIS Online. Preliminary feedback from the main users of this information in the international trade bar has been very positive. Longer term, we will explore the possibility of providing Internet access to confidential case information to eligible parties to the investigations. We will proceed carefully to ensure confidentiality of sensitive proprietary business information.

- Trade and Tariff DataWeb—this system is unique in combining trade and tariff information. It enables the user to custom-design retrievals of trade information about specific products and countries. The password feature enables users to save and update their tailor-made product lists for future sessions. Information is available to both government agencies and the public. This month, the public access pilot project became operational. In response to a letter from the International Trade Data System (ITDS), which is the interagency trade data coordinating entity chaired by the Department of the Treasury, the ITC's DataWeb link was officially established for public availability. Our trade and tariff DataWeb can now be accessed directly from its own website [<http://dataweb.usitc.gov>], the ITC homepage, and from a link on the ITDS website.

To date, all of these initiatives have been internally funded, within existing resources, and with no additional budget requests. Depending on the results of our two pilot projects, we may request funds in the future if resources appear inadequate to support public expansion of these endeavors.

I also would like to address one remaining important element regarding our technological status. The Commission is aggressively preparing to meet the Year 2000 computer issue. We believe we have successfully anticipated our agency needs and are prepared to meet this challenge. The agency has no customized software, nor do we have any mission-critical functions which could result in harm to national security, public safety, health, or income maintenance. The Commission expects to receive vendor fixes or upgrades to software affecting our internal operations. Now underway is an agency-wide hardware upgrade to Y2K compliancy for all client PCs and network servers which should be completed this spring. The Inspector General has reviewed the agency's actions and continues to monitor our response to Y2K needs. No specific funding for Y2K remediation has been requested, and as of now none is anticipated. We will have contingency plans in place to address unanticipated problems which may arise.

STRATEGIC AND PERFORMANCE PLANS

I understand that the Committee is interested in the agency's work on our Strategic and Performance Plans. In October, the Commission issued the third edition of its Strategic Plan, which covers the five-year period ending September 30, 2003. It is accompanied by a two-year Performance Plan which identifies performance goals to meet the strategic goals, and describes performance indicators to measure them.

Efforts to correlate the agency's strategic and performance plans with the budget are underway. The first two of the five key agency operations correspond with the budget justification (import injury and intellectual property-based investigations). For the next budget cycle, the Commission expects to have the same correlation with the strategic and performance plans and the budget for the other three agency lines of business (research, trade information services, and trade policy support).

In concluding my comments today, I would like to highlight a phrase from the agency's strategic plan which states ". . . The Commission recognizes the importance of striving for excellence in all aspects of its mission." These are words that the agency takes to heart.

This concludes my prepared comments for today's hearing. Thank you again for the opportunity to present them, and I am prepared to address any questions or concerns you might have.

Chairman CRANE. Thank you, Ms. Bragg.

Mr. Fisher, why hasn't Canada lived up to its WTO obligations to admit U.S. magazines into their market on the same basis as domestically produced magazines, as called for in the WTO's decision in 1997 and what is the USTR going to do about?

Mr. FISHER. Congressman, this is the darndest issue. As you just mentioned, in 1997 a WTO panel found their magazine regime to be in violation of their international trade commitments. They have put forward a bill known as Bill C-55. It has passed the lower house in Canada. This bill would impose criminal fines on foreign publishers if they run advertisements aimed at Canadian customers. In other words, they would criminalize this activity.

We are in the midst of negotiations with Canada on this subject and, by the way, they are proceeding with good faith and we are making progress. Their insistence that the purpose of this bill is to protect Canadian culture, if it were to be passed, would trigger the terms of the cultural industries provision agreed by Canada in its 1988 Free Trade Agreement with the United States which was subsequently incorporated into the NAFTA under annex 2106 of the NAFTA. This allows the United States, if they were to pass this

bill by insisting that it was for the purposes it now ostensibly is for, to receive compensation by taking what are known as measures of equivalent commercial affects in retaliation without their having recourse to dispute settlement.

Now this is an example of enforcement. Here is one of our duties. Another country was found to be in violation of their obligations. We are pursuing this case aggressively. They have instead tried to substitute a different regime, ostensibly, as it means in this case, preserving Canadian culture. But, clearly, it is unacceptable if it were to proceed.

I say all that against the back drop of the fact that we are in negotiations with the Canadians. It is good faith negotiations. I believe that we will be able to negotiate a proper solution here and we are working very hard to do so, Mr. Chairman.

Chairman CRANE. Hopefully.

Now, Commissioner Kelly, the President's budget includes a legislative proposal for an automation user fee to generate funding as an offset for automated commercial environment, ACE, and the international trade data system. But these funds would not be available until fiscal year 2001. If I understand your testimony, the Administration proposes to fund ACE from resources jointed provided by the trade community and appropriated resources. Yet there are no appropriated resources in the fiscal year 2000 budget request. Can you explain that, first of all, and is it the Administration's intent to put ACE development on hold for fiscal year 2000?

Mr. KELLY. The budget calls for the collection of fees, Mr. Chairman, in the fiscal year 2000, for ACE, not to be expended until fiscal year 2001. It is an area of concern to me, quite frankly. I think ACE is vitally important. We want to move forward with it as quickly as possible. As you know, there is a negotiation process that goes on within the Administration. Customs argued for funds upfront, immediately, and certainly in the fiscal year 2000 budget, to move forward with ACE and that was not forthcoming. The more quickly we can get underway with ACE, I think the better off the country will be, the trade community will be, the Customs Service will be.

Chairman CRANE. There are many figures circulating as to what building ACE will cost. What, in your estimation, will it cost?

Mr. KELLY. The latest estimate is \$1.4 billion. Obviously, this is dependent on bids that are put out and responses on the part of many contractors. But we brought in Peat Marwick to take a look at our estimate procedures, the way we were going about it and they said that they were reasonable and they thought that the process that we used to estimate the cost was a good one. So, as I say, now it is \$1.4 billion. Certainly it is possible that it may change up and down. As technology develops, in fact, the cost may go down.

Chairman CRANE. Can you please update us on the ongoing dispute with the labor union over the use of a very successful drug interdiction approach called pre-primary roving in El Paso? In addition, when we examined the issue last year, less than 25 percent of JFK's work force was available to work Saturday and Sunday as regular workdays when those days made a part of that officer's regular work week, despite the statutory requirement that these days

be deemed regular workdays under those circumstances. And has there been any resolution of this issue with the union?

Mr. KELLY. Well, the pre-primary in El Paso, in essence, what it means is that inspectors go out before vehicles reach the booth and they will open trunks.

Chairman CRANE. That is with the dogs, right?

Mr. KELLY. That is with the dogs or it can be done without dogs, just having people pop trunks. There was some dispute as to whether or not that was an appropriate activity for the inspectors to do. To the best of my knowledge, that has not been resolved, although we are doing pre-primary inspections in other locations along the border. We do local bargaining. I believe that is still an outstanding issue, but I could be wrong.

As far as the staffing at JFK, if I understand that question?

Chairman CRANE. And workdays, regular workdays. When we checked this last year, less than 25 percent of the work force at JFK was available to work Saturday and Sunday as regular workdays when those days make up part of that officers regular work week, despite the statutory requirement that these days be deemed regular workdays under those circumstances. And has that issue been resolved with them?

Mr. KELLY. We have embarked on a project called port certification which takes a look at staffing levels for all of our ports to see if they are adequate, to see how overtime is being distributed. In addition, we are in the final stages of receiving a resource allocation model from Price Waterhouse, an independent contractor that has to look at the entire agency to give us a clean sheet of paper view. I think that will go a long way to telling management how we should have people distributed. Right now, distribution is, to a large extent, the function of local bargaining with the union and we need a better view as to how we should have our people distributed. Both the port certification project and the Price Waterhouse model that we should be obtaining in the next couple of weeks will be helpful in telling management where people should be assigned.

Chairman CRANE. Thank you. And, Chairman Bragg, the ITC is being faced with a more than doubling of its title VII workload due to the Uruguay Round Agreements Act that mandated 5-year Sunset Reviews of all past and future anti-dumping countervailing duty investigations. How are you managing that increase?

Ms. BRAGG. I guess a short answer would be—very carefully. We primarily have responded to the increase through the use of internal transfers within the Commission, reassigning employees from one office to another, as well as, with the fixed-term hires. These fixed-term hires would be for 1- or 2-year periods. We anticipate internal transfers to be approximate—up to 19 people and then a total Sunset hire of possibly 34, depending on need. And that would include, also, the reassignments of 19 internally. It would depend on how our work is progressing and how many reviews actually go into full investigations and have full-blown hearings (as opposed to simpler expedited reviews).

Chairman CRANE. Very good. Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. First of all, I want to indicate how much I agree with Mr. Fisher's characterization of the

professionalism of USTR and that very much applies to the other agencies that are here today and to the four of you who are here to represent them. I think we should all listen when there are plaudits for efforts of government employees.

Second, I think I will resist asking you about substance. It is tempting. Ms. Bragg and Ms. Askey, to talk to you about section 201. Your increased workload, as you know, Mr. Houghton and I, working on a bipartisan basis, we hope both with the House and Senate, feel the need to take a further look at section 201, but I think, perhaps, we should focus on the staffing issues, authorization levels, and not get into substance. Because, Mr. Fisher, I would like, otherwise, to talk to you about a number of issues: Section 301; your report of a few weeks ago and the forthcoming report; Japan, the visit of the Prime Minister; talk about China. That could take us a few hours.

I do urge everybody to look at your testimony on page 14 where you do talk about the negotiations, ongoing negotiations with China and your characterization that there are outstanding issues to be resolved, sectoral issues as well as what have been called protocol issues. Your characterization that the negotiations have moved ahead, but they are far from complete and that you will consult with Congress closely. I hope you will do that. My own view is that that accession needs to be done and it needs to be done right.

Mr. Kelly, I think I will kind of focus on you, if I might. [Laughter.]

In terms of authorization levels and personnel issues and the like. So let me just ask you two questions. I think you are under some limitations as to what you can say in terms of authorization levels. You are part of the Administration. Any views on authorization levels? And let me combine it with asking you to comment about authorization personnel levels and I am asking you to comment on the relations with your employees.

On page—actually, I guess it is not numbered, but you say, “We continue to work in partnership with the NTEU.” And I think it might be helpful to us, before we get into specific issues—we will probably do that later on with other witnesses—any thoughts you have about the State of employer-employee relationships within your agency?

And then, last, if I might just ask you, you know there is going to be later testimony about your automation. And there have been some criticisms of your work to date. So if you could comment on personnel levels, general labor-management relations within the service, and, also, the last issue, how you are coming on automation.

Mr. KELLY. As far as authorized strength levels are concerned, I believe that the Customs Service needs more resources, needs more personnel. I think Congressman Rodriguez mentioned that there are many ports, for instance, along the border that want to operate on a 24-hour basis that simply can't because you don't have the personnel to do it.

The resource allocation model that is coming on board here from Price Waterhouse, holds great promise. It will, for the first time, take a look at a total agency. We have asked them, tell us what

do you think we need to do? Our mission? It has been before for parts of agencies. Now, for the first time, we are going to have kind of a clean sheet of paper view on what the Customs Service needs to do its mission. And, at the very least, it will give us a sense of proportionality as to where people will be assigned.

Mr. LEVIN. And that is due, again, when?

Mr. KELLY. Actually we should have a draft in the next few days. We have to look at it and it is a model. It has in it formulas that you can adjust for workload. If the workload goes up or down, it will tell you how many people you need to do a particular function.

Mr. LEVIN. Will that give us some idea of their recommendations on overall personnel levels as well as proportionality?

Mr. KELLY. Yes, it will. Yes, Sir.

Mr. LEVIN. And when do you think we will know about that?

Mr. KELLY. Well, we have to take a look at it ourselves and look at it and play with it, you might say, to see how it works. And then we will certainly, obviously, make it available to the Committee. I would say probably within a month we will be able to do that.

Mr. LEVIN. So we ought to have that input before we are very much further along in the budget and appropriation process?

Mr. KELLY. Hopefully, we will have it within the next month.

Mr. LEVIN. And if that has some major recommendations of increased personnel levels, we will need to take that into account?

Mr. KELLY. Yes, Sir. It sounds to me that that is the way to go. We have had a, a systematic examination of the functions of the agency that will result in not only port-specific and unit-specific recommendations, but also for the agency as a whole.

Mr. LEVIN. You wouldn't be totally surprised if they came forth with a recommendation for increased personnel levels?

Mr. KELLY. I would not be surprised because I know the work that the Customs Service is doing and the strains that are on the Customs Service now with our present manning levels so, yes, I have reason to anticipate that there is going to be a recommended increase. How much I have no idea.

Mr. LEVIN. And, quickly, on the other two issues.

Mr. KELLY. I think our relations with our employees are good. Clearly, the relationship with the union and unionized employees, I am told, is much better than it was, say, 10 years ago, pre-partnership. The partnership is the Administration's concept of working more closely with its unionized employees. We have done organizational assessment surveys. The employees are generally happy to work in the Customs Service. Like any big organization, almost 20,000 employees, there are some pockets, there are some issues that, that create some tension, but, overall, I think our relations are good.

As far as the union is concerned, I meet with Mr. Tobias. I try to meet on a weekly basis. I am not certain he does that with any other agency head, but we try to communicate as much as possible. So I would characterize our relationship as good, not perfect.

Mr. LEVIN. And technology, quickly, the criticisms of ACE?

Mr. KELLY. Right. We have had some criticism as to our ability to manage a big information technology project such as ACE and I think the things we have done—I have outlined in my oral presentation. We have gotten a first-rate chief information officer,

Woody Hall, who is here now. We have done some reorganization in our IT shop.

We are now moving toward a prime contractor. We have learned from the lessons of other governmental agencies. I believe we need a prime contractor to lead us down the path to develop ACE. And to do that, we have contracted—again, as I said in my oral comments—with Mitre, which is a government-sponsored research firm that will kind of develop an RFP process for us, the acquisition process.

GAO has made some sound recommendations and we are doing everything that we can to adopt those recommendations. We have made significant changes. And we are not looking for the pride of authorship or ownership here. We want ACE to go forward and the prime contractor, to me, is the way to go. So we are adopting that notion. We do need money to do that, though, quite frankly.

Mr. LEVIN. Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. I only have one question and that is to Fisher.

This is a competitive game, as you know from your negotiations on manufactured goods and things like that with China. How do we stack up in terms of our budget with—although it is difficult to compare exactly the numbers—with other countries? I mean, do you have the research? Do you have the resources? When you go into negotiations, do you feel that you have the back up and the people that are necessary to do the job? Compared to any of the other nations that you are dealing with?

Mr. FISHER. Well, first, Congressman, it is very hard to sort out our competitors in terms of the number of personnel they have, their budgets. I had dinner last night with the Minister of another country and their representatives, much smaller than we are by a small fraction. They had 400 people and a budget that dramatically exceeds ours. But when you look it and you break it down and analyze it, it is actually combining what we have in our Commerce Department, large sections of it, and what we have at USTR. So it is very difficult to compare, run a comparison.

Do we feel that we have adequate back up? We have an unusual structure at USTR. We push decisionmaking down to the lowest possible level. It is a good business practice, as you know. We have very able negotiators at the assistant level and then, hopefully, at the deputy level and so on. And we work in a very thin organization. We have very little bureaucracy at USTR. I know that is hard to believe coming from someone that works in a bureau of the U.S. Government, but the fact is that anybody can walk into my office that needs to at any time. They don't abuse that privilege. Similarly, we can do that with Charlene Barshefsky. And I think we survive significantly on our wits, to be frank. But, at the same time, having taken the bureaucracy out of our little bureaucracy, I think we are able to be much more efficient than we would otherwise be if we had rigid formulae.

We are happy with the budget request that we have made. Frankly, we are making up for some lost time. We went through a very dry period for quite a while. But we have the responsibility to cut costs. I mentioned including using frequent flier miles and

cutting out a lot of the stuff. And it makes it harder on our negotiators, but we have this duty to the taxpayer. And I would say, Congressman Houghton, we are very satisfied with what we have. Obviously, everybody would like more in their wallets.

And if I just may say one other thing here. We are very, very fortunate—forgive me for saying this in this hearing. We have a USTR that has been on the job 6 years. She is very unique. Usually there is rapid turnover. She went from my position to acting and then to USTR. There is a tremendous repository of knowledge in that woman's brain. And that allows us to gear ourselves much more efficiently than we would otherwise be able to.

Mr. HOUGHTON. Not only knowledge, but energy. My lord. I don't know that she ever sleeps. Thank you, Mr. Chairman. That is it.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. If I could ask Commissioner Kelly a question regarding a followup of sorts on the question that Congressman Levin asked regarding management and employee relations. Is there anything, Commissioner, that you are aware of with regard to the collective bargaining agreement that you have with the employee union that has affected or impeded the ability of Customs to interdict drugs or interfered with that process at all?

Mr. KELLY. No, I have no indication that, as a result of the collective bargaining agreements, we are unable to do our job.

Mr. BECERRA. And, at this stage, you mentioned that you were in the process of sitting down with representatives from the employees union to try to straighten out any differences the agency has with its employees in regards to work place and benefits and so forth.

Mr. KELLY. We have ongoing negotiations, both national level, local level, on a myriad of issues, yes, Sir.

Mr. BECERRA. And that goes on even with the current collective bargaining agreement in place. Is that correct?

Mr. KELLY. That is correct. Yes, Sir.

Mr. BECERRA. Thank you. That is it, Mr. Kelly. If I could ask a question to you, Mr. Fisher. The question of whether or not we are going to get into this whole debate with China's accession to WTO, there is a great concern that, at the end of the day, if they come in—and, Ms. Bragg, this is probably something I should address to you as well—that we will not have a way to enforce the agreements.

Is there anything you can tell us that will give us confidence that you all will be equipped, should we get to the stage of seeing China enter into the WTO, that we can be sure to enforce the new provisions under which China would operate in this new trade setting? You have got very small budgets and your enforcement capabilities are probably stretched to begin with, but is there anything that you could tell us to lead us to believe that, with your current budgets, that you would be able to address the enforcement needs of this country to ensure that China is fulfilling its obligations under WTO?

Mr. FISHER. Well, Congressman, first, we haven't completed our negotiations. I think that is an important marker. Second, we will be discussing a lot of the specifics of what we have achieved later

this week with you and your fellow members of this Committee. Generally speaking, let me say this: Assuming that we are able to complete this negotiation, the purpose of the negotiation is for China to accede to membership of the WTO. Presently, we invoke our own trade laws because they are not members of the WTO and we are endeavoring in this negotiation—and thus far we have—to secure the right for us to use our trade laws.

As regards other enforcement, though, we believe that there is a benefit for them to be accountable to the 133 other nations that are members of the WTO. Any temptation, whether it is on intellectual property rights or any other aspect of the keeping of their commitments to us and to the WTO, forces within China or others in that economy to say, well, you know, we can play hardball here. It is much easier for their leaders to say, wait a minute, we have now a commitment to the rest of the world. It is not just a bilateral commitment to the United States.

This allows us, then, to use the monitoring and the enforcement mechanisms of the WTO. This is where USTR spends a great deal of time as litigants, when necessary. And it strengthens our hand to be able to have that additional layer of requirements for meeting their obligations to the international community.

Mr. BECERRA. So you are not asking for additional monies for your general counsel office, are you?

Mr. FISHER. No, Sir, we are not. I must tell you, though, we did fill 10 new positions in fiscal year 1998. We substantially extended our own enforcement mechanism in terms of the role we play. And we are now digesting those new employees. We are not asking for any more this year. Seven of those were litigants or lawyers, rather, and then additional staff on top of that.

And the short answer, Congressman, is that, again, this would expand in terms of comfort—assuming it is done right, assuming we complete this package—the ability to bring the laws of the international community to the enforcement table in addition to our own bilateral trade laws. And we would be happy to give you a detailed briefing on that whenever you wish.

Mr. BECERRA. I would appreciate that.

Ms. BRAGG. Congressman, as far as the International Trade Commission is concerned, I think the framework is already in existence as far as any unfair trade practices that any Chinese company may engage in in the United States. And those are through the existing anti-dumping and countervailing duty laws, as well as any other practice that would be subsumed within the section 201 escape clause mechanism. And, also, our section 337 intellectual property framework.

Mr. BECERRA. Ambassador, I should probably follow up with you on that opportunity.

Mr. FISHER. Please do. Please call me.

Mr. BECERRA. Thank you, Mr. Chairman.

Chairman CRANE. Just a followup on the question to you, Mr. Kelly. My understanding is you told me that the union prevents you from using pre-primary in El Paso. Right?

Mr. KELLY. I am not certain if that issue was resolved or not. It was an issue. I am not certain. It was an issue that was under discussion and I don't know how that was resolved or if it is still

under discussion. But pre-primary roving, as it is called, is going on in other ports on the border.

Chairman CRANE. And everywhere except there, right?

Mr. KELLY. Well, yes.

Chairman CRANE. Well, is it that the policy isn't effective in interdiction?

Mr. KELLY. The policy is, I think, an effective one.

Chairman CRANE. Effective.

Mr. KELLY. Yes, Sir.

Chairman CRANE. Not ineffective.

Mr. KELLY. Yes, Sir.

Chairman CRANE. And, yet, you don't know the answer to the question about El Paso?

Mr. KELLY. I don't know the status of the negotiation in El Paso. I don't know if that dispute has been resolved.

Chairman CRANE. Well, is it not fair to say that the union has had an adverse effect, then, on drug interdiction because of holding up that resolution of that question?

Mr. KELLY. Well, it is something that is in negotiation. I mean, if something were permanently——

Chairman CRANE. But how long has this been going on?

Mr. KELLY. I don't have the answer to that question.

Chairman CRANE. Because I heard it was several years.

Mr. KELLY. No, no. It is certainly not several years. It is a fairly recent issue that surfaced. I was in El Paso when I was Under Secretary, which was less than a year ago and, to the best of my recollection, pre-primary examinations were ongoing.

Chairman CRANE. I was just handed the notification here. Since early 1995, Customs and the National Treasury employees union local in El Paso have been negotiating over work conditions there involving that pre-primary provision.

Mr. KELLY. Well, I will have to get back to you on that, Mr. Chairman. I just simply don't know.

[The following information was subsequently received:]



THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.
FO: P JOG

Honorable Philip Crane
Chairman
Subcommittee on Trade
House Ways and Means Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

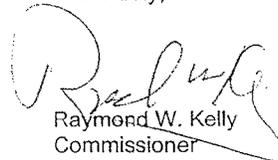
At the conclusion of today's hearing on the Customs Fiscal Year 2000 budget request, you asked whether Customs is having difficulty in performing its enforcement mission due to a lack of cooperation with the National Treasury Employees Union, particularly in El Paso. The specific contention was that pre-primary roving, a highly effective enforcement tool, was not being done at the El Paso bridges since 1995.

This is simply not so. Customs has been performing pre-primary roving at El Paso without interruption since 1995.

Prior to 1998, extensive negotiations were underway to address a number of safety and operational concerns we shared with NTEU. On August 12, 1998, Customs and NTEU, through our local partnership in El Paso, entered into an agreement which addressed our issues and provides for the full scope of pre-primary roving. Pre-primary operations were conducted throughout the negotiations.

I appreciate the opportunity to clarify this matter for you and the members of the Subcommittee.

Yours truly,


Raymond W. Kelly
Commissioner

Chairman CRANE. Well, thank you all for your testimony. And, with that, you are excused.

And I would like to invite our next panel of witnesses. John P. Simpson, Deputy Assistant Secretary for Regulatory, Tariff, and Trade Enforcement; Dennis Schindel, Assistant Inspector General for Audit, Office of Inspector General; Norman J. Rabkin, Director, Administration of Justice Issues; and Randolph Hite, Associate Director, Governmentwide and Defense Information Systems.

And if you will all take your seats, we will proceed after the transition is concluded. If you folks can hold on for a second here. We have got a major flow going out that door.

And now I think we can commence with Mr. Simpson first.

STATEMENT OF JOHN P. SIMPSON, DEPUTY ASSISTANT SECRETARY, REGULATORY, TARIFF, AND TRADE ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY

Mr. SIMPSON. Thank you, Mr. Chairman. I am here this morning representing the many agencies of the U.S. Government that have joined together to build an international trade data system. But we are not as well known as we would like, so perhaps I could take a moment to tell you what the international trade data system is and why we are building it.

Over the years, as Congress has enacted laws to protect public health and safety, to protect animal and plant health, to protect the environment, to protect endangered species, to help protect intellectual property, to extend great benefits to countries with whom we have trade agreements, to impose sanctions on countries that threaten our national security, the agencies of the executive branch that are responsible for administering these laws have imposed reporting requirements on the international trade community. Over the years, these reporting requirements have accumulated to the point where there are now 40 different agencies administering 400 different laws at the border.

We are conscious of the fact that not all of these laws necessarily applies to any single transaction. But it is actually possible for several of them to apply to one importation of goods. Just to give you a simple example. If this morning a shipment of strawberries crosses the border in Nogales, Arizona, Customs Service would get information about that shipment; Immigration and Naturalization Service will get information about the driver; the Federal Highway Administration will increasingly want information about the truck and the driver's status as a commercially licensed operator.

But then, in addition to that, the Food Safety Inspection Service will be concerned that the strawberries have been rinsed in dirty water, handled by workers with dirty hands. They are concerned about hepatitis and they will want information on that. The Animal Plant Health Inspection Service will be concerned that the strawberries may be infected with some sort of a fruit pest or that the wood cartons in which the strawberries are imported are infected with some sort of a pest. EPA is concerned about pesticide residues. And, of course, the Census Bureau, the Farm Agriculture

Service, the Agriculture Marketing Service, and State agriculture authorities all want information for statistical purposes.

So, for a fairly simple transaction such as that, there is the potential for the international trade community to be burdened with very heavy reporting requirements. We don't know exactly what the cost is in the United States for parties importing into the United States. But about 4 years ago, the United Nations Council on Trade and Development estimated that worldwide, the cost of reporting or preparing documents for governments and doing the record keeping to support those documents averages about 4 to 6 percent of the value of the goods. In other words, it is an indirect tax of about 4 to 6 percent on international trade. We have some reason to think, because of some work done by one American company, that that figure is probably in the ballpark for the United States.

So, with the international trade data system, we are trying to do something about that cost. There are several objectives that we want to accomplish with the international trade data system. We want a single window for dealing with the government for the international trade community. Over the last few years, we have taken—the last 2 years, we have taken hundreds of government forms and thousands of data items and we have compressed them into a single electronic message. We don't want separate front ends. As Federal Government agencies move from paper reporting processes to electronic reporting, we don't want the government to incur the expense of investing in duplicative systems or duplicative interfaces with trade.

We want to be sure that there is Internet access to the government to accommodate the needs of small businesses. Currently, many of the systems for reporting to government use what are called bands, value-added networks or dedicated lines that are simply beyond the resources of small businesses to use.

We want to use transponder technology at the border to speed up the movement of trucks. Right now, when a truck approaches the border, an inspector takes several seconds to key in information about that truck. When the inspector is doing that, not only is the truck delayed, but the inspector is not doing what we train them to do. He is being used as a data input operator rather than as someone who is there to look at the crop, look at the driver, make sure that everything is in order before the truck moves on. So that is a key objective for us.

On what we call the back end, we want the public to have a single point of access for international trade data maintained by a wide variety of U.S. Government agencies. Today, if you are a researcher at the University of Illinois and you want to know about the impact of international trade on the economy of Illinois, you have to go to many sources. We would like the international trade data system to be a single window, not only for academic researchers, but also for policymakers in the government, such as Members of Congress, USTR, the U.S. International Trade Commission to get better data and more timely data.

We also want to be prepared to outsource the operation and maintenance of the system. One of the things we have learned is that Federal Government agencies do not do a good job of main-

taining and upgrading sophisticated automation systems. So we want to be prepared to arrange for this to be done in the private sector.

We are starting on some pilots this year, Mr. Chairman, in three different locations and we hope to be able to report to the Committee soon. Thank you.

[The prepared statement follows:]

Statement of John P. Simpson, Deputy Assistant Secretary, Regulatory, Traiff, and Trade Enforcement, U.S. Department of the Treasury

Mr. Chairman, on behalf of the Treasury Department and all of the agencies of the federal government who are working together to create an international trade data system I want to thank you and the members of the Subcommittee for giving us the opportunity to appear here today.

THE ENVIRONMENT

Let me begin by describing to you the environment in which we are working. The United States is the world's largest exporter and its largest importer. On the export side, the U.S. economy depends heavily on world markets to support a higher rate of growth. Although exports in 1998 were down slightly from the previous year, largely because of the Asian financial crisis, they were up by a little over 70 percent from 1990. About one of every ten U.S. jobs, and one of every five manufacturing jobs, is supported by exports.

The U.S. economy is also heavily dependent on imports. The competitiveness of U.S. manufacturers and the quality of life for U.S. consumers depend on having access to materials and goods from around the world. Indicative of this, the value of imports into the United States in 1998 was up by about 85 percent over 1990.

Because international trade is so important to the U.S. economy, the cost of government procedural requirements affecting international trade, and specifically information reporting requirements imposed on import and export transactions, is a burden on the performance of the economy as a whole.

This burden is not imposed as a matter of conscious policy. Rather, as laws have been enacted to implement trade agreements; prevent unfair trade practices; protect the environment, consumers, animal and plant health, and endangered species; ensure highway, rail, and air safety; better regulate immigration; impose economic sanctions on hostile regimes; and prevent export of sensitive technologies to inappropriate destinations, new requirements for reporting have been superimposed one on top of another, despite efforts to limit the cumulative burden.

Although there are no reliable cost figures for the United States alone, the United Nations Council on Trade and Development estimates that worldwide the cost of documentation requirements for international trade accounts for 4 to 6 percent of the cost of goods traded. In other words, the cost of preparing documentation is equivalent to a tax of 4 to 6 percent on the value of goods.

Today, separate reporting and data systems are maintained by U.S. federal government agencies involved in all aspects of the international trade process, including regulation of goods, transportation, and immigration. Exporters and importers deal with numerous paper and electronic systems, and are confronted with duplicative, incompatible, and non-uniform data reporting and record-keeping requirements.

These multiple information collection systems are not only costly and burdensome for both government and the trade community, they also limit the effectiveness of individual agencies in carrying out their enforcement and regulatory responsibilities at the border. Agencies generally do not have access to information that other agencies collect, or have the benefit of knowing what enforcement or regulatory actions other agencies have taken in response to that information. They act in isolation rather than in concert with each other.

Finally, those who need access to statistical data on international trade, including Congressional committees that enact trade policy into law, must often research several potentially incompatible sources because the systems do not use standard data or technology.

The International Trade Data System (ITDS) is intended to rationalize the federal government's collection and use of international trade data. ITDS is aimed at:

(1) reducing the cost and burden of processing international trade transactions and transport for both government and the private trade community by substituting

standard electronic messages for the multiple and redundant reporting—often on paper forms—that occurs today;

(2) improving enforcement of and compliance with laws and regulations that apply at the border to carriers (for example, highway safety and vessel clearance), people (drivers and crews of commercial conveyances), and goods (several hundred laws including those addressing public health and safety, animal and plant health, consumer protection, enforcement of trade agreements, etc.); and

(3) providing convenient access for Congress, Executive Branch agencies, and the public to international trade data that are more accurate, complete, and timely.

The ITDS will serve many agency automated systems, including Customs' Automated Commercial Environment (ACE), by distributing to those systems information collected electronically from importers, exporters, carriers, and other parties to international trade. The information collected will consist of a standard set of data that meets the needs of all U.S. Government agencies.

ITDS will also serve as a common payment point for taxes and fees paid to multiple government agencies, much as American Express or VISA provides a single billing and collection point for a variety of charges incurred by its customers.

Finally, ITDS will serve as a custodian of records for information it collects, and as a convenient, single point of access to all Federal government data international trade bases for persons—who will have different levels of access—seeking information about U.S. international trade.

The International Trade Data System (ITDS) Project Office has been established at the Department of the Treasury in accordance with the Vice President's memorandum of September 15, 1995. The need for the implementation of the ITDS to be managed by an inter-agency board was the recommendation of a government-wide task force representing fifty-three of those agencies. The board was to be given the authority to "recommend and, if necessary, direct individual agencies to modify their processes and systems to conform with the principles for an integrated International Trade Data System." The task force report concludes that "authority to make cross-agency decisions that would be vested in this Board is the only way possible to obtain the multi-agency re-engineering of the international trade processes that will be required to make the International Trade Data System a reality." Agencies represented on the Board include Treasury, the Customs Service, the Food and Drug Administration, the Immigration and Naturalization Service, the Transportation Department, the Agriculture Department, the Commerce Department, the U.S. Trade Representative, and the U.S. International Trade Commission.

ITDS Development

Initially, it was envisioned that there would be three principal tasks to construction of an ITDS: (1) creation of a standard set of data to satisfy the needs of all users without redundancy, (2) design of a single point of collection from which data would be distributed to all agencies requiring them, (3) and design of a single point for accessing all data collected by the system, regardless of where they are stored.

However, as the project developed, participants have taken advantage of opportunities created by the project to address other objectives. For example, a module for data on trade in services will be included in the ITDS, certain processes for clearing trucks and trains entering the U.S. will be re-engineered to take advantage of dedicated short-range communications technology (transponder readers) being deployed by the Department of Transportation, and data definitions will be developed with an eye toward the possibility of future harmonization of U.S. trade data with data collected by our major trading partners, particularly the G7 countries and Mexico.

Much of the ground work has been accomplished. With the participation of all the involved agencies, an effort to identify their international trade data requirements was completed in 1997. Those data requirements are being converged with harmonized data sets being developed by the G7 countries so that we will be closer to the vision of having a "passport" for goods that will be universally accepted for both export and import purposes.

The ITDS information architecture, or design report, was completed in September 1998 and presented for public review and comment on the Internet through <http://www.itds.treas.gov>, and at a public hearing on November 5, 1998. Key sections of the report are the *Project Summary*, the *Concept of Operations*, the *Project Implementation and Transition Plan*, and the *Cost/Benefit Analysis*. These can be found at the above Internet address.

Pilot Projects

ITDS pilots are being deployed this year at the Ambassador Bridge in Detroit, the Peace Bridge in Buffalo, and at the rail crossing at Laredo, Texas. The current plan is for the Customs Service, the Immigration and Naturalization Service, the Federal

Highway Administration, and the Food and Drug Administration to be the initial participating federal agencies. However, in order for the pilot to succeed, the Customs Service must agree to process the electronic message received from ITDS through Customs' border cargo selectivity system. We are hopeful that we can complete arrangements with Customs in time to keep to the schedule for beginning the pilots this year.

The Way Forward

At this time, no decision has been made to advance the ITDS beyond completion of the Design Report, although the project is funded at the level of \$5.4 million in FY 1999, with a similar amount proposed in FY 2000, in order to conduct pilots and to continue testing. If a decision is made to deploy the ITDS, full system functionality could be achieved in three years, and full deployment to all ports and all agencies could be achieved in a fourth year (although major ports and major users would be served at an earlier time). The full four-year cost for deploying the system would be \$268 million. This cost projection assumes that all ports of entry will be provided with equal capabilities. However, alternative deployment strategies are being analyzed that may significantly reduce this cost estimate.

There are a number of actions that are needed for the ITDS to proceed. These include providing for the long-term interagency management of the ITDS, removing any statutory or regulatory obstacles to sharing of a single collection of data among the agencies that need them, and working on outsourcing of operation of the system to the private sector under government ownership and supervision.

Allow me again to thank you and your colleagues, Mr. Chairman, for your interest in the International Trade Data System Project, and for giving us an opportunity to appear here today. I shall be happy to answer any questions you may have and to provide any written material you may want.

Thank you.

Chairman CRANE. Thank you.
And our next witness is Mr. Schindel.

**STATEMENT OF DENNIS S. SCHINDEL, ASSISTANT INSPECTOR
GENERAL FOR AUDIT, OFFICE OF INSPECTOR GENERAL, U.S.
DEPARTMENT OF THE TREASURY**

Mr. SCHINDEL. Thank you, Mr. Chairman, Mr. Levin, Members of the Subcommittee. I am pleased to appear before you today.

A year ago I testified before this Subcommittee on the results of an audit that we conducted on the impact of U.S. Customs Service officers pay reform amendments, otherwise known as COPRA. Our audit, which was completed in September 1996, found that, while the COPRA legislation was expected to reduce Customs overtime costs for inspectional services, it, in fact, resulted in an increase in total overtime and premium pay costs. In a moment, I will explain why that occurred.

When I testified last April, this Subcommittee had a bill, H.R. 2262, under consideration that would have revised a number of provisions in COPRA which contributed to the increased costs in overtime and premium pay. However, H.R. 2252 was not passed into law and the provisions of COPRA that contributed to the increase are still in existence today.

COPRA became law as part of the Omnibus Budget Reconciliation Act of 1993 that took effect January 1, 1994. COPRA created a new and exclusive overtime compensation premium pay system for Customs Officers performing inspectional services. The intent behind COPRA legislation was to more closely match earnings to hours worked. The House report dated May 25, 1993 estimated

that COPRA changes would result in overtime savings of \$12 million in fiscal years 1994 and 1995 with total savings through fiscal year 1998 of \$52 million.

After we initiated our audit what we found, however, was that premium pay expenses for Customs, specifically the night differential pay, 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.

I would like to direct your attention to the bar chart which graphically depicts the Customs' overtime costs before and after COPRA.

If I can get a little high-tech here. Actually, I had to wrestle this away from my 10-year-old daughter this morning. They are very popular with the kids. This first bar shows the cost to Customs' overtime in fiscal year 1993. This was the last full year under the prior pay legislation commonly known as 1911 Act overtime. As you can see, the costs for total overtime were \$99.2 million. Of this amount, the small amount there, \$51,000 represents the cost of night differential premium pay.

Now, in the next year, fiscal year 1995 we have up here, that is the first full year, first full fiscal year, under the new COPRA legislation. And in that year, the total overtime costs went up to \$106.1 million and the night differential portion of that went to \$8.9 million from \$51,000.

Now Customs has continued to experience higher costs each year. The remaining two bars show the costs for fiscal years 1997 and 1998. In fiscal year 1997, total overtime pay, including the premium pay, was \$106.8 million with \$9.3 million attributable to night differential. In fiscal year 1998, you can see that the costs went up to \$136.9 million with \$11.9 million attributable to night differential.

Now let me discuss the reasons why COPRA contributed to the increase in Customs' overtime costs and, more specifically, the night differential premium pay. 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 night differential amount from 10 percent of basic pay to 15 and 20 percent, depending on the time of day.

Now this next chart here will graphically depict, I hope, exactly how this works.

It is a little busy, so let me walk you through it. First, you will need to change your orientation slightly because this is a 24-hour clock. So, going down the righthand side, we have the 12 hours of the day that run from midnight to 12 noon. And then going up the left side, we have the 12 hours of the day that run from 12 noon to midnight. Now the time period that qualifies for night differential premium pay is represented by this black band here. That covers the period from 3 p.m. to 8 a.m. or 17 out of the 24 hours in a day. The two thin blue arrows here represent the two periods of that night differential period that qualify for the premium pay rate, 15 percent. On the left side, 20 percent. On the right side. So, so

far we see, then, that COPRA has established a night differential period that covers all but 7 hours of the day and 2 higher premium pay amounts, 15 and 20 percent.

Now the night differential provision in COPRA legislation also provides that if the majority of a shift falls within a night differential period, then the entire shift qualifies for night differential premium. Now, to illustrate the impact of this, we have three sample shifts, which are represented in the color bands in the inner circle here. In these three shifts, the entire shift would qualify for night differential. For example, looking at the blue band, a Customs' officer can earn a 15 percent night differential for the entire 8 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 to 12 noon, as represented by this green band here. Likewise, in the red band, we have a shift that runs from 8 p.m. to 4 a.m., which would also qualify for 8 hours of night differential pay at the 20 percent rate.

What this all means is that, essentially, 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 day-time hours, qualifies for 8 hours of night differential, premium pay.

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 had protested Customs' refusal to pay night differential to Customs' officers who were on leave for periods of 8 hours or longer. The ruling essentially required Customs 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 received night differential premium pay even if they were on vacation.

The bottom line is that the overall cost to Customs for overtime has shown an increase rather than a decrease after the passage of COPRA. It has steadily increased every year since 1995. The night differential portion of that total cost has steadily increased from \$51,000 in fiscal year 1993 to now \$11.9 million in fiscal year 1998. That substantial increase will remain a part of Customs' total overtime costs and continue its upward trend unless the provisions of COPRA that I have outlined in this testimony are eliminated or modified through new legislation.

Mr. Chairman, this concludes my remarks. I will be happy to answer any questions you or others may have.

[The prepared statement follows:]

**Statement of Dennis S. 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 today. Last April, I testified on the results of an audit we conducted on the impact of the United States Customs Service Officers Pay Reform Amendments (COPRA). Our audit which was completed in September 1996, found that while the COPRA legislation was expected to reduce the United States Customs Service (Customs) overtime costs for inspectional services, it in fact resulted in an increase to total overtime and premium pay costs.

When I testified last April this Committee had a bill H.R. 2262, under consideration that would have revised a number of provisions in COPRA that contributed to the increased costs of overtime and premium pay. However, H.R. 2262 was not passed into law and the provisions of COPRA that contributed to these increases are still in existence today.

COPRA became law as part of the Omnibus Budget Reconciliation Act of 1993. It took effect January 1, 1994. COPRA created a new and exclusive overtime compensation and premium pay system for Customs officers performing inspectional services. The intent of 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, we found that premium pay expenses for Customs, specifically, the night work differential, substantially increased under COPRA. Instead of the significant reduction in Customs overtime costs that COPRA was anticipated to provide, costs increased due to the use of both overtime and premium pay. Clearly, this was not the expected result when COPRA was passed in 1993.

According to data available 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 were \$99.2 million. Of this, \$51,000 was due to night 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 differentials. Therefore, COPRA substantially increased Customs costs for night differential pay from \$51,000 in 1993 to \$8.9 million in 1995.

Customs has continued to experience higher costs each year. In FY 1997 total overtime pay, including premium pay was \$126.8 million of which \$9.3 million was due to night differentials. In FY 1998 the costs were \$136.9 million and \$11.9 million respectively.

One of the major reasons for the increase in Customs premium pay costs, and more specifically the night differential 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 night differential amount from 10 percent of basic pay to 15 percent or 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 24 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 8 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. Essentially, 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 pay.

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 Customs refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer. The ruling required Customs 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 received night differential premium pay even if they were on vacation. While this situation was addressed temporarily in FY 1997 and again in FY 1998 through language in the Customs appropriation, a permanent correction is needed through a revision to the COPRA pay legislation.

In summary, the overall cost to Customs for overtime has shown an increase rather than a decrease after the passage of COPRA and has steadily increased every year since 1995.

The night differential portion of that total cost has steadily increased from \$51,000 in FY 1993 to \$11.9 million in FY 1998. That substantial increase will remain a part of Customs' total overtime costs and continue its upward trend unless

the provisions of COPRA outlined in this testimony are eliminated or modified through new legislation.

Chairman CRANE. Thank you, Mr. Schindel.
Mr. Rabkin.

STATEMENT OF NORMAN J. RABKIN, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. RABKIN. Thank you, Mr. Chairman, Mr. Levin, Members of the Subcommittee. I am pleased to be here today to discuss the work that GAO has done, mostly for this Subcommittee, addressing the Customs Service's effort to interdict drugs, to combat corruption, and to comply with the Government Performance and Results Act. My testimony on these subjects is based on reports that we have issued since 1997.

You also asked me to discuss the basis for the \$163 million estimate of revenues to be produced by a fee to be charged to non-government organizations for the use of Customs automation systems. My statement contains a thorough discussion of these issues and it has references to our issued reports for more details. I will just summarize the key points for you.

First, on interdiction of drugs. We reported on four different areas. The first relates to Customs' efforts to interdict drugs being smuggled through the ports while it moves legitimate traffic through the ports as quickly as possible. We reported on several ways Customs tries to identify and segregate low-risk traffic, that is, repeat shipments from known manufacturers or known truckers or with known importers. Then Customs tries to devote most of its inspectional activity to higher risk traffic. We pointed out some of the problems Customs was having with those programs and made recommendations to improve them.

Second, in the area of drug interdiction, we reported on the Custom's aviation program. The program has three interdiction-related missions. The main point of our report was that, over the past 3 years, Customs has spent about half of its aviation resources helping on investigations; about 25 percent conducting surveillance operations in Central and South America; and the remaining 25 percent on interdiction activities along the Southwest border.

Third, we are issuing a report today to the Senate Appropriations Committee on the status of field testing of a technology designed to help Customs determine whether specific illegal drugs are in sea or truck containers. Although Customs has not been very supportive of this new technology, it is working with the Pentagon and the Federal Aviation Administration to support further testing, which is scheduled to begin later this year.

And, finally, in the area of drug interdiction, we reported last year on the missions and funding of Federal agencies that collect or produce drug intelligence. Customs has a sizable intelligence function and focuses on drug smuggling individuals, organizations, transportation networks, and patterns.

Next, on the issue of drug-related corruption, we recently reported that Customs and the Immigration and Naturalization Service could be doing more to prevent corruption. Our work focused on drug-related corruption along the Southwest border. Although there have been only a relatively few cases of documented drug-related corruption, we found that Customs wasn't conducting reinvestigations of key personnel as often as it had planned. We also recommended that Customs follow up on cases where employees are convicted of corruption, determine how it happened, and then make the appropriate changes so it wouldn't happen again.

The next area I would like to comment on is strategic planning and resource allocation. Customs' strategic planning generally meets the requirements and intents of the Results Act. It covers the major missions and has result-oriented goals. Customs annual performance plans should also be helpful to decisionmakers such as this committee in reviewing how well Customs has been achieving its goals and setting priorities for coming years.

Regarding the allocation of resources, specifically personnel, among Customs' 301 ports, as Commissioner Kelly mentioned this morning, the agency has begun to develop a more rigorous data based system, as we had recommended in reports issued last year.

Finally, you asked us about the proposed automation fee, user fee for the automation systems. The President's budget proposes this fee and it shows a \$163 million revenue that is to be generated by it. The collection of the fee is tentatively scheduled to start in fiscal year 2000 and continue for at least the following 4 years.

According to Treasury and OMB and Customs officials, the estimate was based on the following three assumptions. First, Customs will develop and implement ACE over a 4-year period at a cost of about \$1 billion. The second assumption was the Treasury would develop and implement the new international trade data system over the same period at a cost of about \$250 million. And the third assumption was that the Federal Government and the trade community would share these costs equally. Therefore, the first year's costs, which, in this case, would be a quarter of the total amount, about \$325 million, would be shared equally, \$162.5 million each, \$163 million by the trade community to be represented by the user fee and by the Government.

Mr. Chairman, this completes my summary and I will be glad to answer your questions.

[The prepared statement follows:]

**Statement of Norman J. Rabkin, Director, Administration of Justice Issues,
General Government Division, U.S. General Accounting Office**

U.S. CUSTOMS SERVICE: BUDGET AUTHORIZATION ISSUES

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today at this Customs oversight hearing to discuss work we have done, mostly for this Subcommittee, addressing Customs' efforts to interdict drugs, combat corruption, and comply with the Results Act.¹ For the most part, our testimony is based on products we have issued on each of these subjects since 1997. You also asked us to discuss the basis for the \$163 million access fee to be charged to nongovernment organizations for the use of Customs' automation systems as included in the President's fiscal year 2000 budget. Our discussion of the user fee is based on interviews with the Office of Management and Budget (OMB), the Department of the Treasury,

¹ Government Performance and Results Act of 1993, P.L. 103-62.

and Customs officials and a review of sections of the President's fiscal year 2000 budget.

Created in 1789, the U.S. Customs Service is one of the federal government's oldest agencies. Customs is responsible for collecting revenue from imports and enforcing customs and related laws. Customs collects revenues of about \$22 billion annually while processing an estimated 15 million import entries and 450 million people who enter the country. A major goal of Customs is to prevent the smuggling of drugs into the country by creating an effective drug interdiction, intelligence, and investigation capability to disrupt and dismantle smuggling organizations. Customs' workforce totals almost 20,000 employees at its headquarters, 20 Customs Management Centers, 20 Special Agent-in-Charge (SAC) offices, and 301 ports of entry around the country.

DRUG INTERDICTION

Our work on Customs' efforts to interdict drugs has focused on four distinct areas: (1) internal controls over Customs' low-risk cargo entry programs; (2) the missions, resources, and performance measures for Customs' aviation program; (3) the development of a specific technology for detecting drugs; and (4) Customs drug intelligence capabilities.

Low-Risk Cargo Entry Programs

In July 1998, at the request of Senator Dianne Feinstein, we reported on Customs' drug-enforcement operations along the Southwest border of the United States.² Our review focused on low-risk, cargo entry programs in use at three ports—Otay Mesa, California; Laredo, Texas; and Nogales, Arizona. To balance the facilitation of trade through ports and the interdiction of illegal drugs being smuggled into the United States, Customs initiated and encouraged its ports to use several programs to identify and separate low-risk shipments from those with apparently higher smuggling risk. The Line Release Program was designed to expedite cargo shipments that Customs determined to be repetitive, high volume, and low risk for narcotics smuggling. In 1996, Customs implemented the Land Border Carrier Initiative Program, which required that the Line Release shipments across the Southwest border be transported by Customs-approved carriers and driven by Customs-approved drivers. After the Carrier Initiative Program was implemented, the number of Southwest Border Line Release shipments dropped significantly. We identified internal control weaknesses in one or more of the processes used at each of the three ports we visited to screen Line Release applicants for entry into the program. These weaknesses included (1) an absence of specific criteria for determining applicant eligibility at two of the three ports, (2) incomplete documentation of the screening and review of applicants at two of the three ports, and (3) lack of documentation of supervisory review and approval of decisions. During our review, Customs representatives from northern and southern land-border cargo ports approved draft Line Release volume and compliance eligibility criteria for program applicants and draft recertification standards for program participants.

The Three Tier Targeting Program—a method of targeting high-risk shipments for narcotics inspection—was used at the three Southwest border ports that we visited. According to officials at the three ports, the Three Tier program had two operational problems that contributed to their loss of confidence in the program's ability to distinguish high-from low-risk shipments. First, there was little information available in any database for researching foreign manufacturers. Second, local officials doubted the reliability of the designations. They cited examples of narcotics seizures from shipments designated as "low-risk" and the lack of a significant number of seizures from shipments designated as "high-risk." Customs suspended this program until more reliable information is developed for classifying low-risk importations.

One low-risk entry program—the Automated Targeting System—was being pilot tested at Laredo. It was designed to enable port officials to identify and direct inspectional attention to high-risk shipments. The Automated Targeting System is designed to assess shipment entry information for known smuggling indicators and thus enable inspectors to target high-risk shipments more efficiently. Customs is evaluating the Automated Targeting System for expansion to other land-border cargo ports.

²*Customs Service Drug Interdiction: Internal Control Weaknesses and Other Concerns With Low-Risk Cargo Entry Programs* (GAO/GGD-98-175, July 31, 1998).

Aviation Program

In September 1998, we reported on Customs' aviation program missions, resources, and performance measures.³ Since the establishment of the Customs Aviation Program in 1969, its basic mandate to use air assets to counter the drug smuggling threat has not changed. Originally, the program had two principle missions:

- border interdiction of drugs being smuggled by plane into the United States and
- law enforcement support to other Customs offices as well as other federal, state, and local law enforcement agencies.

In 1993, the Administration instituted a new policy to control drugs coming from South and Central America. Because Customs aircraft were to be used to help carry out this policy, foreign counterdrug operations became a third principal mission for the aviation program. Since then, the program has devoted about 25 percent of its resources to the border interdiction mission, 25 percent to foreign counterdrug operations, and 50 percent to other law enforcement support.

Customs Aviation Program funding decreased from about \$195 million in fiscal year 1992, to about \$135 million in fiscal year 1997—that is, about 31 percent in constant or inflation-adjusted dollars. While available funds decreased, operations and maintenance costs per aircraft flight hour increased. Customs Aviation Program officials said that this increase in costs was one of the reasons they were flying fewer hours each year. From fiscal year 1993 to fiscal year 1997, the total number of flight hours for all missions decreased by over one-third, from about 45,000 hours to about 29,000 hours.

The size of Customs' fleet dropped in fiscal year 1994, when Customs took 19 surveillance aircraft out of service because of funding reductions. The fleet has remained at about 115 since then.⁴ The number of Customs Aviation Program onboard personnel dropped steadily, from a high of 956 in fiscal year 1992 to 745 by the end of fiscal year 1997.⁵

Customs has been using traditional law enforcement measures to evaluate the aviation program (e.g., number of seizures, weight of drugs seized, number of arrests). These measures, however, are used to track activity, not measure results or effectiveness. Until 1997, Customs also used an air threat index as an indicator of its effectiveness in detecting illegal air traffic.⁶ However, Customs has discontinued use of this indicator, as well as selected other performance measures, because Customs determined that they were not good measures of results and effectiveness. Having recognized that these measures were not providing adequate insights into whether the program was producing desired results, Customs says it is developing new performance measures in order to better measure results. However, its budget submission for fiscal year 2000 contained no new performance measures.

Pulsed Fast Neutron Analysis Inspection System

The pulsed fast neutron analysis (PFNA) inspection system is designed to directly and automatically detect and measure the presence of specific materials (e.g., cocaine) by exposing their constituent chemical elements to short bursts of subatomic particles called neutrons. Customs and other federal agencies are considering whether to continue to invest in the development and fielding of this technology.

The Chairman and the Ranking Minority Member of the Subcommittee on Treasury and General Government, Senate Committee on Appropriations, asked us to provide information about (1) the status of plans for field testing a PFNA system and (2) federal agency and vendor views on the operational viability of such a system. We are issuing our report on that work today.⁷

Customs, the Department of Defense (DOD), the Federal Aviation Administration (FAA), and Ancore Corporation—the inspection system inventor—recently began planning to field test PFNA. Because they are in the early stage of planning, they do not expect the actual field test to begin until mid to late 1999 at the earliest. Generally speaking, agency and vendor officials estimated that a field test covering Customs' and DOD's requirements will cost at least \$5 million and that the cost

³ *Customs Service: Aviation Program Missions, Resources, and Performance Measures* (GAO/GGD-98-186, Sept. 9, 1998).

⁴ Customs' fleet will increase because additional aircraft were funded in the fiscal year 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, P.L. 105-277, 112 Stat 2681-553, 2681-583.

⁵ Staffing for the Aviation program is expected to grow to 817 in fiscal year 2000, according to Customs' latest budget justification.

⁶ The air threat index used various indicators, such as the number of stolen and/or seized aircraft, to determine the potential threat of air drug smuggling.

⁷ *Terrorism and Drug Trafficking: Testing Status And Views on Operational Viability of Pulsed Fast Neutron Analysis Technology* (GAO/GGD-99-54, Apr. 13, 1999).

could reach \$8 million if FAA's requirements are included in the joint test. Customs officials told us that they are working closely with the appropriate applicable congressional committees and subcommittees to decide whether Customs can help fund the field test, particularly given the no-federal-cost language of Senate Report 105-251.⁸ In general, a complete field test would include (1) preparing a test site and constructing an appropriate facility; (2) making any needed modifications to the only existing PFNA system and its components;⁹ (3) disassembling, shipping, and re-assembling the system at the test site; and (4) conducting an operational test for about 4 months. According to agency and Ancore officials, the test site candidates are two seaports in California (Long Beach and Oakland) and two land ports in El Paso, Texas.

Federal agency and vendor views on the operational viability of PFNA vary. While Customs, DOD, and FAA officials acknowledge that laboratory testing has proven the technical feasibility of PFNA, they told us that the current Ancore inspection system would not meet their operational requirements. Among their other concerns, Customs, DOD, and FAA officials said that a PFNA system not only is too expensive (about \$10 million to acquire per system), but also is too large for operational use in most ports of entry or other sites. Accordingly, these agencies question the value of further testing. Ancore disputes these arguments, believes it can produce an operationally cost-effective system, and is proposing that a PFNA system be tested at a port of entry. The Office of National Drug Control Policy has characterized neutron interrogation as an "emerging" or future technology that has shown promise in laboratory testing and thus warrants field testing to provide a more informed basis for deciding whether PFNA has operational merit.

Federal Counterdrug Intelligence Coordination Efforts

At the request of the Subcommittee on National Security, International Affairs, and Criminal Justice, House Committee on Government Reform and Oversight,¹⁰ in June 1998 we identified the organizations that collect and/or produce counterdrug intelligence, the role of these organizations, the federal funding they receive, and the number of personnel that support this function.¹¹ We noted that more than 20 federal or federally funded organizations, including Customs, spread across 5 cabinet-level departments and 2 cabinet-level organizations, have a principal role in collecting or producing counterdrug intelligence. Together, these organizations collect domestic and foreign counterdrug intelligence information using human, electronic, photographic, and other technical means.

Unclassified information reported to us by counterdrug intelligence organizations shows that over \$295 million was spent for counterdrug intelligence activities during fiscal year 1997 and that more than 1,400 federal personnel were engaged in these activities. The Departments of Justice, the Treasury, and Defense accounted for over 90 percent of the money spent and personnel involved.

Among its many missions, Customs is the lead agency for interdicting drugs being smuggled into the United States and its territories by land, sea, or air. Customs' primary counterdrug intelligence mission is to support its own drug enforcement elements (i.e., inspectors and investigators) in their interdiction and investigation efforts. Customs is responsible for producing tactical, operational, and strategic intelligence concerning drug-smuggling individuals, organizations, transportation networks, and patterns and trends. In addition to providing these products to its own drug enforcement elements, Customs is to provide this information to other agencies with drug enforcement or intelligence responsibilities. Customs is also responsible for analyzing the intelligence community's reports and integrating them with its own intelligence. Customs' in-house collection capability is heavily weighted toward human intelligence, which comes largely from inspectors and investigators who obtain information during their normal interdiction and investigation activities.

CORRUPTION

On March 30, 1999, we issued a report to the Chairman of the Senate Caucus on International Narcotics Control on the efforts of Customs and the Immigration

⁸Senate Report 105-251 (July 1998) on the fiscal year 1999 Treasury and General Government Appropriations bill directs the Commissioner of Customs to enter into negotiations with the private sector to conduct a field test of the PFNA technology at no cost to the federal government.

⁹The existing (prototype) PFNA system is located at the vendor's plant in Santa Clara, CA.
¹⁰This is now the Subcommittee on National Security, Veterans' Affairs, and International Relations of the House Committee on Government Reform.

¹¹*Drug Control: An Overview of U.S. Counterdrug Intelligence Activities* (GAO/NSIAD-98-142, June 25, 1998).

and Naturalization Service to address employee corruption on the Southwest border.¹² We said that both agencies could do more to prevent drug-related employee corruption. The following reflects our findings and recommendations relative to Customs and Customs' response to our report.

Customs has policies and procedures designed to ensure the integrity of its employees. These policies and procedures consist mainly of mandatory background investigations for new staff and 5-year reinvestigations of employees, as well as basic integrity training. As required, Customs generally had completed background investigations for new hires by the end of their first year on the job. However, reinvestigations were typically overdue, in some instances by as many as 3 years. Customs officials said that the basic training that new employees are to receive includes integrity training. Agency records for 88 of 100 randomly selected Customs employees on the Southwest border showed that they received several hours of integrity training as part of their basic training. According to Customs officials, the remaining employees likely received basic training, but it was not documented in their records.

However, Customs was not taking full advantage of these policies and procedures, as well as the lessons it should have learned from closed corruption cases, to address fully the increased threat of employee corruption on the Southwest border. Some Customs employees on the Southwest border have engaged in a variety of illegal drug-related activities, including waving drug loads through ports of entry, coordinating the movement of drugs across the Southwest border, transporting drugs past Border Patrol checkpoints, selling drugs, and disclosing drug intelligence information. Customs' Office of Internal Affairs is required to formally report internal control weaknesses identified from closed corruption cases, but has not done so. Our review of nine cases involving Customs employees assigned to the Southwest border who were convicted of drug-related crimes between fiscal years 1992 and 1997, revealed internal control weaknesses that were not formally reported and/or corrected.¹³ These weaknesses included instances where:

- drug smugglers chose the inspection lane at a port of entry,
- employees did not recuse themselves from inspecting individuals with whom they had close personal relationships, and
- employees disclosed drug intelligence information.

Also, Customs had not formally evaluated its integrity procedures to determine their effectiveness. For example, we determined that financial information required for background investigations and reinvestigations was not fully reviewed.¹⁴

We recommended that Customs:

- evaluate the effectiveness of integrity assurance efforts, including training, background investigations, and reinvestigations;
- comply with policies that require employment reinvestigations to be completed when they are due;
- document that policies and procedures were reviewed to identify internal control weaknesses in cases where an employee is determined to have engaged in drug-related criminal activities;
- strengthen internal controls at Southwest border ports of entry; and
- fully review financial disclosure statements to identify financial issues, such as cases in which employees appear to be living beyond their means.

Customs generally concurred with our recommendations and indicated that it is taking steps to implement them. However, Customs requested that we reconsider our recommendation that it fully review the financial disclosure statements provided by employees as part of the background and reinvestigation process. Customs indicated that implementing this recommendation may violate the provisions of the Computer Matching Act.¹⁵ Our recommendation expects Customs to make a more thorough examination of the financial information it collects to determine whether employees appear to be living beyond their means. We leave it to Customs' discretion to determine the type of examination to be performed. Since implementing the

¹²*Drug Control: INS and Customs Can Do More to Prevent Drug-Related Employee Corruption* (GAO/GGD-99-31, Mar. 30, 1999).

¹³If employees entered guilty pleas, we considered them to have been convicted of the crime.

¹⁴The Department of the Treasury's Office of Professional Responsibility published a report on corruption with findings that are consistent with ours. See *An Assessment of Vulnerabilities to Corruption and Effectiveness of the Office of Internal Affairs, U.S. Customs Service* (Feb. 1999).

¹⁵The Computer Matching and Privacy Protection Act of 1988, P.L. 100-503, generally requires that agencies engaging in computer matching must do so pursuant to written matching agreements that state such things as the purpose and legal authority of the match, the justification for the matching program, its anticipated results, a description of the records to be matched, as well as other information on the program.

recommendation does not require electronically matching financial disclosure information with other data, the Computer Matching Act would not apply.

STRATEGIC PLANNING

In the past 18 months, we have reported on Customs' compliance with provisions of the Government Performance and Results Act. We have also reported on how it has determined its need for inspectors and how it has allocated inspectional positions to ports around the country.

Performance Planning

Under the Results Act, executive agencies are to develop strategic plans in which they, among other things, define their missions, establish results-oriented goals, and identify strategies they plan to use to achieve those goals. In addition, agencies are to submit annual performance plans covering the program activities set out in the agencies' budgets (which began with plans for fiscal year 1999); and the plans are to describe the results the agencies expect to achieve with the requested resources and indicate the progress the agency expects to make during the year in achieving its strategic goals.

The strategic plan developed by the Customs Service addressed the six requirements of the Results Act. Concerning the elements required, the mission statement was results oriented and covered Customs' principal statutory mission—ensuring that all goods and persons entering and exiting the United States do so in compliance with all U.S. laws and regulations. The plan's goals and objectives covered Customs' major functions—processing cargo and passengers entering and cargo leaving the United States. The plan discussed the strategies by which Customs hopes to achieve its goals. The strategic plan discussed, in very general terms, how it related to annual performance plans. The plan discussed some key factors, external to Customs and beyond its control, that could significantly affect achievement of the strategic goals, such as the level of cooperation of other countries in reducing the supply of narcotics. Customs' strategic plan also contained a listing of program evaluations used to prepare the plan and provided a schedule of evaluations to be conducted in each of the functional areas.

In addition to the required elements, Customs' plan discussed the management challenges it was facing in carrying out its core functions, including information and technology, finance, and human resources management. However, the plan did not adequately recognize Customs' need to improve:

- financial management and internal control systems,
- controls over seized assets,
- plans to alleviate Year 2000 problems,¹⁶ and
- plans to improve computer security.¹⁷

We reported that these weaknesses could affect the reliability of Customs' performance data.

Further, our initial review of Customs' fiscal year 2000 performance plan showed that it is substantially unchanged in format from the one presented for 1999. Although the plan is a very useful document for decisionmakers, it still does not recognize Customs' need to improve its internal control systems, control over seized assets, or plans to improve computer security.

Resource Allocation

Regarding Customs' resource allocation process, in April 1998 we reported on selected aspects of the Customs Service's process for determining its need for inspectional personnel—such as inspectors and canine enforcement officers—for its commercial cargo or land and sea passengers at all of its 301 ports.¹⁸

Customs officials were not aware of any formal agencywide efforts prior to 1995 to determine the need for additional cargo or passenger inspectional personnel for its 301 ports. However, in preparation for its fiscal year 1997 budget request and

¹⁶ Customs has established effective Year 2000 program management controls, including structures and processes for Year 2000 testing, contingency planning, and Year 2000 status reporting. See *Year 2000 Computing Crisis: Customs Has Established Effective Year 2000 Program Controls* (GAO/AIMD-99-37, Mar. 29, 1999).

¹⁷ See *Customs Service: Comments on Strategic Plan and Resource Allocation Process* (GAO/T-GGD-98-15, Oct. 16, 1997) and *Results Act: Observations on Treasury's Fiscal Year 1999 Annual Performance Plan* (GAO/GGD-98-149, June 30, 1998).

¹⁸ *Customs Service: Process for Estimating and Allocating Inspectional Personnel* (GAO/GGD-98-107, Apr. 30, 1998); *Customs Service: Inspectional Personnel and Workloads* (GAO/GGD-98-170, Aug. 14, 1998); and *Customs Service: Inspectional Personnel and Workloads* (GAO/T-GGD-98-195, Aug. 14, 1998).

a new drug enforcement operation called Hard Line,¹⁹ Customs conducted a formal needs assessment. The needs assessment considered (1) fully staffing all inspectional booths and (2) balancing enforcement efforts with the need to move complying cargo and passengers quickly through the ports. Customs conducted two subsequent assessments for fiscal years 1998 and 1999. These assessments considered the number and location of drug seizures and the perceived threat of drug smuggling, including the use of rail cars to smuggle drugs. However, all these assessments were

- focused exclusively on the need for additional personnel to implement Hard Line and similar initiatives,
- limited to land ports along the southwest border and certain sea and air ports considered to be at risk from drug smuggling,
- conducted each year using generally different assessment factors, and
- conducted with varying degrees of involvement by Customs' headquarters and field units.

We concluded that these limitations could prevent Customs from accurately estimating the need for inspectional personnel and then allocating them to ports. We further concluded that, for Customs to implement the Results Act successfully, it had to determine its needs for inspectional personnel for all of its operations and ensure that available personnel are allocated where they are needed most.

We recommended that Customs establish an inspectional personnel needs assessment and allocation process, and it is in the process of responding to that April 1998 recommendation. Customs awarded a contract for the development of a resource allocation model. Customs officials told us that the model was delivered in March 1999 and that they are in the early stages of deciding how to use the model and implement a formal needs assessment system.

PROPOSED AUTOMATED SYSTEMS USER FEE

Customs plans to spend more than \$1 billion over the next few years to modernize its systems environment for certain core missions, including facilitating international trade, enforcing laws governing the flow of goods across the borders, and assessing and collecting about \$22 billion annually on imported merchandise. To pay for the development and implementation of new automated systems, the President's budget for fiscal year 2000 proposes a Customs automation systems access fee to be charged to nongovernment organizations using the system—generally, importers or their brokers. As currently proposed by the administration, the fee will amount to \$1.80 per 1,000 bytes of information processed by Customs for commercial users and should generate an estimated \$163 million in revenue per year. Collection of this fee is tentatively scheduled to start in fiscal year 2000 and to continue for at least the following 4 or 5 years.

You asked us to discuss the basis for the \$163 million estimate. According to Treasury officials, the estimate is based on the following three assumptions:

- Customs will develop and implement the Automated Commercial Environment (ACE) over a 4-year period (from fiscal year 2001 to fiscal year 2004) at a total cost of over \$1 billion.²⁰
- Treasury will develop and implement its new International Trade Data System (ITDS) over the same period at a cost of about \$256 million.
- The federal government and the trade community will share the cost of these systems. Therefore, the \$325 million annual cost (\$1.3 billion/4 years, the period to develop and implement the two systems) would be split—\$162.5 million each.

In addition to the \$163 million generated by the user fee, additional funds would be needed from other sources, including direct appropriations, in each of the four fiscal years beginning in 2001. OMB and Treasury officials told us that additional appropriated funds already in the budget base will be directed to the development and implementation of the systems. These officials also said that current estimates are preliminary and are likely to change when a contract to develop the systems is awarded.

Customs projected that it will process about 90.5 billion bytes of data annually for commercial users of its system. Dividing the \$163 million annual cost proposed to be borne by the trade community by the expected volume yields a charge of \$1.80 per 1,000 bytes of information.

¹⁹ Operation Hard Line was Customs' effort to address border violence and drug smuggling through intensified inspections, improved facilities, and advances in technology.

²⁰ In 1997, Customs developed a \$1.05 billion estimate to develop, operate, and maintain ACE over the 15-year period from 1994 to 2008, and it is still Customs' current official life cycle cost estimate.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions.

Chairman CRANE. Thank you, Mr. Rabkin.
And, finally, Mr. Hite.

**STATEMENT OF RANDOLPH C. HITE, ASSOCIATE DIRECTOR,
GOVERNMENTWIDE AND DEFENSE INFORMATION SYSTEMS,
ACCOUNTING AND INFORMATION MANAGEMENT DIVISION,
U.S. GENERAL ACCOUNTING OFFICE**

Mr. HITE. Chairman Crane, Mr. Levin, thank you for inviting me to participate in today's hearing. My testimony will focus on Customs' management of ACE is based on a recent report in which we identified a number of management and technical weaknesses facing Customs on ACE that jeopardize the successful delivery of needed system capabilities on time and within budget.

Mr. Chairman, before I summarize the ACE weaknesses, I would like to make two points. First, the need to leverage information technology to improve the way that Customs approaches import processing is undeniable. I have seen firsthand the outdated import processes that Customs currently uses. These processes are paper-laden and they are time-consuming and they are out of step with the just-in-time inventory processes of the trade. Moreover, Customs import processes are transaction based rather than account based. That is analogous to you and I receiving a separate bill and making a separate payment on our credit cards for each transaction that we make.

Second, as the Commissioner outlined earlier, Customs concurs with our findings and is committed to implementing them. And, as the Commissioner outlined, they have already taken some steps to begin implementing them. We are very encouraged by this and wish to commend the Commissioner for his commitment and personal involvement in ACE.

I would now like to briefly discuss the three categories of ACE weaknesses that we found and the steps that Customs has begun taking to implement our recommendations. First, we found that Customs has not been building ACE within the context of a complete and enforced enterprise systems architecture. In lay terms, an architecture is a blueprint of an organization's future systems environment. Its purpose is basically the same as that of any construction blueprint, to provide a standards based and analytically derived framework within which to construct interrelated and interdependent components. Without enterprise architectures, our work has shown that incompatible systems are produced that require additional time and resources to interconnect and maintain and that suboptimize overall organizational performance.

In response to recommendations that we made last year on this matter, Customs reports that it plans to complete its architecture next month and that it has already modified its procedures to provide for effective enforcement of the architecture.

Second, we found that Customs did not have a firm basis for knowing whether its proposed system solution was the right thing,

meaning that it is the most cost-effective alternative to pursue. When investing in information systems, organizations should do three things: (1) identify and analyze alternative system solutions; (2) reliably forecast system return on investment, as Mr. Houghton mentioned, and invest in the alternative providing the highest return on investment; and (3) manage large investments by breaking them into a series of smaller increments and forecasting expected and validating actual return on investment from one increment at a time.

In the case of ACE, we found that Customs did not satisfy any of these requirements. For example, Customs forecasts of return on investment was based on unreliable estimates of cost and benefits; did not consider alternative system solutions and approaches; and was predicated on an all-or-nothing investment approach that has proven to be ineffective in managing large modernization investments.

In response to our recommendations in this area, as the Commissioner mentioned, they are now analyzing alternative approaches to ACE and they are developing the capability to perform cost-benefit analyses and post-implementation analyses on system increments. Customs also plans to have these analyses independently validated.

Third, we found that Customs processes for developing and acquiring ACE software lacked engineering rigor and discipline. One measure of such rigor and discipline is the Software Engineering Institute's capability maturity models. We evaluated ACE software processes against SEI's criteria for a repeatable level of software maturity, which is the second level on a five-level maturity scale. Customs did not fully satisfy any of these criterion and, thus, its capability to either develop or acquire software is, by definition, ad hoc, at times chaotic, and not effective.

In response to our recommendations, Customs reports that it is developing plans to achieve SEI level two maturity and then level three maturity; that it is preparing a directive to require level two capabilities of all software contractors; and that is exploring engaging a systems integration contractor with at least a level three capability to assist it.

In conclusion, successful systems modernization is critical to Customs ability to function in the 21st century. Success, however, depends on doing the right thing and doing it the right way. To be right, Customs must invest in and build systems within the context of an enterprise systems architecture; make informed, data-driven decisions about investment options based on reliable analyses of expected and actual return on investment for system increments; and it must build its system increments using mature software processes. Our work on other challenged modernization programs has shown that to do less increases the risk of delivering less-than-promised capabilities late and for more than projected cost.

Fortunately, Customs acknowledges its weaknesses and is committed to correcting them. We are equally committed to working with Customs in this endeavor and working with the Congress in overseeing Customs' efforts. This concludes my statement. I will be happy to answer any questions you may have at this time.

[The prepared statement follows:]

Statement of Randolph C. Hite, Associate Director, Governmentwide and Defense Information Systems, Accounting and Information Management Division, U.S. General Accounting Office

Mr. Chairman and Members of the Subcommittee: Thank you for inviting me to participate in today's Customs Service oversight hearing. My statement will focus on Customs' Automated Commercial Environment, better known as ACE. Through ACE, Customs intends to implement much needed improvements in the way it currently enforces import trade laws and regulations, and assesses and collects import duties, taxes, and fees, which total \$22 billion annually.

The need to leverage information technology to improve the way that Customs does business in the import arena is undeniable. Customs' existing import processes and supporting systems are simply not responsive to the business needs of either Customs or the trade community, whose members collectively import about \$1 trillion in goods annually. These existing processes and systems are paper-intensive, error-prone, and transaction-based, and they are out of step with the just-in-time inventory practices used by the trade. Recognizing this, Congress enacted the Customs Modernization and Informed Compliance Act, or "Mod" Act, to define legislative requirements for improving import processing through an automated system.¹

Customs fully recognizes the severity of the problems with its approach to managing import trade and is modernizing its import processes and undertaking ACE as its import system solution. Begun in 1994, Customs' estimate of the system's 15-year life cycle cost is about \$1.05 billion, although this estimate is being revised upwards. In light of ACE's enormous mission importance and price tag, Customs' approach to investing in and engineering ACE demands disciplined and rigorous management practices. Such practices are embodied in the Clinger-Cohen Act of 1996² and other legislative and regulatory requirements, as well as accepted industry system/software engineering models, such as those published by the Software Engineering Institute (SEI).³

Unfortunately, Customs has not employed such practices to date on ACE. Our February 1999 report on ACE,⁴ upon which my testimony today is based, describes serious management and technical weaknesses in Customs' management of ACE. The ACE weaknesses are: (1) building ACE without a complete and enforced enterprise systems architecture, (2) investing in ACE without a firm basis for knowing that it is a cost effective system solution, and (3) building ACE without employing engineering rigor and discipline. My testimony will address each of these points as well as our recommendations for correcting them. Customs agrees with our findings, and it is committed to implementing our recommendations.

ACE: A BRIEF HISTORY

Customs began ACE in 1994, and its early estimate of the cost and time to develop the system was \$150 million over 10 years. At this time, Customs also decided to first develop a prototype of ACE, referred to as NCAP (National Customs Automation Program prototype), and then to complete the system. In May 1997,⁵ we reported that Customs' original schedule for completing the prototype was January 1997, and that Customs did not have a schedule for completing ACE. At that time, Customs agreed to develop a comprehensive project plan for ACE.

In November 1997, Customs estimated that the system would cost \$1.05 billion to develop, operate, and maintain throughout its life cycle. Customs plans to develop and deploy the system in 21 increments from 1998 through 2005, the first four of which would constitute NCAP.

¹ Customs refers to Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 19 U.S.C. 1411 et seq) as the Customs Modernization and Informed Compliance Act or "Mod" Act.

² Although the Clinger-Cohen Act (Public Law 104-106) was passed after Customs began developing ACE, its principles are based on practices that are widely considered to be integral to successful IT investments. For an analysis of the management practices of several leading private and public sector organizations on which the Clinger-Cohen Act is based see *Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology*, (GAO/AIMD-94-115, May 1994). For an overview of the IT management process envisioned by Clinger-Cohen see *Assessing Risk and Returns: A Guide for Evaluating Federal Agencies' IT Investment Decision-making* (GAO/AIMD-10.1.13, February 1997).

³ Software Development Capability Maturity ModelSM (SW-CMM[®]) and Software Acquisition Capability Maturity ModelSM (SA-CMM[®]). Capability Maturity ModelSM is a service mark of Carnegie Mellon University, and CMM[®] is registered in the U.S. Patent and Trademark Office.

⁴ *Customs Service Modernization: Serious Management and Technical Weaknesses Must Be Corrected* (GAO/AIMD-99-41, February 26, 1999).

⁵ *Customs Service Modernization: ACE Poses Risks and Challenges* (GAO/T-AIMD-97-96, May 15, 1997).

Currently, Customs is well over 2 years behind its original NCAP schedule. Because Customs experienced problems in developing NCAP software in-house, the first NCAP release was not deployed until May 1998—16 months late. In view of the problems it experienced with the first release, Customs contracted out for the second NCAP release, and deployed this release in October 1998—21 months later than originally planned. Customs' most recent dates for deploying the final two NCAP releases (0.3 and 0.4) are March 1999 and September 1999, which are 26 and 32 months later than the original deployment estimates, respectively. According to Customs, these dates will slip farther because of funding delays.

Additionally, Customs officials told us that a new ACE life cycle cost estimate is being developed, but that it was not ready to be shared with us. At the time of our review, Customs' \$1.05 billion estimate developed in 1997 was the official ACE life cycle cost estimate. However, a January 1998 ACE business plan specifies a \$1.48 billion life cycle cost estimate.

CUSTOMS IS DEVELOPING ACE WITHOUT A COMPLETE ENTERPRISE SYSTEMS ARCHITECTURE

Customs is not building ACE within the context of an enterprise systems architecture, or "blueprint" of its agency-wide future systems environment. Such an architecture is a fundamental component of any rationale and logical strategic plan for modernizing an organization's systems environment. As such, the Clinger-Cohen Act requires agency Chief Information Officers (CIO) to develop, maintain, and implement an information technology architecture. Also, the Office of Management and Budget (OMB) issued guidance in 1996 that requires agency IT investments to be architecturally compliant. These requirements are consistent with, and in fact based on, information technology management practices of leading private and public sector organizations.

Simply stated, an enterprise systems architecture specifies the system (e.g., software, hardware, communications, security, and data) characteristics that the organization's target systems environment is to possess. Its purpose is to define, through careful analysis of the organization's strategic business needs and operations, the future systems configuration that supports not only the strategic business vision and concept of operations, but also defines the optimal set of technical standards that should be met to produce homogeneous systems that can interoperate effectively and be maintained efficiently. Our work has shown that in the absence of an enterprise systems architecture, incompatible systems are produced that require additional time and resources to interconnect and to maintain, and that suboptimize the organization's ability to perform its mission.⁶

We first reported on Customs' need for a systems architecture in May 1996 and May 1997.⁷ In response, Customs developed and published an architecture in July and August 1997. We reviewed this architecture and reported in May 1998 that it was not effective because it was neither complete nor enforced.⁸ For example, the architecture did not

- (1) fully describe Customs' business functions and their relationships,
- (2) define the information needs and flows among these functions, and
- (3) establish the technical standards, products, and services that would be characteristic of its target systems environment on the basis of these business specifications.

Accordingly, we recommended that Customs complete its enterprise information systems architecture and establish compliance with the architecture as a requirement of Customs' information technology investment management process. In response, Customs agreed to develop a complete architecture and establish a process to ensure compliance. Customs is in the process of developing the architecture, and reports that it will be completed in May 1999. Also, in January 1999, Customs reported that it changed its internal procedures to provide for effective enforcement of its architecture, once it is completed. Until the architecture is completed and enforced, Customs risks spending millions of dollars to develop, acquire, and maintain information systems, including ACE, that do not effectively and efficiently support the agency's mission needs.

⁶*Air Traffic Control: Complete and Enforced Architecture Needed for FAA Systems Modernization* (GAO/AIMD-97-30, February 3, 1997).

⁷*Customs Service Modernization: Strategic Information Management Must Be Improved for National Automation Program To Succeed* (GAO/AIMD-96-57, May 9, 1996) and *Customs Service Modernization: ACE Poses Risks and Challenges* (GAO/T-AIMD-97-96, May 15, 1997).

⁸*Customs Service Modernization: Architecture Must Be Complete and Enforced to Effectively Build and Maintain Systems* (GAO/AIMD-98-70, May 5, 1998).

CUSTOMS IS NOT MANAGING ITS INVESTMENT IN ACE EFFECTIVELY

Effective IT investment management is predicated on answering one basic question: is the organization doing the “right thing” by investing specified time and resources in a given project or system. The Clinger-Cohen Act and OMB guidance together provide an effective IT investment management framework for answering this question. Among other things, they set requirements for

- (1) identifying and analyzing alternative system solutions,
- (2) developing reliable estimates of the alternatives’ respective costs and benefits and investing in the most cost-beneficial alternative, and
- (3) to the maximum extent practical, structuring major projects into a series of increments to ensure that each increment constitutes a wise investment.

Customs did not satisfy any of these requirements for ACE. First, Customs did not identify and evaluate a full range of alternatives to its defined ACE solution before commencing development activities. For example, Customs did not consider how ACE would relate to another Treasury proposed system for processing import trade data, known as the International Trade Data System (ITDS), including considering the extent to which ITDS should be used to satisfy needed import processing functionality. Initiated in 1995 as a project to develop a coordinated, government-wide system for the collection, use, and dissemination of trade data, the ITDS project is headed by the Treasury Deputy Assistant Secretary for Regulatory, Tariff and Trade Enforcement. The system is expected to reduce the burden federal agencies place on organizations by requiring that they respond to duplicative data requests. Treasury intends for the system to serve as the single point for collecting, editing, and validating trade data as well as collecting and accounting for trade revenue. At the time of our review of ACE, these functions were also planned for ACE.

Similarly, Customs did not evaluate different ACE architectural designs, such as the use of a mainframe-based versus client server-based hardware architecture. Also, Customs did not evaluate alternative development approaches, such as acquisition versus in-house development. In short, Customs committed to and began building ACE without knowing whether it had chosen the most cost-effective alternative and approach.

Second, Customs did not develop a reliable life-cycle cost estimate for the approach it selected. SEI has developed a method for project managers to use to determine the reliability of project cost estimates. Using SEI’s method, we found that Customs’ \$1.05 billion ACE life-cycle cost estimate was not reliable, and that it did not provide a sound basis for Customs’ decision to invest in ACE. For example, in developing the cost estimate, (1) Customs did not use a cost model, (2) did not account for changes in its approach to building different ACE increments, (3) did not account for changes to ACE software and hardware architecture, and (4) did not have historical project cost data upon which to compare its ACE estimate.

Moreover, the \$1.05 billion cost estimate used to economically justify ACE omitted relevant costs. For instance, the costs of technology refreshment and system requirements definition were not included (see table 1). Exacerbating this problem, Customs represented its ACE cost estimate as a precise point estimate rather than explicitly disclosing to investment decisionmakers in Treasury, OMB, and the Congress the estimate’s inherent uncertainty.

Table 1.—Estimated Costs Omitted From Customs’ ACE Cost-Benefit Analysis

Excluded Cost Description	Excluded Cost Estimate
Hardware and software upgrades at each port office (e.g., desktop workstations, and operating systems, application and data servers, database management systems).	\$73 to \$172 million
Security analysis, project planning and management, and independent verification and validation.	\$23 million
Requirements definition, component integration, regression testing, and training.	No estimate available

Customs’ projections of ACE benefits were also unreliable because they were either overstated or unsupported. For example, the analysis includes \$203.5 million in savings attributable to 10 years of avoided maintenance and support costs on the Automated Commercial System (ACS)—the system ACE is to replace. However, Customs would not have avoided maintenance and support costs for 10 years. At the time of Customs’ analysis, it planned to run both systems in parallel for 4 years, and thus planned to spend about \$53 million on ACS maintenance and support during this period. As another example, \$650 million in savings was not supported by

verifiable data or analysis, and \$644 million was based on assumptions that were analytically sensitive to slight changes, making this \$644 million a “best case” scenario.

Third, Customs is not making its investment decisions incrementally as required by the Clinger-Cohen Act and OMB. Although Customs has decided to implement ACE as a series of 21 increments, it is not justifying investing in each increment on the basis of defined costs and benefits, and a positive return on investment for each increment. Further, once it has deployed an increment at a pilot site for evaluation, it is not validating the benefits that the increment actually provides, and it is not accounting for costs on each increment so that it can demonstrate that a positive return on investment was actually achieved. Instead, Customs estimated the costs and benefits for the entire system—all 21 increments, and used this as economic justification for ACE.

Mr. Chairman, our work has shown that such estimates of many system increments to be delivered over many years are impossible to make accurately because later increments are not well understood or defined. Also, these estimates are subject to change in light of experiences on nearer term increments and changing business needs. By using an inaccurate, aggregated estimate that is not refined as increments are developed, Customs is committing enormous resources with no assurance that it will achieve a reasonable return on its investment. This “grand design” approach to managing large system modernization projects has repeatedly proven to be ineffective across the Federal Government, resulting in huge sums invested in systems that do not provide expected benefits. Failure of the grand design approach was a major impetus for the IT management reforms contained in the Clinger-Cohen Act.

CUSTOMS IS NOT MANAGING ACE SOFTWARE DEVELOPMENT/ACQUISITION EFFECTIVELY

Software process maturity is one important and recognized measure of determining whether an organization is managing a system or project the “right way,” and thus whether or not the system will be completed on time, within budget, and deliver promised capabilities. The Clinger-Cohen Act requires agencies to implement effective IT management processes, such as processes for managing software development and acquisition. SEI has developed criteria for determining an organization’s software development and acquisition effectiveness or maturity.

Customs lacks the capability to effectively develop or acquire ACE software. Using SEI criteria for process maturity at the “repeatable” level, which is the second level on SEI’s five-level scale and means that an organization has the software development/acquisition rigor and discipline to repeat project successes, we evaluated ACE software processes. In February 1999,⁹ we reported that the software development processes that Customs was employing on NCAP 0.1, the first release of ACE, were not effective. For example, we reported that Customs lacked effective software configuration management, which is important for establishing and maintaining the integrity of the software products during development. Also, we reported that Customs lacked a software quality assurance program, which greatly increased the risk of ACE software not meeting process and product standards. Further, we reported that Customs lacked a software process improvement program to effectively address these and other software process weaknesses. Our findings concerning ACE software development maturity are summarized in table 2.

Table 2.—Summary of ACE Software Development Maturity

Key Process Areas	Satisfied	Not Satisfied
Requirements management	X
Software project planning	X
Software project tracking and oversight	X
Software quality assurance	X
Software configuration management	X

Note: These represent five of six level 2 key process areas in SEI’s Software Development Capability Maturity Model. We did not evaluate ACE in the sixth level 2 key process area—software subcontract management—because Customs did not use subcontractors on ACE.

As discussed in our brief history of ACE, after Customs developed NCAP 0.1 in-house, it decided to contract out for the development of NCAP 0.2, thus changing

⁹ *Customs Service Modernization: Ineffective Software Development Processes Increase Customs System Development Risks* (GAO/AIMD-99-35, February 11, 1999).

its role on ACE from being a software developer to being a software acquirer. According to SEI, the capabilities needed to effectively acquire software are different than the capabilities needed to effectively develop software. Regardless, we reported later in February 1999¹⁰ that the software acquisition processes that Customs was employing on NCAP 0.2 were not effective. For example, Customs did not have an effective software acquisition planning process and, as such, could not effectively establish reasonable plans for performing software engineering and for managing the software project. Also, Customs did not have an effective evaluation process, meaning that it lacked the capability for ensuring that contractor-developed software satisfied defined requirements. Our findings concerning ACE software acquisition maturity are summarized in table 3.

Table 3.—Summary of ACE Software Acquisition Maturity

Key Process Areas	Satisfied	Not Satisfied
Software acquisition planning	X
Solicitation	X
Requirements development and management	X
Project office management	X
Contract tracking and oversight	X
Evaluation	X
Transition and support	X
Acquisition risk management	X

Note: These represent seven level 2 key process areas in SEI's Software Acquisition Capability Maturity Model. We also evaluated one key process area associated with the "defined" level of process maturity (level 3)—acquisition risk management.

CUSTOMS HAS COMMITTED TO IMPLEMENTING OUR RECOMMENDATIONS FOR STRENGTHENING ACE MANAGEMENT

To address ACE management weaknesses, we recommended that Customs:

- (1) analyze alternative approaches to satisfying its import automation needs, including addressing the ITDS/ACE relationship;
- (2) invest in its defined ACE solution incrementally, meaning for each system increment (a) rigorously estimate and analyze costs and benefits, (b) require a favorable return-on-investment and compliance with Customs' enterprise systems architecture, and (c) validate actual costs and benefits once an increment is piloted, compare actuals to estimates, use the results in deciding on future increments, and report the results to congressional authorizers and appropriators;
- (3) establish an effective software process improvement program and correct the software process weaknesses in our report, thereby bringing ACE software process maturity to a least an SEI level 2; and
- (4) require at least SEI level 2 processes of all ACE software contractors.

In his February 16, 1999, comments on a draft of our report, the Commissioner of Customs agreed with our findings, and committed to implementing our recommendations. On April 1, 1999, the Commissioner provided us a status report on Customs efforts to do so. In brief, the Commissioner stated that Customs:

- (1) is conducting and will conduct additional analyses to consider alternative approaches to ACE, and will base these analyses on the assumption that Customs will use and not duplicate ITDS functionality;
- (2) is developing the capability to perform cost/benefit analyses of ACE increments, and is and will conduct post-implementation reviews of ACE increments;
- (3) has retained an audit firm to independently validate cost/benefit analyses;
- (4) is developing software process improvement plans to achieve software process maturity of level 2 and then level 3, and;
- (5) is preparing a directive to require at least level 2 processes of all Customs software contractors.

Additionally, the Commissioner stated that Customs is developing a plan for engaging a prime integration contractor that is at least SEI level 3 certified. Under this approach, the prime would assist Customs in implementing effective system/software engineering processes, and would engage subcontractors to meet specified system development and maintenance needs.

¹⁰GAO/AIMD-99-41, February 26, 1999.

CONCLUSIONS

Successful systems modernization is absolutely critical to Customs' ability to perform its trade import mission efficiently and effectively in the 21st century. Systems modernization success, however, depends on doing the "right thing, the right way." To be "right," organizations must (1) invest in and build systems within the context of a complete and enforced enterprise systems architecture, (2) make informed, data-driven decisions about investment options based on expected and actual return-on-investment for system increments, and (3) build system increments using mature software engineering practices. Our reviews of agency system modernization efforts over the last 5 years point to weaknesses in these three areas as the root causes of their not delivering promised system capabilities on time and within budget.¹¹

Until Customs corrects its ACE management and technical weaknesses, the federal government's troubled experience on other modernization efforts is a good indicator for ACE. In fact, although Customs does not collect data to know whether the first two ACE releases are already falling short of cost and performance expectations, the data it does collect on meeting milestones show that the first two releases have taken about 2 years longer than originally planned. This is precisely the type of unaffordable outcome that can be avoided by making the management and technical improvements we recommended.

Fortunately, Customs fully recognizes the seriousness of the situation and has committed to correcting its ACE management and technical weaknesses. We are equally committed to working with Customs as it strives to do so and with the Congress as it oversees this important initiative.

This concludes my statement. I would be glad to respond to any questions that you or other Members of the Subcommittee may have at this time.

Chairman CRANE. Thank you, Mr. Hite. Before we get to questions, can somebody find out what is going on over there? I mean, are we in recess right now? I mean, the six bells. Breaking 20 minutes for lunch, I guess.

All right, Mr. Simpson, would you clarify the proposed inter-relationship between ACE and ITDS? And some trade industry members are concerned because they are uncertain of how ACE will interface with ITDS and, specifically, have you worked out these logistics and issues with Customs and have all differences been resolved?

Mr. SIMPSON. Yes, Sir. The concept of the international trade data system is simply that it is a common mechanism for many components of the international trade community to communicate with many components of the Government. In simple terms, it is like one of these telephones that allows you to make a conference call and talk to several people simultaneously.

ITDS will not have any effect on the businesses processes of the various agencies with which it communicates. It is simply a utility that allows the Federal Government to communicate with the public and the public to communicate with the Federal Government more efficiently.

¹¹*Tax System Modernization: Management and Technical Weaknesses Must Be Corrected If Modernization Is to Succeed* (GAO/AIMD-95-156, July 26, 1995); *Tax Systems Modernization: Actions Underway but IRS Has Not Yet Corrected Management and Technical Weaknesses* (GAO/AIMD-96-106, June 7, 1996); *Tax Systems Modernization: Blueprint Is a Good Start but Not Yet Sufficiently Complete to Build or Acquire Systems* (GAO/AIMD/GGD-98-54, February 24, 1998); *Air Traffic Control: Immature Software Acquisition Processes Increase FAA System Acquisition Risks* (GAO/AIMD-97-47, March 21, 1997); *Air Traffic Control: Complete and Enforced Architecture Needed for FAA Systems Modernization* (GAO/AIMD-97-30, February 3, 1997); and *Air Traffic Control: Improved Cost Information Needed to Make Billion Dollar Modernization Investment Decisions* (GAO/AIMD-97-20, January 22, 1997).

Now, to some extent, we face the problem of having to deal with legacy systems that are in place and will be affected by what we do because we need to use standard messages in order to make it convenient for the private sector to deal with the Government. In at least one case, the Customs Service had worked out standard messages for a pilot of its NCAP program. We have agreed that we will not disrupt that pilot, that we will accept exactly the messages that are currently being used by pilot participants, who happen to be the big three auto companies. We will accept exactly that message and we will grandfather them in. We will pay for software to translate what they send to us into the format that we need in order to have a standard message for the Government.

So we are doing everything that we can to minimize the inflexibility of a new system by filling in, at our cost, the capability to translate different kinds of messages that come to us from the private sector into a standard format that many agencies of the Federal Government can use in common.

Chairman CRANE. Mr. Schindel, you showed in your graphs up there that that night differential portion of total overtime cost has jumped from \$51,000 to \$11.9 million between 1993 and 1998. That is a 240 time increase, which is a little mind boggling to behold. Are you familiar with H.R. 3809, introduced in the 105th Congress? There is a provision in title II relating to overtime and premium pay for Customs officers to help reduce the differential costs for Customs and I am—let us see, these provisions are similar, also, to H.R. 2262. What is your assessment? I mean, are they sound ways of addressing the problem?

Mr. SCHINDEL. I have not had an opportunity to thoroughly analyze H.R. 3809, but if it is similar to H.R. 2262, I think it does go a long way to resolving the problem. COPRA actually did have some of the intended impact on regular overtime. It reduced regular overtime, I think, from 1993 to 1995 by about \$7 million. But, because of the tremendous increase in night differential premium pay, because of some of those provisions that I outlined and that the bill addresses, the total premium pay and overtime did not go down, it went up. So it should have the intended impact of producing some savings.

Chairman CRANE. Mr. Rabkin, in your testimony, you said that Customs could do more to prevent drug-related employee corruption. And, specifically, what are the first things that Customs should do to combat this problem?

Mr. RABKIN. We made a number of recommendations. Probably the two most important are, where there have been identified cases of employee corruption, where there have been convictions, Customs needs to analyze what went wrong with its systems that it has in place, its policies and procedures, to find out if there was anything it could have done differently to have prevented it and then go back and make those changes.

Second, as part of its internal procedures, Customs is supposed to do reinvestigations of employees in critical positions routinely every three or 4 years. And, because of funding and other problems, it has fallen way behind. It has a large backlog. So another thing it can and it should do is to reduce that backlog by reinves-

tigating these employees to make sure that they still meet the integrity standards.

Chairman CRANE. Thank you. Mr. Hite, some believe that ACE is desperately needed and that building ACE should proceed while developing functionality is along the way. What is your assessment on that evaluation?

Mr. HITE. My assessment would be that a modernized import system is definitely needed and that, before entering into the actual building of the software and the acquisition of hardware for that system, that Customs needs to do certain things to put itself in the position of being able to effectively do that. And building that management capacity is something that, in my correspondence with the Commissioner, I understand he intends to do during the fiscal year 2000 timeframe. So that when they do engage in building ACE, they are in a position to do so effectively.

Chairman CRANE. Thank you. Mr. Levin.

Mr. LEVIN. Thanks. Well, Mr. Simpson, we are glad you are here and I think the development of an international trade data system, at a first glance, makes a lot of sense with the growth in international trade and all the various agencies and departments. You say, at the end of your testimony, that the full cost of development and deployment would be \$268 million. So you are developing a model. Are you charging for the—do you contemplate charging for the system? I mean, how—just tell me, how does it work?

Mr. SIMPSON. Let me give you a two-part answer. Let me answer the second part first. We have no plan to charge for access to the system. That does not preclude either Congress or the executive branch from considering some sort of user fee in the future. But we have no intention, at this point, of proposing a charge for accessing the system in the future.

In terms of the cost, we have been very mindful of the points that GAO has made with respect to Customs' ACE system and the need to look at cost-benefit returns based on different options for deployment. So, instead of looking at deploying the international trade data system to all 330-some ports of entry in exactly the same way with the same capabilities, which is what the estimate that you referred to is based on, we are looking at the fact that the top 41 ports account for 80 percent of the trade. And we are making some judgments about how we could deploy ITDS at the remaining ports in a way that would still assure that trade moves efficiently there, but would not be as costly to the Government. We believe we can significantly reduce the cost of deploying ITDS by looking at other options.

Mr. LEVIN. All right. Well, keep in touch. I think there is a lot of interest. What its effect would be on ACE, I think you have to—you know, which comes first, where the resources are placed. But, also, how it would evolve over time. All of these things have interest to us.

Mr. SCHINDEL, let me just ask you a few questions because your testimony seemed to focus on the night differentials, but, as I understand your chart, overtime has grown anyway, right?

Mr. SCHINDEL. That is correct.

Mr. LEVIN. And the issue that you focused on—and, again, forgetting the merits of it for just a second so we understand it—represents a small portion of the overtime.

Mr. SCHINDEL. That is correct, but the night differential, prior to COPRA, again, was \$51,000 and, immediately after COPRA in 1995, went up to \$8.9 million. The other overtime increases are likely a result of normal pay increases that also affected the overtime piece. So I think that that would have gone up in any event. But the dramatic increase was from the night differential prior to COPRA and then after COPRA. And that more than offset—there was some, as I mentioned, there was some overtime savings between 1993 and 1995 in straight overtime, but that was more than offset by that significant increase from \$51,000 to \$8.9 million in night differential.

Mr. LEVIN. It represented, in the last fiscal year, in 1998, the \$11.9 million is added to the \$125, right? I don't have the chart right in front of me, so—

Mr. SCHINDEL. Yes, correct.

Mr. LEVIN. OK, it's \$136. So it is about 8 percent, right, of the overall, overtime costs?

Mr. SCHINDEL. Correct.

Mr. LEVIN. Do you have any notion—maybe it is a little too complicated—what the average pay is—I suppose you would have to go by grade—including overtime for people in the Customs Service?

Mr. SCHINDEL. No, Sir, I don't have that information.

Mr. LEVIN. Do you have any idea of the average pay ranges?

Mr. SCHINDEL. I don't have that information. I could try to get that and provide it to you.

Mr. LEVIN. Does anybody here know that?

Mr. RABKIN. I think the \$20,000 to \$40,000 figure that was thrown around earlier is the range for the regular inspectors. And then there is a \$25,000 cap on the amount of overtime that they can earn.

Mr. LEVIN. So these are all GS employees?

Mr. RABKIN. Yes, grades 5 through 11.

Mr. LEVIN. OK. So, \$20,000 to \$40,000 is the average pay for, I take it, those, obviously, in certain ranges. They are not the top-level employees. They are the vast majority of the employees of the Custom Service?

Mr. RABKIN. Well, these are the inspectors at the ports.

Mr. LEVIN. So these are the vast majority of people related to the inspection at the ports?

Mr. RABKIN. Yes.

Mr. LEVIN. They are not the top management but the typical employee. Do you have any idea what the average overtime is? I know what the cap is, but do you have any guess?

Mr. RABKIN. If I had to guess, I would guess it would be close to \$25,000, but I don't know.

Mr. LEVIN. So that would place people working in those capacities between \$45,000 and \$65,000 a year?

Mr. RABKIN. It is probably the more senior people that work the overtime, that get to get it.

Mr. LEVIN. Oh, so a lot of people don't work the overtime.

Mr. RABKIN. Not all of it, as I understand it.

Mr. LEVIN. Are those figures available?

Mr. RABKIN. They should be from the Customs Service, yes.

Mr. LEVIN. OK. Maybe we should look at them.

[No information had been received at the time of printing.]

Mr. LEVIN. My time is up, Mr. Chairman. I would hope—I guess there will be more testimony on this that we can take a look at this, at the issues that relate to pay. By the way, the increases in the night, in the differentials, do they include inflation increases and the like?

Mr. SCHINDEL. Yes, they would.

Mr. LEVIN. They take it into account.

Mr. SCHINDEL. They are a percentage of basic pay, so if basic pay goes up, then they would go up, too.

Mr. LEVIN. We took a look at this before. I think we ought to take a look at it again. I think it would be effective if we could look at the overall picture and try to take an objective look at what the dynamics are. I have no idea, for example, overtime. I assume the amount of overtime in the Customs Service is beyond the average for Federal employees?

Mr. SCHINDEL. I think that is probably correct.

Mr. LEVIN. And, I take it, that is a reflection of some reality within the Customs Service? It has been going on a long time, I take it?

Mr. SCHINDEL. I think it is a reflection of, perhaps, where the additional staffing is needed or, because of the way the traffic flows, you know, that there are certain periods when flights come in or cargo that they have to be there.

Mr. LEVIN. So it may be a reflection of the greater difficulty of planning shifts and of people planning for shifts within the Service, right?

Mr. RABKIN. Yes, I think it varies by port, too. I think each port is unique and to look at the issue of whether overtime makes sense to the Custom Service, you have to take into consideration the conditions at the port at a given period of time, you know, over a couple-month period. Because the alternative, if you want to provide the same level of service, is hiring more people. And, at a certain point, it is beneficial to the Custom Service to pay the overtime. There is less of a learning curve; you don't have other people you are paying benefits to. There is a model you can develop to analyze that, but it has to be applied port by port.

Mr. LEVIN. So just to complete this, there may be an impact on the employee in terms of their ability to plan their work week, which is a tradeoff for the Customs Service, relative to hiring more personnel. So it works, in other words, there is an impact on both the employer and the employee from this kind of a system.

Mr. RABKIN. Correct.

Mr. LEVIN. OK, thank you.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Schindel, let me ask you a question with regard to the chart that we have here. Does the shift differential increase reflect increases above and beyond what might have been earned through regular overtime if shift differential pay had not been available or does it simply rep-

resent pay provided as a result of qualifying for the shift differential pay? I am referring to that green portion of each bar.

Mr. SCHINDEL. Right.

Mr. BECERRA. Does it represent what an employee would have earned above and beyond what overtime would have paid the employee?

Mr. SCHINDEL. Correct. That is the premium portion that is attributable to night differential.

Mr. BECERRA. The night differential, right. But, now, if you didn't provide someone with night differential, you would probably be paying them for night work, probably overtime?

Mr. SCHINDEL. That could be.

Mr. BECERRA. OK, now is that reflected in this chart? In other words, if we didn't have the night differential pay, would the red bar be larger than it is for either of those years?

Mr. SCHINDEL. I think, logically, you might be able to conclude that.

Mr. BECERRA. So, the red bar might be larger if you didn't have the night differential pay, which is reflected by the green portion of the bar?

Mr. SCHINDEL. That may be.

Mr. BECERRA. So the amount that is attributable to night differential in terms of increasing pay for Customs employees would look differently if you accounted for the intersection between what otherwise might be straight overtime pay versus what is, right now, under the way it is structured, considered night differential pay.

Mr. SCHINDEL. To some degree, but, then again, some of these shifts, these are their normal 8-hour shifts, but, because of the way the night differential is structured and the majority of shift rule, they get paid premium when, if that rule was not there, they would just get straight salary.

Mr. BECERRA. Obviously, if it is a straight, regular shift, 8 or 9 hours, and it happens to hit the night-time hours, the majority hits the night-time hours of that workday. Under a system that had no night differential pay, they wouldn't get any overtime?

Mr. SCHINDEL. Right.

Mr. BECERRA. OK, got it. But there may be, mixed into the green portion of each bar, a portion that might have otherwise have gotten compensated through overtime pay.

Mr. SCHINDEL. Right.

Mr. BECERRA. Officer, do we know how many more employees Customs has in 1998 versus what it had, say, in 1993?

Mr. SCHINDEL. I don't have those figures myself, no.

Mr. BECERRA. What about the increase in workload that Customs—in its entirety, not by employee, but in its entirety—the increase in workload that the department saw in those 5 years? Do we have any way to assess how much more work they have?

Mr. SCHINDEL. I don't have that information, but certainly the trade, everyone knows, has exploded so there has been a tremendous increase in workload.

Mr. BECERRA. So would that lead you to assume that night-time shifts and swing shifts have probably increased the number of people assuming those shifts?

Mr. SCHINDEL. I don't have that information, but it might be a safe assumption.

Mr. BECERRA. Chances are, then, with the implementation of COPRA and the increasing workloads, especially after some of these free trade agreements, we are probably seeing more people working with a larger workload and the need for more people to work the swing or night shifts, which helps them receive that extra compensation.

Mr. SCHINDEL. Right. Unless there were staffing increases to offset that.

Mr. BECERRA. Now, if you were to have straight staff increases to undo the need for overtime and some of the night differential issues to compensate employees better, would that save you money or cost you money?

Mr. SCHINDEL. That would have to be analyzed, I think. For instance, some of these shifts, like the one sample shift from 12 noon to 8 p.m. is a regular shift I know at a couple of airports, like O'Hare, because that is the way their air traffic patterns work. So employees would be working that shift—

Mr. BECERRA. Does Customs set the shifts?

Mr. SCHINDEL. Yes.

Mr. BECERRA. So if Customs wanted, you could say, have someone start at 11 a.m. and run until 7 p.m., which would leave them at less than the majority of their time in a night differential shift?

Mr. SCHINDEL. That is correct.

Mr. BECERRA. So Customs does have some latitude about that?

Mr. SCHINDEL. I believe so, yes, Sir.

Mr. BECERRA. But, of course, we would have to find out if that would be logical for Customs to do.

Mr. SCHINDEL. Right.

Mr. BECERRA. Thank you. But, obviously, I think we need to—

Mr. SCHINDEL. And some of that may depend on the local union, too.

Mr. BECERRA. And we need to look into that to see exactly how that actually translates into real numbers. If I could ask Mr. Simpson a question regarding the ITDS. I know that there are some folks in the industries out there that would have to comply with ITDS and also with the new system we are trying to implement within—the ACE system we are trying to implement within Customs. They are concerned that if you don't quickly incorporate ITDS, you are going to have folks out there, like air couriers, who are going to have to both respond to reporting requirements under ACE and reporting requirements under ITDS and that is going to be pretty burdensome for them. What is your response to that?

And then, second, what is the hold up in trying to incorporate ITDS?

Mr. SIMPSON. Mr. Becerra, they would never have to respond both to ITDS and to ACE. ITDS would simply be a front end communication link that would provide to ACE whatever information the Custom Service says it wants. ITDS would never dictate information requirements. We are simply a service to our clients, who are Federal agencies.

The reason that we are concerned about moving ITDS ahead as quickly as we can is that several Federal agencies are in the proc-

ess of building new automated systems, such as the Customs Service, which is building ACE; Immigration, which is building SENTRI; FDA, the Food and Drug Administration, which is building OASIS II; Federal Highway, which is building its SAFER system. They are all expecting that the International Trade Data System will be there as the common front end for their new automated systems. If that expectation doesn't materialize fairly quickly, they are going to have to make tough decisions to invest in building communications links of their own, stand-alone communications links.

Now there are a couple of big downsides to that. One is that it is much more costly for the Federal Government to have to build separate stand-alone front ends. The other downside is that it still leaves the trade community with the need to communicate separately with multiple Federal agencies. They will be able to communicate electronically, rather than on paper forms, as they have in the past, but it is still multiple reporting. So, from our point of view, it is important for us to move forward quickly enough that we can convince Federal agencies that they will not need to invest in their own communications links with the public, that we will be there to do it for them. But that is all we are doing for them. We are not trying to alter what they do with the information or the way they discharge their responsibilities.

Mr. BECERRA. And, Mr. Hite, I think you make the point in your report that Customs has moved forward with its program, the ACE system, without fully reviewing it and seeing if it will actually be efficient and do everything Customs is hoping that it will do. What happens if, in fact, they move forward with ACE and it doesn't meet their needs and we still don't have the intersection or the proper working relationship with the ITDS?

Mr. HITE. Yes, Sir, that is precisely why we recommended as one of the actions that Customs needed to take was to resolve this issue of its interrelationship with ITDS and to ensure that it will be interoperable with and not duplicative of ITDS. I mean, the two have to merge. They can't proceed in isolation from one another. We became aware of ITDS during the course of our review of ACE and we began raising this question to try to get this issue resolved.

Mr. BECERRA. Have you seen anything to better satisfy you that Customs will move quickly enough to respond to your concerns or at least to merge ACE and ITDS?

Mr. HITE. Yes, I have seen, through my discussions, progress in the merger of the two. The Commissioner, in a letter to me dated April 1, indicated that ACE will not duplicate ITDS functionality and that ITDS will be the front end interface.

Mr. BECERRA. Thank you, Mr. Chairman.

Chairman CRANE. Folks, I want to express appreciation to you for your testimony thus far. Because we are going to start voting in about 2 minutes, we will stand in recess until 2 p.m.

[Recess.]

[Questions submitted by Chairman Crane, and Mr. Simpson's responses, are as follows:]

Question 1. Some members of the trade industry believe that every dollar spent building the International Trade Data System (ITDS) is a dollar taken from the Customs Automated Commercial Environment (ACE). Given the scarcity of re-

sources and the general consensus that ACE is urgently needed, please explain how the two programs interface, to what extent they are complementary, to what extent they compete for funds, and what criteria the Administration use to determine funding levels for ACE and ITDS in its FY 2000 budget?

Response. *How the two programs interface and are complementary*—Any government automated system, such as ACE, that collects information from the public needs an interface with the public, or “front end.” The front end provides the conduit for information to flow back and forth between the public and a government agency, and it provides certain checks and edits to assist public filers in submitting information. ITDS is being designed as the front end for ACE and for several other federal agency automated systems. By having ITDS serve as a common front end for multiple agencies, the information reporting burden on the public can be reduced (by eliminating redundant reporting), and government can avoid the cost of building a separate front end for each agency’s automated system. However, ITDS is only a front end. All of the new functionality (i.e., what is done with the information filed) that the trade community wants from a Customs automated system will be provided by ACE.

Why the two systems are not competing for funds—By providing a front end for Customs’ ACE system, ITDS performs a function that would otherwise have to be built into ACE and funded out of the budget for ACE. In other words, if ITDS is not built the cost of ACE will increase, as will the cost of other new automated systems being developed by other federal agencies. The budgets for each of those systems would need to be increased to cover the cost of building and operating front end functions that ITDS offers to perform in common for all of them. ITDS is not competing with ACE for funds, since ITDS relieves ACE of the need to pay for a separate front end. However, without ITDS the ACE project would be competing with other government automation projects for the additional funds that each of them would need to build separate front ends.

Criteria used to determine funding levels for ACE and ITDS in the FY 2000 budget—Because of concerns about ACE management raised by the Congressional appropriations committees, which have resulted in significant restrictions being placed on use of FY 1999 ACE funds, the FY 2000 budget does not request funds for ACE. During FY 2000, Customs and Treasury will work together to identify a prime contractor for ACE so that system development can go forward in FY 2001 in a manner satisfactory to Congress. The FY 2000 budget request includes \$5.4 million for the ITDS. This amount is requested to enable the project team to stay in existence and to operate three limited pilots.

Question 2. Will ITDS officials use data collected for enforcement purposes? What effect will ITDS have on the movement of imports and exports?

Response. The ITDS has no enforcement authority, responsibility, or capability. It is simply a communications utility that will enable multiple government agencies, some of which do have enforcement and regulatory responsibilities, to collect information more efficiently and cheaply. The information collected will be distributed to each government agency with a need for it, and those agencies with border enforcement or regulatory responsibilities—including Customs, INS, FDA, and USDA—will determine what action to recommend. The recommendations will be consolidated by ITDS and forwarded through Customs’ information systems to a Customs inspector at the port of entry.

The availability of better, more timely information is expected to enable agencies to be more effective in carrying out their enforcement and regulatory responsibilities. This has raised concern that shipments will be stopped more frequently for inspection, imposing additional burdens on the trade and on Customs. Obviously, neither the trade nor Customs would want to ignore a request from, for example, FDA or USDA that their officers be allowed to inspect a shipment for reasons related to food safety. However, it is not necessarily the case that better enforcement will mean additional inspections. The expectation is that greater enforcement effectiveness will result from improved targeting of inspections as a result of having better, more timely information, not necessarily from an increase in the number of inspections.

Finally, the great majority of shipments detained by Customs are held because of missing documents, not because they have actually been targeted as likely violations of law. By providing importers with a fully electronic means for dealing with multiple agencies, and by providing on-line help, including checks and edits on messages sent, ITDS is expected to reduce significantly delays attributable to missing documents and missing or incorrect data.

Question 3. In your testimony you stated that ITDS will serve a custodian of records for the information it collects. Does that mean, for example, that ITDS will be the custodian of Customs records it collects rather than Customs?

Response. In the current environment there are both multiple reporting requirements and multiple systems of records. ITDS seeks to consolidate both, and ITDS will be the official system of records for import and export transaction. However, although agencies will not be permitted to impose reporting requirements on the public outside the ITDS, they will be allowed to maintain duplicate, unofficial systems of records if they so choose. It is hoped that the economy offered by a single records system will persuade agencies not to choose to maintain duplicate systems of records.

Chairman CRANE. The Committee will reconvene.

Now I would like to invite our next panel, Mr. Kurt Zimmer, vice president of GartnerGroup; Ronald Schoof, customs and export regulation administrator, with Caterpillar; Peter Powell, chief executive officer of C.H. Powell Co., in Massachusetts.

I think George Weiss is with you. Right, Mr. Powell?

Mr. POWELL. No, Sir.

Chairman CRANE. Oh.

Mr. WEISS. I am just sitting in the audience.

Chairman CRANE. I thought you were with one of the witnesses that was coming on board. OK.

Richard Salamone, manager, customs and international regulatory compliance; and Jane B. O'Dell, vice president, international trade and customs compliance, Limited Distribution Services.

If you will all please take seats and please try and keep your oral presentations to 5 minutes or less. Any printed statements will be made a part of the permanent record. With that, we will proceed with Mr. Zimmer.

**STATEMENT OF J. KURT ZIMMER, VICE PRESIDENT,
GARTNERGROUP, STAMFORD, CONNECTICUT**

Mr. ZIMMER. Thank you, Mr. Chairman. First, let me say a few words about my organization. I represent GartnerGroup. Gartner is the world's leading provider of research analysis on the IT industry. We serve over 11,000 client organizations worldwide.

Our reputation is premised on objectivity, in-depth analysis of the IT industry, and a very deep knowledge of that industry. We have a very clear understanding of best practices, and more importantly, most importantly, how to put those best practices into context. This is never about perfect world scenarios. It is always about the real world.

The IT organization in Customs has faced a very difficult scenario over the years, declining real IT spending, increased delivery requirements, and increased external scrutiny. That would be a challenge for any organization that we would represent or have seen in the industry today.

I have a number of goals today. One is to present pragmatic real-world opinions, ones that can be substantiated based on my experience, my organization's experience and knowledge, ones that are based on industry best practices, which I think are very important.

Another goal is to put into context the challenges facing Customs, because they are very real and very pertinent to today's dis-

cussion. I also want to establish that much really has been accomplished by Customs to date. They are very successful in terms of IT, as much as we would like to think differently at times.

GartnerGroup and myself have served Customs for approximately 4 years. I have been the key resource over that period. I have worked with Customs on a wide variety of initiatives. I won't go through those in detail, but they range from direct assistance to then Acting Commissioner Sam Banks, to ACE, to multiple technology initiatives, reviews of many programs. We have been with Customs in-depth for that period of time.

We have worked extensively with all aspects of Customs and all levels of Customs. We work with Treasury, GAO, OMB, and the trade in conjunction with these activities. The bottom line is we know IT and we know Customs. We know the environment they are in.

A few of the historical realities. Our approach is very pragmatic. Pragmatism is required in this situation. We find their organizations are not driven from academic and best case scenarios. They are really required to do what is best given a moving target. There is a real world that organizations have to deal with.

Customs' IT has faced a unique set of realities or constraints. Funding is on the decline. Funding is insufficient for even their core requirements, IT requirements. Additional and continuous funding is unpredictable, at best. Legislative mandates do not ensure funding. There is insufficient technical infrastructure, which is a fun issue in and of itself. The core trade system, ACS, is in fact aging and is of considerable concern. They are continuously responding to external criticism, which causes the organization to thrash quite a bit. Simply put, the demands exceed, far exceed the ability to Customs IT to optimally address. So what do they do? They address them as best as they can, as any organization would.

Our observations. Customs has performed admirably, in our view, given those circumstances. They have done a very good job. No organization is perfect. Customs is far from it. But they have done an excellent job, given the scenario that they are in. They have made mistakes. They will continue to make mistakes. However, in its current reality, we have been quite impressed with what they have been able to accomplish.

Instead of focusing on what they have done wrong, I would like to spend just a couple of minutes focusing on what they have done right, and what they have done well. Their program to remediate Y2K was outstanding by anybody's standards, not only the Government. They were well ahead of most of private industry. They did an outstanding job. To me, this proves a number of things. One of which is that they can manage large, complex projects. We have been told they can't. They in fact can, if given the resources and the capability to do that.

ACE. Initial implementations have received excellent response. The cost estimates, while large, have proven to be fairly accurate with KPMG and others looking over their shoulder. In our view, amazing progress has been made with virtually no predictable direct funding. It is amazing to us that they have been asked to do 20-year projections without knowing what they are going to be able to spend, and when they are going to be able to spend it. It is dif-

difficult to do that for 1 year, let alone 20 years. Customs has done what it's had to. It has made the best progress possible under what I would consider almost impossible conditions.

ACS, a system you have heard about, and other core systems, are immense by anybody's standards in the industry. They maintain one of the largest data bases on the planet. Their systems have to keep pace with the growing trade requirements. They demonstrate a very impressive ability to maintain these systems in the face of their current reality and constraints.

One quick note on ACS. It is aging. But the IT organization deserves some credit for maintaining it and keeping it going, which is required for the Government.

In terms of enterprise IT architecture, they have done an excellent effort. They are well ahead of many private sector firms. They are beginning to be viewed as a best practice within the Government. Their investment management process is coming on-line, and is showing some excellent results.

In terms of their application development process, which you heard about, CMM, they do have a process, it's just not CMM. It is extensive. They have tried to follow it. There is no perfect model, even CMM. A good model does not ensure success. They have been criticized for not having a model, but they do have a model and are using it.

It is important to understand that software has been successfully written for 20 years in the absence of this model, and will continue to be delivered. It helps, it's not the answer.

In general, process improvements are not free. These improvements come with repetition and rigor. Repetition takes time, and rigor takes resources. Customs has neither, yet it has accomplished a tremendous amount under these difficult circumstances.

Our opinions are about reality. They have been asked to do much more with less. They have the resources. They are doing a good job. They have so many things on their plate right now that it is virtually impossible to take them all on: Y2K, ACE, CMM, infrastructure updates. Yet they have made incredible progress against these tremendous conditions, and they will continue to do so. They face very limiting conditions. Yes, they pass our reasonability tests over and over. They listen to advice, and they act. They respond professionally. When put into the real world context, they have accomplished much. They deserve to be supported in accomplishing even more.

Thank you. That concludes my remarks. Thank you.

[The prepared statement follows:]

**Statement of J. Kurt Zimmer, Vice President GartnerGroup,
Stamford, Connecticut**

My organization and I have had the unique opportunity to assist the U.S. Customs Service (Customs) over the course of the last four years. During this time, I have worked closely with virtually all of the key staff within both the information technology (IT) organization and the core business areas. My tenure with Customs has afforded me the chance to gain clear insight into its IT challenges, opportunities and successes. This tenure, in conjunction with my organization's respected capabilities in the IT arena, allows me to present you with as independent and objective a view as possible into the realities of the Customs IT history and current situation.

Thank you for the opportunity to present this testimony. It presents the collective opinion of myself and others within my organization, GartnerGroup.

OVERVIEW

The U.S. Customs Office of Information and Technology (Customs IT) organization has faced a difficult scenario over the years, a decline in real spending coupled with significantly increased requirements across a broad spectrum of areas. This, coupled with increased scrutiny both internally and externally, has forced the IT organization to operate in an environment which would be a challenge for any organization, public or private sector.

My goal today is to present the committee with a pragmatic, real-world set of opinions on the Customs IT situation, opinions which can be substantiated based on unparalleled industry experience and knowledge, coupled with a clear understanding of industry best practices. I am not here to spout platitudes but to fairly put into context the challenges facing the Customs IT organization and establish that it has, in fact, accomplished significant achievements, even in the face of obstacles that most organizations never encounter.

THE GARTNERGROUP INDUSTRY POSITION

GartnerGroup is the world's leading provider of information and analysis on the IT industry. We advise over 11,000 client organizations worldwide. These clients represent most major organizations, both private and public sector, in this country and around the world. You would be hard-pressed to find an IT professional who does not recognize our name and the knowledge, experience, independence and objectiveness for which that name stands.

Our reputation is premised on our ability to present the business and IT communities with impartial, accurate information and recommendations with respect to the direction, use and value of IT. Not only do we provide industry with a clear picture of IT directions, but we also have a deep understanding of the best practices that drive excellence. Our view into our vast client base allows us to accurately present a picture of what is happening in the IT arena and to put it in context.

I personally have 18 years of experience in IT, the last four with GartnerGroup. Prior to GartnerGroup, I served as the chief distributed technical architect at DuPont (E.I. duPont de Nemours Company). I have extensive experience in enterprise architecture and a wide variety of other IT disciplines. I have provided senior-level consulting services to a number of the largest companies in the United States and around the world, and have served other Federal clients as well (GSA, DISA, U.S. Navy).

THE GARTNERGROUP EXPERIENCE IN CUSTOMS

As I mentioned, GartnerGroup (specifically, the GartnerConsulting organization) has served Customs for just over four years. I have been the key resource over that period. We have provided a wide variety of advisory (research), measurement and consultative services. However, I will focus primarily on the consultative side, as it is the most relevant to the current situation.

The following represents a synopsis of the activities that we have executed on behalf of Customs. These are listed to provide the Committee with a general understanding of the depth and breadth of our experience with Customs. These will not be presented in detail; however, we can provide further clarification and content upon request.

- Assessment of the CDC2000 Architecture
- Development of a High-Level ACE Business Case
- Assistance in the Establishment of an Initial ACE Application Architecture
- Assessment of CTP/TAP Technical Architectures
- Assistance in the Development of a Business Plan for ACE
- Review and Assessment of the Electronic Data Warehouse (EDW) Effort
- CIO Selection and Transitional Support
- Direct and Continuous Consultation with the Acting Commissioner on IT Issues
- Independent Assessment of the Y2K Effort
- Assessment of ACS Viability
- Development of an TISAF-Compliant Enterprise Architecture
- Assessment of Targeting Systems, including CABINET/WANTS and the Pilot Land Border Targeting System
- Review and Recommendations around Organizational Realignment
- Assessment and Scoring of Customs Strategic Plan
- IV&V of EDS and CTP Architectural Efforts
- Development of an Improved Investment Management Process (IMP).

In executing these efforts, GartnerConsulting worked extensively with the Customs IT organization (technicians, developers, planners and management) at all lev-

els. We also worked with the “business” side of Customs, from the Acting Commissioner down to those in the field. During the course of our ACE efforts, we also spent time with the Trade community. Additionally, our activity at times required us to interact extensively with other Federal bodies such as Treasury, GAO and OMB. In short, we have worked with Customs in the broadest possible context over a continuous time line and against the backdrop of our objectivity and experience across the entire IT industry. As such, we trust that our comments will be viewed as material and expert.

THE HISTORICAL REALITIES OF THE CUSTOMS IT SITUATION

GartnerConsulting approaches any situation from the perspective of pragmatism. Real-world organizations are rarely driven from highly academic or best-case scenarios, but are usually trying to do what is best given a moving and uncertain target. Customs is not different in this regard. Our analysis and recommendations are almost always done in the context of incremental realism. The bottom line is: Given a specific set of circumstances or requirements, how does an organization make real improvement given its current environment? It is almost never about reaching the IT nirvana that some would suggest Customs attempt to reach.

Over the years, we have come to gain a deep appreciation for the realities of the Customs IT situation. These realities are critical, for they establish the context that bounds our analysis, comments and recommendations. We believe that the following realities are key:

- Customs IT funding in real terms has been and continues to be on the decline.
- The current Customs IT funding level is insufficient to meet core IT requirements, let alone enough to make significant organizational, process and functional capability improvements.
- Additional and continuous funding is unpredictable at best and subject to the influence of many outside forces. Some sources of funding have very specific restrictions and cannot always be optimally allocated.
- Legislative mandates do not ensure a funding stream to complete.
- Customs IT technical infrastructure is insufficient to meet the demands of current initiatives. This alone is a huge investment challenge, ACE notwithstanding.
- The core Trade system (ACS) is in fact aging and is of increasing concern. This is not conjecture or posturing. Those who would suggest this clearly do not understand the facts and are placing in jeopardy the ability of Customs to provide continuity of operations to the Trade community.
- Customs IT has needed to respond continuously to criticism, much of it we believe unwarranted or overstated, from a variety of sources and of changing form as issues are addressed. We have never encountered an organization that spends as much time as Customs responding to these types of actions. It is debilitating at best and clearly diffuses the ability of the organization to maintain focus.

The above minimally define the realities and constraints facing Customs IT. They are critical because they establish a scenario that cannot resolve itself without immediate intervention or acceptance of degraded service levels and overall capability. In extremely simple terms, the demands on Customs (Y2K remediation, ACE development, maintaining a stable ACS, suggested process improvements, enterprise architecture completion and all normal day-to-day activities) far exceed the ability of Customs—or for that matter any organization with which I have worked—to optimally address. This speaks volumes in terms of evaluating Customs’ actions and capabilities against this backdrop and not against one of unrealistic expectations.

OBSERVATIONS AND OPINIONS

I would start by categorically stating that Customs IT has performed admirably in the face of the noted realities. No organization is perfect; most are far from it. We base an assessment of an organization’s character and capability not only on what it has accomplished but also on the circumstances facing the organization in trying to accomplish its mission. Let me be clear. Customs IT has made mistakes and has many opportunities for improvement. But when placed in the context of its current situation, we are very impressed by what Customs has and continues to accomplish.

Instead of focusing on what Customs could do to improve (enough has already been pointed out by other bodies), I would like to take some time to point out what Customs does well. This is not based on conjecture but on the GartnerConsulting view into the IT industry as a whole and on the extensive real-world experience which our consultants bring to the table. This is also based on in-depth efforts that we have performed on behalf of Customs.

Initiatives

Y2K—The Customs Y2K program is outstanding. The program has received excellent reviews internally. The combination of a well-run program office, dedicated staff and continuous review was key. When others would have you believe that Customs suffers from weak project management and planning, remember that this Y2K effort was clearly one of the best executed in the Federal or private sector. Customs can manage large, complex projects.

ACE—In many respects ACE has demonstrated success. There have been strong positive responses to early NCAP releases. Earlier project cost estimates and benefits are proving to be reasonably accurate based on a new and complete analysis done by an outside party. What is important to remember is that ACE has received virtually no significant direct funding. Over the years, Customs has been asked to provide many different estimates—estimates that are supposed to be accurate. However, at the same time it has never had the benefit of a reliable and continuous funding mechanism to use as a planning assumption. It is remarkable that Customs has made the progress it has given the circumstances. Again, consider the backdrop—no funding, a legislative mandate, aging existing system, no infrastructure and heavy oversight requiring best practices. Customs did what it had to do under the circumstances; it made the best progress possible under impossible conditions.

Existing Application Base including ACS—The existing base of Customs applications supports a wide array of functions: trade, enforcement, administrative and financial. The systems are immense by any measure. Customs supports one of the largest databases anywhere. The amount of funding required to maintain and operate these systems is very low. These systems must support the fairly rapid growth in Trade and the associated areas. We continue to be very impressed with the ability of Customs to maintain continuity of operations in the face of growth, declining budget and overall system age. While we have not done an in-depth analysis of the overall capability, we believe that the Customs staff has done an outstanding job in this area. Again, this speaks to the ability of Customs to plan, manage and execute significant efforts in the face of trying circumstances.

Specifically with respect to ACS, it should be noted again that it is increasingly difficult to maintain the integrity and continuity of the system. This is due to the historical lack of documentation, application complexity, volume growth, physical characteristics of the technology in use and other issues. While many would focus on the challenge Customs has had in keeping ACS functioning, we feel that given the situation, Customs should be viewed in a very positive light. It has managed to maintain operations in the face of an almost worst-case scenario. It has used limited resources very effectively.

Enterprise IT Architecture—After a slow start four years ago, Customs has responded with one of the most thorough efforts we have seen to date. The effort is especially laudable given the fact that the conceptual model upon which Customs was directed to base its approach had never actually been built out and tended to reflect too academic a view of the requirement. The Customs approach and deliverables are now beginning to be viewed by a broad cut of its peers as a best practice.

ATS—Targeting has always been a key component of the Customs approach. While not a large initiative by ACE standards, the effort around targeting continues to show astounding success. Not only has Customs developed a leading-edge targeting delivery system, but it has also directly attacked the challenge of a common approach to many different types of targeting.

Cabinet/Wants—This targeting effort is singled out as an example of the positive and pragmatic way in which Customs has applied architecture and standards to its day-to-day approach. In short, this non-standard technical environment required an upgrade. Customs IT viewed this as an opportunity to evaluate the system not only in terms of the use of standard technology, but also in terms of a common approach to targeting. Customs IT took the time and has to date expended the effort to upgrade this capability technically, operationally and functionally. Most organizations would not have made this type of forward-looking investment, especially given the severe resource constraints. Even in the absence of all the formal planning, process and architectural artifacts demanded by some, Customs continues to demonstrate an ability to do the right things and to do them as effectively as possible.

Organization

Reorganization—Based on new IT leadership vision and the proven success of the Y2K program office, Customs IT has executed a reorganization to ensure a proper balance of accountability and responsibility. This reorganization maximizes the use of a very limited resource—people. Over the four years that I have been associated

with Customs there has been a notable shift toward the creation of an accountable IT organization. While subtle, this shift is very positive. When coupled with a number of simple core process improvements (IRB, architecture, project/program management), we would expect to see a structure capable of supporting the intent of recent oversight recommendations but in an effective and pragmatic manner.

Processes

IMP—Customs has been refining its Investment Management Process (IMP) over the last few years. The most recent refinement fundamentally shifts the IMP from being an explicit, standalone process to one that over-arches a number of related processes—a best practice. While too detailed a discussion for this forum, the shift to pragmatic and layered roles in conjunction with focused informational requirements and decision criteria combine to establish a very fluid approach. Recent experience with the use of this new approach has been very successful. Our experience is that this approach will reap true benefits, and will rapidly become as good, if not better, than that of most organizations with which we work.

Enterprise Architecture—While the core IT architecture is increasingly well established, the underlying architectural processes which support and interconnect the overall architecture with associated processes (such as IMP) are currently in development. Very shortly they are expected to duplicate the successes of the IMP. Clearly, architectural processes are key to the continued success of the IMP over the long term. What is evident is that Customs IT is open and moving to a very collaborative and accountable model. We have extensive experience in enterprise architecture and the associated processes. This experience leads us to believe that when institutionalized the planned Customs IT architectural process will be a best practice and pragmatic and usable as well. What is absolutely critical is that these processes are not “paper” processes, but are processes that virtually disappear into the background and become a part of everyday decision-making and activity. From our experience, it is this type of approach that separates effective processes from ones that look good on paper but never become part of the culture.

Application Development and Acquisition—Customs has made a significant investment in the development of a system-development life cycle (SDLC). The SDLC is a mechanism to help ensure that a rigorous process is used to develop new application functionality. The Customs SDLC is extensive, perhaps overly so, given the nature of the role of application development within the organization. However, the fact that it does have one in place is positive. What is somewhat perplexing is the requirement to now shift to a “new” model, CMM (SEI’s Capability Maturity Model), and the fact that Customs is now being held to a new standard. In the end, all of these approaches are designed to help ensure success for application development and/or software acquisition. There is no perfect model or process, nor does the existence of a process ensure success. They are all frameworks that help traverse the complexity of the application development/acquisition life cycle. Given the fact that Customs IT fundamentally is not an application development organization, that it had an extensive SDLC is very positive.

While CMM is an extremely thorough and excellent approach, it must be put into a context, which it has not to date. Customs does have a process; it just is not CMM. Customs has had significant successes in the absence of CMM, as has every organization that does application development. And as noted, CMM does not ensure success. CMM is, to a large extent, more appropriate for commercial organizations that develop applications as a core competency, and less appropriate for organizations like Customs, which on the whole develop very few new applications and do not have application development teams internally as a core competency. Customs should be applauded for its efforts around an SDLC and given recognition for its stated direction toward CMM compliance.

General—It is important to note that many types of process improvement are not free. Implicit in the comments of the critics of Customs is the requirement that significant process frameworks can and must be established prior to moving forward. This is impractical. Improvement comes from repetition and rigor. Repetition takes time and rigor takes resources. Customs has been given neither the resources nor the ability to gain experience with a development process. These are the facts. Customs IT has done a reasonable job under the circumstances. It has done what it has had to do to make demonstrable progress.

SUMMARY

The reality of the Customs IT world is very basic—do much more with less. The Gartner Consulting basic analysis is that Customs has the resources to just deal with the day-to-day issues, at best. The reality is that Y2K, ACE, CMM compliance

and technical infrastructure improvements all require resources in excess of what is available. Customs has done a very good job of balancing these issues. Not perfectly, but reasonably. Our experience tells us that Customs asks for advice and then listens. It has accomplished many very positive initiatives and on the whole is very successful. To be responsible, we all have to look at Customs IT and put its difficult history in perspective.

As an external consultant, the easiest thing to do is to find fault; the hardest is to find a realistic and truly executable approach given some set of limiting circumstances. When put into this context many, if not most, of Customs IT decisions pass the reasonability test easily. Customs IT has shown what it can do when positively challenged and when given the ability to respond in a professional manner. We firmly believe that this ethic and capability to function under extreme circumstances is core to Customs culture. It is something to leverage, build upon and actively support, and not to replace.

This concludes my remarks before the committee. Thank you for the opportunity to address you today.

Chairman CRANE. Thank you.

Mr. Schoof, do you live in Peoria?

Mr. SCHOOF. I do.

Chairman CRANE. I taught down at Bradley for years. Three of our eight children were born there, yes, indeed.

Mr. SCHOOF. Welcome back sometime.

Chairman CRANE. Of our eight, we had only one boy and he was born in Peoria, which proves it plays in Peoria. [Laughter.]

Mr. SCHOOF. That's right. It still does, too.

**STATEMENT OF RONALD SCHOOF, CUSTOMS AND EXPORT
REGULATION ADMINISTRATOR, CATERPILLAR INC., PEORIA,
ILLINOIS, AND VICE-CHAIRMAN JOINT INDUSTRY GROUP**

Mr. SCHOOF. Thank you, Mr. Chairman, and Representative Levin. I am responsible for the customs and export compliance at Caterpillar in Peoria, and happy to be here again. I am also vice chairman of the Joint Industry Group (JIG), that is a coalition of 150 Fortune 500 companies, brokers, trade associations, and law firms actively involved in international trade, and one of the founding Members of the Coalition for Customs Automation Funding.

I have been asked today to relate to you the position of the JIG regarding the President's proposed fiscal year 2000 Treasury budget, and the needed funding for automation systems. Briefly stated, we find the President's Treasury budget on automation funding to be poorly crafted. We are disappointed in the Administration's inability to assume a leadership role in the development of a mission-critical Customs system.

The proposed new tax, termed a user fee by the Administration, is illegal under the NAFTA agreement with Canada and Mexico. Furthermore, the President's budget proposes to fund automation at half the level that is needed. The tax would place an additional burden on industry, that already contributes \$800 million a year to the merchandise processing fee.

For this reason, it is now time for Congress to fill the leadership void by establishing adequate funding for Customs automation. In fact, it should be noted that it was the Ways and Means Committee leadership that approved the Customs Mod Act, which required among other things, an enhanced Customs automation system.

While industry has fulfilled its side of the Mod Act at the cost of tremendous additional resources and expenditures, Customs Service has been unable to provide the most important component of its side of the agreement, automation.

The current Customs ACS system is experiencing brownouts and delays and declining service with increased frequency. A major blackout or a crash of the system will have major effects on companies, the environment, and the economy. For Caterpillar, a 1-day shutdown of ACS will cause disruptions. A prolonged ACS blackout of more than a day could halt our production lines and cause serious delays in shipping needed replacement parts to our customers.

The automotive industry will be forced to shut down production lines at a much earlier date than Caterpillar because of the high volume, just in time delivery procedures. Many of these shutdowns would occur within the first few hours of an ACS failure. Setting aside the environmental impact of thousands of vehicles frozen with engines running along our borders, imagine the impact to the U.S. economy and U.S. labor if production comes to a halt in our major U.S. manufacturing companies.

Further adding to our concern is the low level of funding available for ACS maintenance. For fiscal year 1999, Customs has a deficit of \$8.5 million for ACS life support. We urge the Committee to authorize the emergency funding in the amount of \$8.5 million before the end of April. For fiscal year 2000 budget, a similar shortfall of \$32 million exists.

The replacement system, ACE, which we have heard a lot about today, has been scrutinized for years. JIG members have taken an active role in the ACE planning since the passage of the Mod Act. Many members are currently participating in the various ACE prototype programs. Our organization has participated in the Customs Trade Support Network, TSNs, that have given industry an opportunity to ensure that each business sectors' automation needs are addressed. Overall, we have been very pleased with the Customs' approach to this point.

International Trade Data Systems, ITDS. We support the Treasury Department's mission of reduced amount of data required by the Government prior to importation. JIG supports the concept of front-end interface to serve as a single data collection point between the Government and industry. However, as we have come to understand the design and enforcement natures of ITDS system, we have concerns with its true role in the clearance process.

In conclusion, Mr. Chairman, the Administration has failed to develop an adequate method to fund ACE and support ACS. We turn to Congress to provide the solution. In order to develop ACE over a 4-year period, a funding level of at least \$300 million per year in each of the next 4 years is required. Because industry has and continues to contribute more than \$800 million a year in merchandise processing fee, we urge that a portion of these funds be appropriated to Customs for ACE development. In doing so, we recommend that Congress treat the Customs Service as though it was a business: conduct hearings, require deadlines to be met, hold Customs responsible for its management in the process.

For its part, we pledge to continue to participate in the TSNs and insist upon regular updates and informative meetings with the

Customs Service. Indeed, with all that industry has invested in the Mod Act to this point, ACE development will not proceed without industry scrutiny. Thank you.

[The prepared statement follows:]

Statement of Ronald Schoof, Customs and Export Regulation Administrator, Caterpillar Inc., Peoria, Illinois, and Vice-Chairman, Joint Industry Group

INTRODUCTION

Mr. Chairman and distinguished Members of the House Ways & Means Subcommittee on Trade. My name is Ronald Schoof and I am responsible for customs and export regulation administration with Caterpillar Inc., in Peoria, Illinois. I am also Vice-Chairman of the Joint Industry Group (JIG), a coalition of more than one hundred and fifty members representing Fortune 500 companies, brokers, importers, exporters, trade associations, and law firms actively involved in international trade. The Joint Industry Group enjoys a close and cooperative relationship with the U.S. Customs Service and frequently engages Customs on trade-related issues that affect the growth and strength of American imports and exports. The Joint Industry Group is also one of the founding members of the Coalition for Customs Automation Funding.

I have been asked today to relate to you the position of the Joint Industry Group regarding the President's Proposed Fiscal Year 2000 Treasury budget and needed funding for development of Treasury and Customs automated data processing systems.

CURRENT BUDGET

Briefly stated, we find the President's Treasury budget on automation funding to be very poorly crafted. The proposed new tax, termed a "user fee" by the Administration, is illegal under the NAFTA agreement with Canada and Mexico. It conflicts with the Treasury Department's own mission of reducing the amount of data required for imports under the International Trade Data System (ITDS). ITDS seeks to reduce the amount of data required, while the proposed budget taxes the amount of data sent. The two objectives are contradictory. The tax would place an additional burden on an industry that has already contributed \$800 million a year for the last ten years in Merchandise Processing Fees (MPF). A portion of the MPF should have been used to build and implement Customs automated systems. Furthermore, the President's budget proposes to fund automation at a level that is less than half of what is genuinely needed. We are disappointed in the Administration's inability to assume a leadership role in the development of mission critical Customs systems.

For this reason it is now time for Congress to fill that leadership void. In fact it should be noted that it was the Ways & Means Committee leadership that approved the Customs Modernization Act (Mod Act) that required, among other things, an enhanced Customs automated system.

CUSTOMS MODERNIZATION ACT

Passed in 1993, the Mod Act placed added compliance responsibility on industry. This included industry accepting the responsibility for classifying goods, exercising reasonable care, developing corporate account based systems, assigning merchandise value, determining the country of origin, and determining duties of imported products. As its part of the agreement, the Administration, through the Customs Service, was to provide methods to facilitate the process by enhancing automation systems to accommodate the new requirements. This added new meaning to the term "trade facilitation." It was not a term that indicated a regress of Customs enforcement policies, rather it alluded to the Customs side of the agreement. While industry has fulfilled its side of the Mod Act, at a cost of tremendous additional resources and expenditures, the Customs Service has been unable to provide the most important component of its side of the agreement—automation. At this point, industry can only continue to hope that the Automated Commercial System will last long enough for Customs to develop its successor.

THE AUTOMATED COMMERCIAL SYSTEM (ACS)

As JIG has testified previously, our membership continues to be concerned about the aging Automated Commercial System (ACS). It is almost 15 years old and is experiencing brownouts, delays, and declining service with increased frequency. A

major blackout or “crash” of the system will have devastating effects on companies, the environment, and the economy.

For Caterpillar, the company I represent, a one-day shut down of ACS will cause disruptions. A prolonged ACS blackout of more than a day or two would halt our production lines and cause serious delays in shipping needed replacement parts to our customers. An inactive assembly line is a scenario that will face many of JIG’s manufacturing company members. General Motors, DaimlerChrysler, and Ford Motor Company will be forced to shut down production lines at a much earlier date than Caterpillar because of their high volume just-in-time-delivery procedures. In fact, miles of idling trucks strung across the Texas, California, New York, and Michigan borders is certain to occur during a major shut down of ACS. Setting aside the environmental impact of thousands of trucks frozen with engines running along our borders, imagine the impact to the U.S. economy and U.S. laborers if production comes to a halt in our major U.S. manufacturing companies.

Further adding to industry concerns is the low level of funding available for ACS maintenance. In FY2000, a minimum of \$99 million is necessary just to maintain ACS. The President’s budget proposed \$35 million with an additional \$32 million in base funds. This represents a deficit of \$32 million. While this lack of funding is alarming, more alarming are the funds currently available for ACS maintenance. In FY1999 Customs has a deficit of \$8.5 million for ACS life support. This means that funding for ACS will expire at the end of this month. We urge the Committee to authorize emergency funds in the amount of \$8.5 million before the end of April.

THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE)

The replacement system, the Automated Commercial Environment (ACE) has been scrutinized for years. JIG members have taken an active role in ACE development and funding since the passage of the Mod Act. Our organization has participated in the Customs Trade Support Networks (TSN’s) that have given industry an opportunity to ensure that each sector’s automation needs were addressed. Industry advised Customs to adopt a modular approach to the ACE design, and Customs has done so. We suggested that Customs outsource the construction of ACE to an information technology firm specializing in automated systems. Customs has concurred and is preparing a request for proposal with the help of a Federally Funded Research and Development Contractor (FFRDC). Overall, we have been pleased with the Customs approach to this point.

INTERNATIONAL TRADE DATA SYSTEM (ITDS)

The Joint Industry Group has been asked to comment on the Treasury Department’s International Trade Data System (ITDS). JIG supports the concept of a front-end interface to serve as a single data collection point between government and industry. We support the Treasury Department’s mission to reduce the amount of data required by the government prior to importation. However, as we have come to understand the design and enforcement nature of the Treasury ITDS system we are concerned with its true role in the clearance process. Therefore, at this point JIG cannot support the proposed ITDS system. We do agree that a front-end element is necessary for ACE, but the ITDS proposed to us today is not the solution.

RECOMMENDATIONS

In proposing an unacceptable and insufficient budget, the Administration has failed to develop an adequate method to fund ACE or support ACS. We turn to Congress to provide the solution to the ACE and ACS funding issues. In order to develop ACE over a four year period, which is the time frame agreed upon by industry and Customs, a funding level of at least \$300 million per year in each of the next four years is required. Because industry has contributed, and continues to contribute, more than \$800 million per year in MPF, we urge that a portion of those funds be appropriated to Customs for ACE development.

In doing so, we recommend that Congress treat the Customs Service as though it were a business. Conduct oversight hearings, require deadlines to be met, hold Customs responsible for its management of the process. For its part, JIG pledges to continue its participation in the TSN’s to ensure that all industry sector’s automation requirements are met. JIG will insist upon regular updates and informative meetings from the Customs Service. Indeed, with all that industry has invested in the Mod Act to this point, ACE development will not proceed without JIG’s scrutiny.

Chairman CRANE. Thank you, Mr. Schoof.
Mr. Powell.

STATEMENT OF PETER H. POWELL, SR., CHIEF EXECUTIVE OFFICER, C.H. POWELL CO., PEABODY, MASSACHUSETTS, AND PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., NEW YORK, NEW YORK

Mr. POWELL. Thank you, Mr. Chairman, Mr. Levin, Subcommittee Members. My name is Peter Powell of the C.H. Powell Company. I also serve as president of the National Customs Brokers and Forwarders Association of America.

As you well know, Mr. Chairman, from our many years of working together, a customs broker acts on behalf of an importer in its obligations to the Customs Service, filing information, paying duties, and ensuring compliance with the laws of the United States. We have long known that Customs automation is essential to these processes. While we heard "automate or perish" long ago, brokers quickly understood the criticality of this tool, and worked in conjunction with Customs to develop ACS, the Automated Commercial System.

Jointly, Customs and the broker community were responsible for its early development and then its evolution over almost two decades. Recently however, it has become clear to our community that ACS is in trouble. We, who are on the front lines, became aware of this first. The most obvious signs of ACS's inability to keep up with rapidly increasing volumes has been the brownouts and outages experienced in this past year. Yet ACS has other limitations caused by aging technology, coupled with expanding demands for better and more sophisticated performance.

In many respects, ACS successor system, the Automated Commercial Environment, known as ACE, sounds like something different. In fact, it's merely modernization of what is frankly antiquated today. Yes, there needs to be new hardware and software. However, the Customs process itself remains functionally the same, albeit more efficient and improved to cope with workloads that increase at an alarming pace. ACE can increase productivity through faster processing of information. ACE increases flexibility by permitting resort to other tools for processing information such as the Internet, as an example. ACE improves interfaces with the private sector and with 104 other Federal agencies. And, ACE helps implement those processes that this Committee has mandated through laws such as the Customs Modernization Act.

We customs brokers can tell you that trade will come to a crashing halt if ACS collapses under the weight it must now bear. Unfortunately, we seem headed in that direction. This year's funding outlook is bleak. To maintain ACS on life support, Customs estimates that it will need \$12 million this year. However, \$8.5 million is unfunded. To continue life support in fiscal year 2000, the Administration proposes \$35 million, which we understand to be \$32 million short.

But stop for one moment. Even were Congress to find the money to fund ACE, whether over 4 or over 7 years, do we want our lifeline to international trade merely sustained on life support? I would venture that we need a robust, functioning automation system in the interim that can meet the demands of trade over the next 4 to 7 years.

To put processing in limbo, without improving the present system to meet intervening contingencies is equally neglectful on all of our parts. How can we stand by and wait another 4 to 7 years to enjoy benefits conceived by this Committee over 5 years ago?

As for ACE, the funding outlook is equally poor. Treasury continues to dole out funds sparingly, with \$3.4 million in fiscal year 1999 funds, awaiting a cost-benefit analysis. This Committee has authorized some funds in a bill now being delayed in the Senate. However, the Administration has requested no funds, I repeat, zero funds for fiscal year 2000. And, it has proposed an untenable user fee concept, which we oppose, to permit a mere \$150 million in fiscal year 2001.

To adequately fund ACE, we project that Congress must appropriate at least \$300 million each year for 4 years. Instead, we have only the Administration's proposal, which at best is misguided, and at worst, woefully inadequate.

NCBFAA believes that ACE must be constructed forthwith. We acknowledge that a \$1.2 to \$1.4 billion price tag demands great caution and the necessary diligence on the part of those authorizing, appropriating, and overseeing the spending of these funds. NCBFAA in no way implies that the Congress should simply throw money at this problem. Congress must insist on meaningful oversight. Treasury must guarantee that it can meet your terms. Nonetheless, the days of armchair quarterbacking must draw to a close. We must reduce the demands on Customs planners and implementers so that they can realistically move forward, focus on achieving the result demanded by Congress, rather than merely constructing an elegant risk-adverse process.

We have confidence that Customs, under your oversight, can produce a successful Automated Commercial Environment. NCBFAA urges you to support ACE with the necessary authorizations. Mr. Chairman, thank you.

[The prepared statement follows:]

Statement of Peter H. Powell, Sr., Chief Executive Officer, C.H. Powell Co., Peabody, Massachusetts, and President, National Customs Brokers and Forwarders Association of America, Inc., New York, New York

Mr. Chairman, my name is Peter H. Powell Sr., of the C. H. Powell Company, a logistics company whose services include customs brokerage. I am also President of the National Customs Brokers and Forwarders Association of America (NCBFAA).

As you well know, Mr. Chairman, from our many years of working together, a customs broker acts on behalf of an importer in its obligations to the Customs Service: filing information, paying duties and ensuring compliance with the laws of the United States. This role has led to a very close relationship between a customs broker and a customs official, and between the NCBFAA and the U.S. Customs Service. We are "force multipliers," handling 95% of all commercial entries. A professional, customs broker, by virtue of his acting as the link to Customs for hundreds of importers, greatly simplifies the task for Customs of handling, this year, 21 million entries and provides the best possible assurance that information is complete, accurate and timely.

We have long known that Customs automation is essential to these processes. While we heard “automate or perish” long ago, brokers quickly understood the criticality of this tool and worked in harmony with Customs to develop ACS—the Automated Commercial System. Jointly, Customs and the broker community were responsible for its early development and then its evolution over almost two decades. Recently, however, it has become clear to our community that ACS is in trouble—and we who are on the front lines became aware of this first. The most obvious sign of ACS’ inability to keep up with rapidly increasing volumes (entries will double between 1994 and 2001 and nearly triple by 2005) has been the brownouts and outages experienced in this past year. Yet, ACS has other limitations caused by aging technology coupled with expanding demands for better and more sophisticated performance. In many respects, ACS’ successor system, the Automated Commercial Environment (ACE), sounds like something different. In fact, it’s merely modernization of what is—frankly—antiquated. Yes, there needs to be new hardware and software; however, the customs process itself remains functionally the same, albeit more efficient and improved to cope with work loads that increase at an alarming pace. ACE can increase productivity through faster processing of information. ACE increases flexibility by permitting resort to other tools for processing information—such as the Internet, for example. ACE improves interfaces with the private sector and with 104 other federal agencies. And, ACE helps implement those processes that this committee has mandated through laws such as the Customs Modernization Act.

Let’s assess the cost of inaction. We customs brokers can tell you that trade will come to a crashing halt if ACS collapses under the weight it must now bear. This extends not only to imports but also to exports. This affects not just foreign, but American businesses. It involves domestic manufacturers dependent on imported parts or foreign markets. It will be catastrophic to American retailers, now reliant on “just-in-time-inventory,” who will find their warehouses empty while their goods pile up at America’s docks and airports.

Unfortunately, we seem headed down that road. This year’s funding outlook is bleak. To maintain ACS on “life support,” Customs estimates that it will need \$12 Million this year—however \$8.5 Million is unfunded. To continue life support in FY2000, the Administration proposes \$35 Million, which we understand to be \$32 Million short. But, stop for one moment. Even were Congress to find the money to fund ACE—whether over 4 or over 7 years—do we want our lifeline to international trade merely sustained on life support? I would venture that we need a robust, functioning automation system in the interim that can meet the demands of trade over the next four to seven years. To put processing in limbo, without improving the present system to meet intervening contingencies, is equally neglectful on all our parts. NCBFAA has proposed EEEP—Enhanced Electronic Entry Processing—a means by which ACS can accommodate remote entry filing until ACE is on its feet. How can we stand by and wait another four to seven years to enjoy benefits conceived by this Committee over five years ago?

As for ACE, the funding outlook is equally poor. Treasury continues to dole out funds sparingly, with \$3.4 Million in FY99 funds awaiting a “Cost Benefit Analysis.” This committee has authorized some funds in a bill now being delayed in the Senate; however, the Administration has requested no funds—I repeat, zero funds—for FY2000. And, it has proposed an untenable user fee concept, which we oppose, to permit a mere \$150 Million in FY2001. To adequately fund ACE, we project that Congress must appropriate at least \$300 Million over four years. Instead, we have only the Administration’s proposal, which is, at best, misguided and, at worst, woefully inadequate.

NCBFAA believes that ACE must be constructed forthwith. We acknowledge that a \$1.2 to \$1.4 billion price tag demands great caution and the necessary diligence on the part of those authorizing, appropriating and overseeing the spending of these funds. NCBFAA in no way implies that the Congress should simply throw money at this problem. In fact, we too have our reservations. That is why we intend to participate at every level, over every issue coming before Customs’ Trade Support Network (TSN). We believe that the fielding of ACE must be, to a great degree, evolutionary and collaborative. Just as we worked with Customs to field a system, ACS, that has proven monumentally successful over 15 years, we intend to insist on that same level of partnership now. After all, our livelihood is at stake. So too must Congress insist on meaningful oversight and Treasury guarantee that it can meet your terms.

Nonetheless, the days of armchair quarterbacking must draw to a close. We must reduce the demands on Customs planners and implementers so that they can realistically move forward, focussed on achieving the result demanded by Congress rather than merely constructing an elegant, risk adverse process. We have confidence that Customs, under your oversight, can produce a successful Automated Commer-

cial Environment. NCBFAA, urges you to support ACE with the necessary authorizations.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Mr. Powell.
Mr. Salamone.

STATEMENT OF RICHARD J. SALAMONE, MANAGER, CUSTOMS AND INTERNATIONAL REGULATORY COMPLIANCE, BASF CORP., MT. OLIVE, NEW JERSEY, AND CHAIRMAN, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, NEW YORK, NEW YORK

Mr. SALAMONE. Thank you, Mr. Chairman, Mr. Levin, and other members of the Trade Subcommittee. I am Richard Salamone, manager of customs and international regulatory compliance for BASF Corporation, one of the largest chemical companies in the United States. I am currently chairman of the American Association of Exporters and Importers. AAIE is a national organization of approximately 1,000 firms involved in every facet of international trade. AAIE is the largest membership organization devoted to observing Customs' policies and practices.

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 on this matter. AAIE urges Congress to support the U.S. Customs Service in its vital effort to keep pace with the exponential growth in international commerce by rolling out its next generation automation system, known as the Automated Commercial Environment, or ACE. Time is of the essence, as Customs' existing 15-year-old Automated Commercial System, known as ACS, is operating at nearly 95 percent capacity. It is on the verge of collapse, threatening to gravely disrupt trade at our borders, which will ultimately inflict severe blows to the national economy.

In today's global marketplace, U.S. manufacturers rely heavily on component parts and materials from all over the world. U.S. competitiveness has been significantly enhanced in recent years by utilization of just-in-time inventory supply chains. Even short-term ACS failures will break a multitude of just-in-time links, preventing essential raw materials and parts from reaching U.S. manufacturing plants. The failure of these raw materials and parts to reach the manufacturing site on a timely basis can lead to halts in production, the shutting down of entire production lines, and the idling of numerous workers.

Following on Mr. Schoof's remarks, I know also that in our industry, in the chemical industry, disruptions in delivery can translate into disruptions in the manufacturing process. Not only will imports be impeded, but exports will also be affected as many of them are manufactured in the United States from imported raw materials.

The Administration proposes an inadequate \$150 million for ACE funding for fiscal year 2001, which is to be derived from an insupportable user fee, which we strongly oppose. The Administration

has requested zero funds for fiscal year 2000. At the proposed level of funding, full implementation of ACE will take at least eight to 10 years, well beyond the limited life expectancy of ACS. We believe funding of at least \$300 million per year over 4 years is much more in line with an optimal implementation, and is likely to lower the total cost of the project. Successful rollout of ACE is vital to our Nation's management of a 10 percent annual growth in international commerce.

Without ACE, Customs will be unable to meet legislative mandates for informed compliance and for improved financial controls over the more than \$20 billion in duties it collects annually. The trade community, Customs, and the national economy will all gain from Customs having a modern software and hardware system that will adapt to future technology developments.

AAEI supports Customs Commissioner Kelly's decision to retain private sector contractors experienced in Government systems, as well as to consult with the Internal Revenue Service in its design and development of future ACE functionalities. Independent contractors not only have extensive experience in large Government systems, but they understand the methodologies of private sector systems, which ultimately have to interface with their Government counterparts. Also, these contractors have previously served large Fortune 1000 companies that have similarly undergone conversion from mainframe-centered computer systems to distributed systems, usually under urgent conditions dictated by the restricted budgets and tight time constraints of private industry.

AAEI is dismayed by the President's proposed budget for Customs automation, calling for the imposition of a new user fee to fund ACE. AAEI believes that the cost of ACE, as well as the cost of maintaining Customs' existing ACS should be borne by general Treasury. Customs has said it needs a predictable and reliable source of funding for its systems. We wholeheartedly agree. We do not agree that an increase in the merchandise processing fee will provide either the given unpredictable shifts in trade and questionable legality of a user fee. Any 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 vulnerable to a challenge in the World Trade Organization. Also, if the United States implements a user fee for computerization of clearance functions for imports, we can expect other countries very quickly to do the same, imposing additional costs and competitive burdens on U.S. exports.

We also hope that Customs and Treasury can come quickly to agreement on the appropriate role for the International Trade Data System, or ITDS. There is merit in the concept of ITDS, as it is a single trade data collection and distribution point for all agencies requiring such data, and it is the location of the Government-wide trade data warehouse. ITDS should result both in reduced data demands on the private sector at a much higher quality and quantity of data for analysis. ITDS should be limited to a neutral transparent technical role, and should not include functions assigned to its constituent agencies. While Customs could regularly query ITDS's stored data regarding trade patterns, Customs, not ITDS,

should be making judgments regarding entry or enforcement policies.

In summation, ACE development can be delayed no further. The current ACS is on the verge of collapse, threatening to paralyze international commerce and ultimately wreak havoc on our national economy. An increase in user fees to pay for ACE and/or ITDS will inevitably face concerted legal challenge for more trading partners. AAEI believes that if Customs continues in the direction of which it is now headed, with continued support from the trade community and adequate Government appropriations, a successful ACE system can be realized without serious disruptions to the U.S. economy.

Thank you for the opportunity to present our views today.

[The prepared statement follows:]

Statement of Richard J. Salamone, Manager, Customs and International Regulatory Compliance, BASF Corp., Mt. Olive, New Jersey and Chairman, AAEI; American Association of Exporters and Importers New York, New York

INTRODUCTION AND BACKGROUND

Good Afternoon, Chairman Crane and members of the Trade Subcommittee. I am Richard Salamone, Manager, Customs and International Regulatory Compliance, BASF Corp. I am testifying today in my role as Chairman of the American Association of Exporters and Importers (AAEI).

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. AAEI is a member of the Coalition for Customs Automation Funding.

We are pleased to have this opportunity to address agency budget authorizations and other 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 concerns on this matter.

AAEI urges Congress to support the U.S. Customs Services design and implementation of its next-generation automation system, known as the Automated Commercial Environment (ACE). Time is of the essence as Customs 15 year-old Automated Commercial System (ACS) is on the verge of collapse. Even short "brownouts" of ACS (which already are beginning to occur) are threatening to disrupt trade and, ultimately, inflict severe blows to the national economy.

In order to avert the looming Customs automation disaster, we believe the following steps must be taken:

Emergency ACS Funding

It is critical that emergency funds be immediately appropriated for the maintenance and preservation of the fragile ACS. This 15 year-old system, is currently operating on average at 90 to 95 percent of its capacity. Several recent "brownouts," temporarily halting the flow of trade, are warnings that larger failures are likely unless its maintenance is made the highest priority.

In today's global marketplace, U.S. manufacturers rely heavily on component parts and materials from all over the world. U.S. competitiveness has been significantly enhanced in recent years by utilization of just-in-time inventory supply chains. Even

short-term ACS failures will break a multitude of just-in-time links, preventing essential raw materials and parts from reaching U.S. manufacturing assembly plants. The failure of even one essential part to reach the manufacturing site on a timely basis will cause the shutting down of entire production lines, halts in production and the idling of numerous workers.

ACS is also linked to the Census Bureaus Automated Export System (AES), which is the vehicle in which U.S. exporters are required to file export documentation. Thus, ACS failures will delay exports as well.

A protracted failing of ACS, necessitating the manual entry and review of data, would impede the flow of trade, thereby paralyzing operations of major segments of U.S. industry including the manufacturing, retail and transportation sectors, all of which depend on the timely delivery of imported supplies. The disastrous impact on the U.S. economy if production lines go down and distribution channels are stalled will directly translate into sales and job losses, decreased exports and a diminishing tax base.

Government Funding for Customs Automation Now

The Presidents \$163 million FY2000 funding request for ACE is inadequate. If this level of funding is continued, full implementation of ACE will take at least eight to ten years. Since it is unlikely that ACS can last that long, recurring day-to-day failures in ACS will almost certainly result in implementation delays in the new system as resources are diverted to ACS to ensure the day-to-day availability of basic functions. Such compromises will delay even further the value and productivity that we expect from ACE. Funding at least \$300 million per annum over four years is much more in line with an optimal implementation and is likely to lower the total cost of the project.

There is no dispute as to whether Customs needs a new, reliable system. The trade community, Customs and the national economy will all gain from Customs having modern software and hardware that will adapt to future technology developments. The successful development of ACE is essential to Customs management of a 10 percent annual growth in international commerce. Without ACE, Customs will be unable to meet legislative mandates for informed compliance and for improved financial controls over the approximately \$20 billion in duties it collects annually. Also, requirements articulated by the trade and Customs field personnel as part of the trade process reengineering effort are reliant on the timely availability of ACE.

It is crucial that Customs obtain government funding now to develop and implement ACE over a four-year period and under appropriate Congressional oversight as well as industry consultation. Customs should provide Congress with an ACE target architectural implementation plan as well as supporting information as requested by Congressional appropriations committees. Outreach programs, as required by the 1993 Customs Mod Act, would be a useful vehicle to maintain meaningful business participation. These programs should be focused on narrow design and implementation issues, both technical and substantive, rather than on general overviews. The private sector recognizes that its role must necessarily be limited, but, for example, it is essential that Customs be made aware when technology choices in the private sector are diverging from Customs own plans and preferences. Recently, for example, the private sector has been moving away from older message protocols such as EDIFACT to the more flexible XML protocols. Customs had been planning to require EDIFACT exclusively for data transmission.

Ensuring Customs Project Management Competence—Customs has been taking numerous steps to ensure that it can see to the design and development of the system it needs and to reassure the private sector. AAEI supports Customs Commissioner Kellys decision to retain private sector contractors experienced in government systems as well as consult with the Internal Revenue Service in its design and development of future ACE functionality. Recently, Mr. Kelly told members of the House Appropriations Subcommittee on Treasury, Postal Service, and General Government that his agency is contracting outside firms with proven track records in project management support and the Carnegie Mellon University Systems Engineering Institutes Capability Maturity Model (CMM) level 3 expertise to guide enterprise improvement in software development and acquisition and to serve as a resource for ACE project management support.

Customs is developing a directive that will require all software contractors that do business with the agency be certified at least at the CMM level 2. Additionally, Customs not only recently reorganized its Office of Information Technology to provide for improved accountability and program control, but it engaged a contractor to update and improve the ACE cost-benefit analysis. Sometime this month, Customs plans to implement a plan for ensuring that software development and acquisition processes comply with CMM level 2 by December 2000. Mr. Kelly noted that

this will improve software development and acquisition controls prior to any further substantial investment in ACE.

Customs also hired a Chief Information Officer (CIO) with extensive experience in enterprise architecture and major systems acquisition. The CIO is currently consulting with the IRS and its main contractor to evaluate the applicability of its method for Customs. He has impressed us with his understanding of this complex situation.

Outsourcing ACE Design and Development—Given the severe time constraints imposed by the doubtful reliability of ACS, we encourage Customs to outsource as much of the system design and development as possible to private entities experienced in developing large systems. AAEI supports Customs outsourcing of its systems development. Independent contractors not only have extensive experience in large government systems, but they understand the methodologies of private sector systems which ultimately have to interface with their government counterparts. Also, these contractors also are working with Fortune 1000 companies that have or are now undergoing similar conversion from mainframe-centered computer systems to distributed systems—usually under urgent conditions dictated by the restricted budgets and tight time constraints of private industry.

Using Commercially Existing Software—We hope that in its design of ACE Customs will choose commercially available and proven software wherever possible. The private sector has generally concluded that custom software takes longer to implement, is expensive to maintain, does not permit integrated data analysis, and is hostage to the long-term availability of its authors. The use of “off-the-shelf” or at least customized software for parts of the new system will speed implementation and reliability.

We also hope that Customs and Treasury can come quickly to agreement on the appropriate role for the International Trade Data System (ITDS). There is merit in the concept of ITDS as (i) a single trade data collection and distribution point for all agencies requiring such data and (ii) the location of a government-wide trade data warehouse. ITDS should result both in reduced data demands on the private sector and a much higher quality and quantity of data for analysis.

Treasury already has made significant progress in the design and implementation of ITDS and its work should not be repeated in the design of another system. At the same time, ITDS should be limited to a neutral, transparent technical role and should not include functions assigned to its constituent agencies. While Customs could regularly query ITDSs stored data regarding trade patterns, Customs, not ITDS, should be making judgments regarding entry or enforcement policies.

What we certainly cannot afford is the development of redundant functionality by any two agencies. Even worse would be delay caused by disagreement over development jurisdiction. In the example of ITDS, if ITDS is superior both in concept and in stage of development to the comparable elements of ACE, ITDS and the ACE project should be integrated immediately. If it is not, it should be modified or abandoned. The analysis of ITDS also should include consideration of how it will be supported over the next decade if it remains a standalone product within Treasury.

For ACE, ITDS, and trade-related software under development in other agencies, there is neither time nor money for anything less than a “best of breed” analysis.

Continued Opposition to User Fees

AAEI believes that the cost of ACE as well as the cost of maintaining Customs existing Automated Commercial System (ACS) should be borne by the general treasury. AAEI is dismayed that the Presidents proposed FY2000 budget for Customs automation still calls for the imposition of a new user fee to fund ACE.

Customs’ computer costs are not generated by a service provided to importers. The cost of computer systems are as much a core cost of an agency’s existence as is office space, employee salaries, pens and paper. These core costs should be borne by the nation as a whole as the price of having that agency. Also, in addition to clearing commercial import shipments, Customs computer system is used for many other purposes including drug enforcement, export shipments, health and safety regulations, and processing of data of other federal agencies. Importers cannot fairly be asked to finance these uses.

Customs has said that it needs a “predictable and reliable” source of funding for its systems. 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 use of a user fee. 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 its computer system only to have the fee later found illegal and subject to refund.

Any 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 vulnerable to challenge in the World Trade Organization. Also, if the United States implements a user fee for the computerization of clearance functions for imports, we can expect other countries very quickly to do the same, imposing additional costs and competitive burdens on U.S. exports.

AAEI requests a bipartisan 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.

CONCLUSION

In its February 1999 reports, *Customs Service Modernization—Serious Management and Technical Weaknesses Must be Corrected*, and *Ineffectual Software Development Processes Increase Customs System Development Risks*, the General Accounting Office indicated that Customs agreed with its recommendations and stated that it is committed to remedying the problems highlighted in the reports. As underscored by the Commissioners recent Congressional testimony, the agency has wasted no time in implementing new strategies to get ACE up-an-running.

AAEI commends Customs on its success in achieving Y2k compliance with respect to its current system. The GAO recently testified before the House Ways and Means Committee on the effectiveness of Customs Y2k management and reporting controls. Customs overall success was attributed to its year 2000 program management structures and processes. Customs was also praised for its Y2k testing with the private sector.

ACE development can be delayed no further. The current ACS is on the verge of collapse, threatening to paralyze international commerce and ultimately, wreak havoc on our national economy. An increase in user fees to pay for ACE and/or ITDS will inevitably face concerted legal challenges. AAEI has launched a grass roots campaign among its 1000 company members to educate their respective representatives on the exigent circumstances that we, as a nation, are now confronting and the need for prompt action.

AAEI believes that if Customs continues in the direction in which it is now headed, with continued support from the trade community and adequate government appropriations, a successful ACE system can be realized without serious disruptions to the U.S. economy.

Chairman CRANE. Thank you, Mr. Salamone.
Our final witness, Ms. O'Dell.

STATEMENT OF JANE B. O'DELL, VICE PRESIDENT, INTERNATIONAL TRADE AND CUSTOMS COMPLIANCE, THE LIMITED, REYNOLDSBURG, OHIO, ON BEHALF OF THE COALITION FOR CUSTOMS AUTOMATION FUNDING, AND INTERNATIONAL MASS RETAIL ASSOCIATION, ARLINGTON, VIRGINIA

Ms. O'DELL. Thank you, Mr. Chairman, Members of the Subcommittee. My name is Jane O'Dell. I am vice president of international trade and customs compliance for The Limited. I am appearing today on behalf of the Coalition for Customs Automation Funding, which is an industry coalition made up of manufacturers, retailers, importers, exporters, carriers, air couriers, forwarders, and trade associations, all of whom have significant interests in the operations of the Customs Service, and range in size from Fortune 500 companies down to sole proprietorships with a handful of employees.

I am also representing the International Mass Retail Association, which is the trade association that represents the fastest growing

segment in the retail industry, discount department stores, home centers, catalog showrooms, warehouse clubs, and even category-dominant specialty retailers like The Limited.

You recognize the name through a number of our known family of fashion brands, Express, Lerner New York, Lane Bryant, Structure, Limited and Limited Too, Galyans, Victoria's Secret, and Bath and Body Works, are all members of The Limited family. We currently comprise over 5,000 stores in the United States and in the United Kingdom, and over 142,000 associates in the United States.

Because we depend on a global sourcing base for both our U.S. supply and our supply in the U.K., you could say that we see U.S. Customs both coming and going. That gives us a unique perspective on their operations. I am also particularly interested in U.S. Customs. I began my career as an import specialist in the early 1970's, before there was such a thing as automation of Customs processes. I am also a licensed Customs broker, so I have worked with them in that capacity. I have worked also for importing companies as I am now.

I was fortunate enough to be appointed to two terms by the Secretary of the Treasury on the committee that advises the Secretary on the commercial operations of U.S. Customs. In that capacity, had an opportunity to learn a lot more about the strategic interests of the Customs Service, as well as the way it has a direct impact on the business community. We want to see them do their job well, and we want them to have the tools to be able to do that.

Before the current automated commercial system, ACS was designed in the 1980's, Customs did its work by hand. I vividly remember drawing red lines on salmon-colored pieces of paper. That was the standard that was used to pick up data which would subsequently be keyed into a computer by someone else. In that process, the number of clerical errors that were made and the amount of judgment that had to be brought to the process on limited information certainly affected the ability of Customs to do its job both as an enforcement agency, and as a revenue-collecting agency. The automation of that process has made a huge difference, both to the efficiency of the service and to their effectiveness.

In the past 15 years, U.S. businesses have also planned around the capabilities of an automated Customs Service. We are now more or less dependent on it. Every time it crashes or slows down, someone somewhere along the supply chain pays a price. For carriers, warehouses and docks become congested and over-crowded. If they cannot keep their employees fully occupied, then they are forced to work them over-time and the economic impact ends up resonating through the entire economy.

For manufacturers, waiting for components, as you have heard from some of my colleagues here today, you may have an entire production line closed down, and the accompanying economic effects. For importers like The Limited, the price is not having the merchandise that someone expects us to have at the appropriate time. Timing is very important to us. We need to have a mix of merchandise that changes constantly. We target holidays with special products so we need to have a supply chain that is both efficient and is predictable, that can move thousands of items to thou-

sands of stores, from hundreds of global locations, in a series of orchestrated transportation moves.

I will give you an example. I don't suppose that this week there are very many people buying baskets with egg-shaped soaps and little terry cloth Easter bunnies in them. Bath and Body Works combines lotions, soaps, and personal care products that are made in the United States with imported novelty items in imported baskets as gift sets. The components are all scheduled to arrive at an assembler in the United States just in time for assembly, and then for store delivery. In order to accomplish this, we need to have the Customs Service operating and predictable.

Now there are those who may ask whether it is Congress' business to ensure that there is an efficient supply chain. I think the answer to that is yes. As you have also heard, this is one of the foundations of the U.S. economy at this point. Manufacturers rely on it. Retailers rely on it. The entire support sector relies on it. Unfortunately, the President's budget for the year 2000 does not recognize the need for this funding to build an automated commercial system that ensures a steady supply of merchandise back and forth across our borders.

You have also heard it said that this is something that should be paid for by the import community, to which we respond we have paid for it. The merchandise processing fee that was levied on importers was levied as a means of funding the operations of the Customs Service, and the processing of international trade is their fundamental reason for being there. We ask Congress to live up to the agreement that we made in accepting this and the Modernization Act, and fund the Automated Commercial Environment.

[The prepared statement follows:]

Statement of Jane B. O'Dell, Vice President, International Trade and Customs Compliance, The Limited, Reynoldsburg, Ohio, on behalf of the Coalition for Customs Automation Funding, and International Mass Retail Association, Arlington, Virginia

My name is Jane O'Dell. I am Vice President of International Trade & Customs Compliance for The Limited and I'm appearing today on behalf of the Coalition for Customs Automation Funding; an inter-industry coalition representing trade associations, Fortune 500 companies, customs brokers, manufacturers, retailers, importers, exporters, forwarders, air couriers, and transportation companies all with significant interests in Customs automation.

I am also representing the International Mass Retail Association, the trade association that represents the fastest growing retailers in the world, including discount department stores, home centers, catalogue showrooms, dollar stores, warehouse clubs, deep discount drugstores, off-price stores and category dominant specialty retailers like The Limited.

The Limited, Inc., through Express, Lerner New York, Lane Bryant, Limited Stores, Structure, Limited Too, Galyan's and its interest in Victoria's Secret and Bath and Body Works, is a leading branded retailer with over 5,000 stores (including stores in England) and 142,000 associates. Like many in our industry we rely on a global sourcing base, and both import into and export from the United States. You could say we see U.S. Customs coming, and going.

My interest in how Customs does its work comes from many years in the industry, in a variety of roles. In the early 70's I was a U.S. Customs Import Specialist. I am a licensed customs broker. I have worked as a customs expert for brokerage firms, importers, consultants and retailers. I was also appointed by the Secretary of the Treasury to two consecutive terms on the Treasury Advisory Committee on the Operations of the U.S. Customs Service, completing the second term in 1998. While I am certainly concerned with Customs' ability to process international transactions, I am also concerned with their strategic goals, and what they need to do their job well.

Before the current automated commercial system, ACS, was designed in the 80's, Customs did its work by hand. Automation has made it possible for the Service to introduce efficiencies into its revenue collection process, into its enforcement process, and handle explosive increases in trade with a steady work force. Incidentally, it has made the supply chain more effective and predictable. You have heard from other witnesses today that ACS is now out of date, subject to slowdowns, brownouts and crashes.

In the past 15 years, U.S. business has planned around the capabilities of ACS, and each time it crashes or slows down someone, somewhere in the supply chain pays a price. For carriers, their warehouses and docks become congested and they cannot keep employees fully occupied. For manufacturers waiting for components, a production line may close. For importers like The Limited, the price is not having merchandise that someone expects us to have at our stores.

For some of our fashion merchandise stores, it's also very important that we have a mix of merchandise that changes constantly. We target holidays with special products. We continuously change the merchandise in our stores. To keep a steady schedule, we need a supply chain that's efficient; that can move thousands of items to thousands of stores from hundreds of global locations in a series of orchestrated transportation moves designed to have all the coordinated fashion elements arrive more or less simultaneously. If we don't achieve this, we lose sales to our many competitors.

I'll give you an example. I don't suppose many people are buying baskets with egg-shaped soap, and terry cloth bunnies this week. Bath & Body Works combines lotions, soaps, and personal care products made domestically with imported novelty items in imported baskets as gift sets. The components are scheduled to arrive at an assembler in the U.S., just-in-time for assembly and store delivery for holidays. Losing 16 hours on the delivery of the baskets costs the workers their time (they aren't paid when there is no work), and the economic impact of our inability to bring a product to market will be felt by the division, but may also affect the corporation, the suppliers (both international and domestic). On Monday bunnies went to mark-down.

We rely on U.S. Customs to perform its work in a way that does not inhibit legitimate commerce. The efficiency of the Customs Service also reflects their ability to collect revenues efficiently, to identify contraband with sophisticated tools, and to meet the obligations of our international trading relationships, which are often targeted at non-tariff barriers to trade.

Now some might think it's humorous that I appear here today to talk to you about efficiency in the global supply chain. Some might even ask whether Congress should work to achieve an efficient global supply chain. There are those who believe it's in the larger domestic interest for the process at the nation's ports to be inefficient. For the reasons stated above, that is not true.

Indeed, the President's fiscal year 2000 budget appears to take this view. It appropriates no money for the development of a new customs automation system, even though virtually every senior official at Customs and Treasury knows ACS is on the brink of catastrophic failure. Instead, it proposes a new, WTO and NAFTA illegal user fee, which would make the trade community responsible for paying for upgrading Customs' automated systems. If it happens in business, we consider it normal operating expense. It's paid out of our revenues. A comparable scenario: when we sell that holiday basket, and the buyer comes to the cash register, we tell them it's another quarter, because we need to work on our computer.

Now, let me be clear on where the Coalition for Customs Automation Funding stands on the Administration's user fee proposal. Many of the coalition's members need efficiency at the ports, but we all share one common viewpoint: *the process of collecting revenues and regulating commerce at the nation's borders is an essential government function*. If we had no duties, quotas, dumping statutes we wouldn't need a Customs Service to process commercial entries. It's these essential government functions that impose a corresponding responsibility upon the government itself—a responsibility that somehow the Administration failed to recognize in its FY2000 budget.

That responsibility is to ensure that regulation at the ports—a necessity to protect domestic industry—doesn't become so inefficient that it harms the very industry it's there to protect.

As you have heard from many here today, if ACS fails, many U.S. industries and workers will be harmed. The question here is whether the system has to completely break down before the Administration will recognize its responsibility or Congress will appropriate the money?

Government should pay for the creation of a new computer system for the Customs Service *out of general revenues*. Is the business community willing to foot the

\$1.2 billion it will take to build the Automated Commercial Environment? The simple answer is that we already have paid for this system, several times over. Importers pay \$20 billion each year in duties and an additional \$800 million annually in merchandise processing fees designed to cover the cost of processing entries at the nation's ports. That adds up to \$20.8 billion each and every year. It would take only about \$300 million annually for the next four years to build the new Automated Commercial Environment. The cost of the system comes to about 1.4 percent of the revenues and merchandise fees collected from the trade community each year.

There is no need for a new user fee.

The Administration has spoken on this issue, it obviously does not believe that a revenue collection system is important enough to fund out of general revenues.

It's up to Congress now. If Congress fails to appropriate the necessary funds, inefficiencies will escalate. I've tried to convey something of the impact here, but let me add one additional point. The United States frequently takes other countries to task for the failings, inefficiencies and unfairness of their customs regimes. Unless we give our Customs officers the tools they need, we're on the path to third world operating capability.

I urge you not to let that happen.

Almost seven years ago, *this committee of Congress* made a deal with U.S. businesses in the form of the Customs Modernization Act. We in the trade community took on the task of informed compliance, reasonable care, new recordkeeping requirements and penalties. In return we were promised a more transparent, efficient process for releasing goods and paying duties. And Customs has worked with us, to ensure all parties benefitted from the changes.

The business community has expended enormous resources in reengineering our systems to ensure that we are able to meet our Mod Act responsibilities, so that Customs need not be a bottleneck in our supply chain. We've kept our end of the bargain.

It's time for Congress to keep it's part of the deal. Fund customs automation now, in this fiscal budget.

Chairman CRANE. Thank you, Ms. O'Dell.

Are any of you in your processes of modernization in the automation area, apprehensive about the uncertainty of the ACE project impact on your automation plans?

Ms. O'DELL. I can say something to that. We are actually in the process of developing our own supply chain architecture at this point. I think Mr. Schoof noted that, Customs has been very helpful in making available to the trade community the plans for the development of the Automated Commercial Environment. I was able to involve our technical people in the trade support network meetings where they discussed the actual structure of it. We fully intend, as ACE is developed, to remain in communication with Customs so that we can ensure that there is compatibility in processes.

Chairman CRANE. I gather, based upon your testimony and Mr. Salamone's before, that there may be none of you in favor of a user fee to cover the cost? Correct?

Ms. O'DELL. Well, there is a user fee. We are currently paying it.

Chairman CRANE. I mean above and beyond.

All right. Mr. Levin.

Mr. LEVIN. Let me just ask a question, and why don't you submit your responses for the record because I am afraid we need to go ahead. Before I ask it, you make a very persuasive case. I hope you will accelerate your efforts to make it to all the powers that be around here. I think you have a long way to go. I doubt if it has been included in anybody's plans at this point, the Budget Com-

mittee, Appropriations Committee, Ways and Means Committee. What's left?

Several of you have referred to emergency funding. I am sure that even further has been away from the consciousness of people. So again, I think you make a very, very strong case, but strong cases don't win by themselves. So I really urge you to re-triple your efforts.

Then for the record, several of you have indicated you think that the user fee, whatever its other merits, would violate NAFTA, WTO, or both. So why don't you, if I might suggest it, Mr. Chairman, why don't you send us your thoughts on that for the record so we can consider the question of WTO or NAFTA consistency, which are important considerations.

So good luck. I guess it's not appropriate for a Member to suggest how you lobby, so I won't. But I do suggest that there is a very low level of information, I think understandably, with all the other issues. Some of us are going to go soon to a briefing on Kosovo. So there are other things going on. Customs issues tend not to be at the top of the priority list for most, understandably so. I think you have your work cut out for you.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, I think Mr. Levin put it best. I would love to see what you have to say about both of those questions that Mr. Levin has posed or commentary he made. It would be helpful for us to know why the industry shouldn't have to pay the fee. A billion dollars is quite a bit of money. We will have to figure out how we pay for that. So it would be very helpful, it would be instructive to have that in the record, that there are legitimate reasons why the industries don't believe that they should have to take on another fee.

It also would be helpful if you could provide any other comment beyond your written testimony and oral testimony about some of the changes that Customs is trying to make. You know, there is still some question about whether this ACE system is really the way to go, if they will be able to merge well with the ITDS. Anything you can offer that will help us feel more comfortable going a particular direction—it is going to be an investment of money one way or the other—that would be instructive.

So I will leave it at that. I thank everyone for being here and providing testimony.

Chairman CRANE. I again thank you all for your participation today and your input. We look forward to continuing to work with you.

[The following information was subsequently received:]

COALITION FOR CUSTOMS AUTOMATION FUNDING, JOINT INDUSTRY GROUP, AND
NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA,
INC.

April 15, 1999

The Honorable Philip Crane
Chairman, House Ways & Means Committee,
Subcommittee on Trade
1104 Longworth House Office Building
Washington, DC 20515-6354

Dear Congressman Crane:

Thank you for the opportunity of the Coalition for Customs Automation Funding (CCAF) to testify before the House Ways & Means Committee, Subcommittee on Trade, regarding the President's proposed FY2000 budget and the US Customs Service automation funding level. At the Subcommittee's request, we are sending a legal opinion supported by the CCAF that supports the statement that the user fees proposed in the President's budget violate the North American Free Trade Agreement (NAFTA) with Mexico and Canada. We believe the proposed fee may also be a violation of the GATT.

The President's budget for FY2000 states under the heading "Automation Modernization:"

"Contingent upon the enactment of authorizing legislation, the Secretary shall charge a fee for the use of Customs automated systems, and such fee shall be deposited as an offsetting collection to this appropriation, to become available on October 1, 2000 and remain available until expended, for the purpose of modernizing Customs automated commercial operations, and of which, \$13,000,000 shall be for an international trade data system: Provided further, That upon enactment of such authorizing legislation, the amount appropriated above from the General Fund shall be reduced by \$163,000,000: Provided further, That none of these funds shall be obligated until 10 days after a spending plan for the funds has been submitted to the Office of Management and Budget and the Treasury Investment Review Board."¹

Furthermore, the Automation Modernization Fee was described as follows:

"The Administration proposes to establish a fee for the use of Customs automated systems. The fee will be charged to users of any Customs automated system based on the user's units of data input. Proceeds of the fee will offset the costs of modernizing Customs automated commercial operations and an international trade data system, and will be available for obligation after 2000. Legislation will be transmitted to allow the Secretary to establish a fee for the use of Customs automated systems."²

NAFTA Article 310 (entitled "Customs User Fees") prohibits the adoption of any Custom user fees as follows:

1. No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods.
2. The Parties specified in Annex 310.1 may maintain existing such fees in accordance with that Annex.

NAFTA Annex 310.1 (entitled "Existing Customs User Fees") states:

SECTION A—MEXICO

Mexico shall not increase its customs processing fee ("derechos de trmite aduanero") on originating, goods, and shall eliminate such fee on originating goods by June 30, 1999.

SECTION B—UNITED STATES

1. The United States shall not increase its merchandise processing fee and shall eliminate such fee according to the schedule set out in Article 403 of the Canada—United States Free Trade Agreement on originating goods where those goods qualify to be marked as goods of Canada pursuant to Annex 311, without regard to whether the goods are marked.

2. The United States shall not increase its merchandise processing fee and shall eliminate such fee by June 30, 1999, on originating goods where those goods qualify

¹Page 836 of The Budget For Fiscal Year 2000

²Page 836 of The Budget For Fiscal Year 2000

to be marked as goods of Mexico pursuant to Annex 311, without regards to whether the goods are marked.

In summation, Article 310.1 states that the US is prohibited from assessing customs user fees on goods originating in Canada and Mexico. The CCAF sustains the position that the definition of "customs user fees" not limited to merchandise processing fees alone, but also includes any similar user fee.

The proposed user fee may also place the US in violation of the GATT. GATT Article VIII.1 (a) limits fees and charges connected with importations to an amount that reflects the approximate cost of services rendered and further states that such fees and charges shall not be a taxation of imports for fiscal purposes:

1.(a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products of a taxation of imports or exports for fiscal purposes. . . .

The CCAF maintains that the proposed user fee represents a tax on imports imposed for the sole purpose of generating revenue for the development of US Customs automated systems. As such, the fee is de facto a tax collected to offset the costs of modernizing the automated systems of the US Customs Service, i.e., a fiscal purpose. Furthermore, any fee assessed must be based on the "cost of services rendered." From the CCAF perspective because the fee is based on the amount of data submitted, there is no relation to the "cost or services rendered."

We urge the Subcommittee to reassess the validity of the President's proposed FY2000 budget for Customs automation modernization. Appropriated funds should be allocated so that the government can fulfill its obligations under the Customs Modernization and Informed Compliance Act (Mod Act) while complying with NAFTA, GATT, and other international agreements.

Sincerely,

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
NEW YORK, NEW YORK 10036
April 19, 1999

The Honorable Philip M. Crane
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The American Association of Exporters and Importers (AAEI) testified at the April 13 Trade Subcommittee hearing where Congressman Sander M. Levin requested that witnesses provide the Subcommittee with a legal analysis of the WTO and NAFTA compatibility of a user fee to fund Customs automation. AAEI believes it also would be appropriate to ask U.S. Customs, the Department of Treasury and OMB for the results of their internal analysis and review of the subject.

In our discussions with Customs it was indicated that an internal analysis had been performed but was not available for review by the private sector. In AAEI's April 13 testimony, as well as our testimony presented last year, we suggested that a disinterested agency of government review the compatibility issue. Additionally, in both our 1998 and 1999 testimony, we requested that Customs, Treasury and OMB make publicly available any such analysis already conducted.

AAEI also understands that Canadian International Trade Minister Sergio Marchi has expressed Canada's objection to an automation user fee. In an April 1, 1999 letter Mr. Marchi stated "In our view, the proposed user fee would be a customs user fee of the type that is prohibited by Article 310 of the NAFTA and therefore inconsistent with U.S. obligations under the NAFTA." Also, the Canadian Trucking Association has conducted a legal analysis which was presented to the Trade Subcommittee on April 13th. We understand the Canadians will address the issue at the NAFTA Ministerial meeting this week. Enclosed please find a portion of the U.S. NAFTA implementing legislation supporting this view.

AAEI has not yet commissioned an analysis of the potential legal ramifications of the proposed user fee to fund ACE or ITDS. Current proposals lack sufficient detail to permit a precise review against WTO and NAFTA standards. Even the general proposals have been continuously modified, making it almost impossible to accurately ascertain whether the fees they propose would ultimately withstand the

legal challenges they will inevitably face. To conduct a proper study, we would require specific information relative the proposals, including the following:

1. An explanation of the ACE architectural plan including functionalities relating to costs of hardware, software, maintenance, roll-out, and timing.

2. A cost breakdown ascribed to commercial entry processing, commercial enforcement, (AD/CVD duties, quotas, visas, etc.) drug enforcement, statistical data elements, and other agency requirements.

3. A cost treatment and charging of export components. Will there be a separate fee?

4. An explication of how the proposed fee would be structured to meet our obligations under NAFTA and the Israel Free Trade Agreement. We would need to know whether there would be free trade agreement offsets under ACE with explanations of the formulas proposed. Similarly, for ITDS, an explanation of how other countries would participate in software and cost recovery.

5. If the proposal relies on a similar charging of IT costs to the public by other U.S. agencies or WTO member countries, we would need a list of how those agencies and countries treat these costs.

6. An explanation of the degree to which importers, brokers, and carriers would have any oversight role in the design and maintenance and access to the system and the manner in which such a role would be exercised.

7. The manner in which sunset provisions would be guaranteed.

8. Demonstrated cost benefits analysis of ACE with payback schedules tied to sunset provisions.

In essence, the conduct of a legal analysis of any user fee proposal requires a great deal more information than is currently available regarding both the automation plans themselves and how the fee would be applied. We fail to see how the Administration and/or Customs can advocate either a new user fee or an increase in the existing fee to fund automation without having first conducted a thorough analysis of the many issues such a fee would unquestionably raise. Surely, any proposal with this impact on the public must be backed with ample data to legally and logically support its purported viability.

AAEI thanks you again for the opportunity to present our views. Feel free to contact me should you have any further questions.

Sincerely,

RICHARD J. SALAMONE

[Attachment is being retained in the Committee files.]

With that, we will now have our final panel: Mr. Tobias, national president, National Treasury Employees Union; Carol Hallett, president and CEO, Air Transport Association; Susan Kohn Ross, chairperson, S.K. Ross and Associates; and James Rogers, chairman, International Committee, Air Courier Conference of America. If you will all be seated, we will proceed in the order that I introduced you. I will ask you again to please try and keep oral presentations to about 5 minutes. Any printed statements will be made a part of the permanent record.

With that, Mr. Tobias, you may proceed.

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

Mr. TOBIAS. Chairman Crane, and Ranking Member Levin, and Mr. Becerra, thank you very much for providing NTEU with the opportunity to testify this afternoon on a Customs authorization bill.

As you have already heard in great detail, the duties and responsibilities of the Customs Service have increased. The number of passengers and volume of trade has increased. As a result, the Customs Service needs additional technology and human resources to accomplish its mission. We have done more with less through

creative new work processes, but we have reached the limit. Without more resources, we will inevitably be able to accomplish less. We need additional authorization, but more importantly, we need additional appropriations.

The promise of an authorization must be supported by the reality of an appropriation in order for the Customs Service to do what I know it can do. In terms of expectations, it is important to keep in mind that the Customs inspectors and canine enforcement officers are journey level grade 9 employees, who start at \$33,000 a year. They may be promoted to the GS-11 level which starts at approximately \$40,000 a year. So that is the salary that we are talking about for these folks.

When the Customs Service fails to promote people to the GS-11 level because of a lack of funds, as it has for several years in San Diego and Calexico and other places along the southwest border, it is impossible to keep the best, which is what we all deserve.

In addition, the inspectors and CEOs have a life controlled by their job. They work rotating shifts. They work in cold and heat. They regularly work weekends. They are at the call of Customs management's orders to work overtime. The staffing levels at most ports are not adequate to meet the needs of the ports, so situations occur daily that require inspectors to come into work on their days off, and to stay beyond their shift for overtime assignments. Most inspectors around the country do not have a full day off during the week. Frequently, they have to scramble to find a replacement or struggle to arrange childcare and juggle family commitments. Most Customs inspectors and CEOs work at least 16 hours of overtime each week. That means a 7-day work week or 16-hour days. This is not an odd occurrence. This is a way of life.

Virginia Rodriguez, who you introduced earlier, Mr. Chairman, is a single mother of a toddler. She has been a Customs inspector in Brownsville, Texas, for 12 years. She recognizes the importance of providing an accurate picture of her life as a Customs inspector. That is why she came from Harlingen, Texas, to be with us today. In 1997, during a routine investigation of a bus traveling across the border, Inspector Rodriguez apprehended one of FBI's most wanted criminals. For her work, she has received Customs' performance awards throughout her career with the agency, and has been featured on the television program America's Most Wanted.

But in spite of all of this accolade, Inspector Rodriguez finds it incredibly difficult to maintain her family life, care for her child, and maintain the work schedules required of inspectors in Brownsville. While she is assigned to a 40-hour work week, she regularly works 56 hours per week. Most inspectors in Brownsville work more overtime than she does. She usually works 8 hours a day and both her days off so that she can relieve her babysitter at the end of the shift and avoid being drafted for overtime.

The threat of forced overtime is real for Virginia Rodriguez. Countless times she has been required to work overtime, forcing her to make last minute arrangements for her son. It has been almost 12 years since Inspector Rodriguez has spent a Thanksgiving Day or Christmas Day with her family. She is not alone in this effort. The same is true for most inspectors working around the country.

Congress recognized that Customs employees must be paid for this overtime work. The original overtime payment formula was created in 1911, and then modified in 1993. Under the 1993 law, COPRA, an employee is paid only for the hours that that employee works. It was a change from the 1911 law. They are only paid for the hours that they work. Now in addition to overtime, Customs employees are eligible for premium pay for working at nights, holidays, and Sundays.

There was an elaborate chart, as I understand it, that was presented this morning about when someone is entitled to time at 15 percent and time at 20 percent. This system was created to compensate the inspection personnel for living with unpredictability and constant irregularity.

In addition to special pay adjustments, Federal employees with law enforcement officer status receive full retirement benefits after 20 years of Government service in law enforcement. Even Members of Congress have this benefit, but currently Customs inspectors and CEOs who carry weapons, who make arrests, and who seize more illegal drugs than any other Federal group, are denied this benefit. We have been trying to convince Congress to pass legislation to give Customs inspectors and CEOs 20-year retirement, recognize that they are indeed enforcement officials, but we haven't been successful. In the meantime, the current provisions of the Customs Officer Pay Reform Act must suffice as incentives for the sacrifices Customs inspectors make to the Customs Service. NTEU believes that changes to this pay system would be misguided and unnecessary. This difficult work situation could be made worse with a mandatory rotation policy.

There was much discussion last year about collective bargaining between NTEU and the Customs Service. There is no evidence to show that the mission of interdicting drugs is impaired when the Customs Service lives up to the collective bargaining provisions it has negotiated. On the contrary, Customs and NTEU have an impressive working relationship. In 1998, the Customs and NTEU received the John N. Sturdivant Partnership Award in recognition of their contributions to reinventing Government through labor-management cooperation. This year, the parties have been nominated for the Office of Personnel Management director's award for outstanding alternative dispute resolution programs, focusing on resolving employee workplace disputes. There is no need for statutory provisions that eliminate negotiated contractual rights or undermine the labor-management relationship.

I applaud this Subcommittee for recognizing the 21st century needs of the Customs Service. I urge each of you to visit the Customs ports in your home districts, talk to the inspectors and CEOs there to fully comprehend what their regular work lives are like. Then you may understand why NTEU will support a Customs authorization bill, but will strongly oppose any legislation that would limit the pay or rights of the rank and file Customs officers.

Thank you for the opportunity to be here today on behalf of the Customs Service employees to discuss these very important issues.

[The prepared statement follows:]

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

Chairman Crane, Ranking Member Levin and Members of the Subcommittee, my name is Robert M. Tobias, and I am the National President of the National Treasury Employees Union (NTEU). On behalf of more than 155,000 federal employees represented by NTEU, almost 13,000 of whom work for the United States Customs Service, I would like to thank you for this opportunity to present our Union's views on an authorization bill for the Customs Service.

The Customs Service is a front line enforcement agency. Its mission is to ensure the public's compliance with hundreds of import laws and regulations while stemming the flow of illegal drugs and contraband into the United States. It has been nearly a decade since Congress has passed a Customs authorization bill. Over the last ten years, legitimate U.S. imports have grown at double digit rates, illegal narcotics smugglers have begun to exploit new and sophisticated methods of moving drugs into the country, and Customs employees have been tasked with combating international money-laundering and arms smuggling.

In addition, Customs is the first line of defense against the illegal importation of merchandise manufactured with forced child labor as well as weapons of mass destruction used in terrorist threats. The Agency is also tasked with combating crimes in cyberspace. This type of crime most certainly was not envisioned back in 1789 when the Customs Service began as the collector of imports and duties on products entering the United States. Yet the Agency must keep pace with the criminal element that will stop at nothing to exploit children, launder money and violate intellectual property rights over the Internet. For Customs, the technology and expertise needed to combat cybercrime is as essential as the high tech equipment needed for processing legitimate cargo and passengers at the hundreds of ports of entry around the United States.

In FY 1999, Customs estimates it will process over 470 million land, sea and air passengers. Over 130 million carriers will enter our ports in 1999 and over \$850 billion worth of merchandise will be processed at the borders. Notwithstanding the Customs Service's relatively static workforce and increasing workload over the past five years, this Agency continues to seize more narcotics than all other federal agencies combined. While we expect to keep the drug seizures high throughout 1999 and into the new century, additional resources, personnel and technology are necessary for this effort. The goal is to win the war on drugs without placing an undue burden on trade.

FY 2000 BUDGET

The Administration has requested a funding level of \$1.93 billion, and 17,389 FTEs for fiscal year 2000. While this figure is \$95.5 million more than the budget for Fiscal Year 1999, over \$312 million of this amount would be derived from a proposed increase to the passenger processing fee. This increase in passenger processing fees would have to be enacted by July of this year in order to provide adequate funding for essential Customs programs, including long term commitments to the Automated Commercial Environment and new more aggressive enforcement efforts. Many think this will be difficult, if not impossible, and that Customs' funding for FY 2000 is in jeopardy of falling far short of its needs.

While NTEU supports increased *authorization* of funds for the Customs Service, no increase in funds will actually be available to Customs without increased *appropriations*. The discretionary spending caps in the House and Senate Budget Resolutions, which have recently passed, will make increased appropriations extremely difficult, if not impossible, to achieve.

INSPECTION PERSONNEL

Customs Inspectors and Canine Enforcement Officers (CEOs) at land, sea and air ports present the first line of defense to the illegal importation of drugs and contraband across our borders. They are literally on the front lines. They work in career ladder positions that begin at the GS-5 level—approximately \$20,000 per year. Only after two years will an Inspector reach the journeyman level of his or her career from which there is no guaranteed promotion. This journeyman level (GS-9) begins at \$30,000 annually and is the highest grade level most Customs Inspectors and CEOs will attain. This level means that at the very height of an Inspector's career, and even after twenty-five years of dedication to the Customs Service, he or she will make a maximum base salary of about \$40,000 per year. In many areas around the country, including San Diego, California, promotions to the GS-11 level have not occurred in several years. This refusal to promote qualified and deserving Inspectors

to the GS-11 level has contributed to a low morale in the Inspector ranks in San Diego and Calexico and many other ports around the country. If Congress wants Customs to keep its most experienced and skilled Customs Inspectors, it should demand that more GS-11 upgrades be given.

SHIFTS AND IRREGULAR HOURS

Not many people recognize the concessions Inspectors and Canine Enforcement Officers make for the Customs Service. Their lives are controlled by their jobs. First, they rarely work regular 9 a.m. to 5 p.m. schedules and, unlike hundreds of thousands of their fellow federal government employees, Customs inspection personnel have little control over the schedules they work in any given two week period.

Cargo shipments and passengers cross our borders at all times of the day and night, and Customs Inspectors must be there to process them. It has been noted over and over again that drug smugglers rarely work from 9-5. Well, neither do the hard-working men and women of the Customs Service. Most Customs Inspectors and CEOs around the country are expected to work at a minimum three different shift schedules. A shift one week may be as ordinary as 8 a.m. to 4 p.m., but the next week it may be as disruptive to the body clock and family life as 5:15 a.m. to 1:15 p.m. or even 3 a.m. to 11 a.m.

John Wilda is a Customs Inspector in High Gate Springs, Vermont. He has worked for the Customs Service for over twenty-five years. He has a wife and two children. In order to attend his son's evening sports events and coach his son's baseball teams, for years, Inspector Wilda worked what is commonly known as a "quick turn" schedule, one in which he had less than eight hours off between his assigned eight hour shifts. His day began at the port at 8 a.m. and ended at 4 p.m. He drove home, coached his son's team, spent the evening hours with his family and just as they settled in for the night, he had to return to the port for the midnight to 8 a.m. shift.

According to Patrick McGannon, a Customs inspector in Laredo, Texas, the changing times and workdays leave little time for family life. It is a luxury to be at home at the same time as your children and spouse. Often it takes hours at home to unwind from an intense and exhausting day working on the border. Inspectors regularly sacrifice attendance at school events and teacher conferences, and they rarely have an opportunity to oversee daily or nightly activities at home. The Inspectors in Laredo combat the extreme cold in winter and intense heat in the summer, while they battle sleep problems from working one week on the midnight shift and the next on the early morning shift. Many people can handle a few weeks of this shift work, but could never survive a career of this lifestyle.

In addition to rotating shifts, Inspectors and CEOs have rotating weekends. They basically work a seven-day workweek, and their two days off can fall anywhere within those seven days. The majority of inspection personnel work both days of the weekend as their regular shift. Each individual will learn about his or her shift schedule and days off about ten days in advance of working the schedule. Most official holidays will fall within their regular workweeks. There is never a guarantee that a holiday or weekend will be spent with family or friends.

OVERTIME

In addition to the unpredictability their work schedules, Inspectors and Canine Enforcement Officers are usually at the call of Customs management for orders to work overtime. The staffing levels at most ports are not adequate to meet the needs of the port, so situations occur daily that require Inspectors to come in to work on their days off and to stay beyond their shift for overtime assignments. Most Inspectors around the country do not have a full day off during the week. Frequently, they must scramble to find a replacement or struggle to arrange child care and juggle family commitments. Most Customs Inspectors and CEOs work at least 16 hours of overtime each week. That can mean a seven-day work week or sixteen hour days. This is not an odd occurrence; this is a way of life. There are grave consequences for refusing to come in for overtime, including termination.

Virginia Rodriguez, single mother of a toddler, has been a Customs Inspector in Brownsville, Texas for almost twelve years. She recognizes the importance of providing an accurate picture of her life as a Customs Inspector and she has come from Harlingen, Texas to be with us today. In 1997, during a routine investigation of a bus traveling across the border, Inspector Rodriguez apprehended one of the FBI's "most wanted" criminals. For her exemplary work, she has received Customs performance awards throughout her career with the Agency and has been featured on the television program "America's Most Wanted." The criminal she caught was a fu-

gitive charged with perpetrating the largest armored bank vault robbery in the United States.

Inspector Rodriguez has told me how difficult it is to maintain her family life, care for her child and work the schedules required of Inspectors in Brownsville. While she is assigned to a 40-hour work week, she regularly works 56 hours per week. Most Inspectors in Brownsville work more overtime than she does. She usually works eight hours a day on both of her days off so that she can relieve her babysitter at the end of her shift and avoid being drafted for overtime. The threat of forced overtime is real for Virginia Rodriguez. Countless times she has been required to work overtime, forcing her to make last minute arrangements for her son. It has been almost twelve years since Inspector Rodriguez has spent a Thanksgiving Day or Christmas Day with her family. She is not alone in this effort. The same is true for most Inspectors working around the country.

The Port of Blaine, Washington is open 24 hours every day. The Inspectors and CEOs stationed there must work 56 hours every week (minimum of 16 hours of overtime) to meet the regular needs of the port. Every six to nine weeks, they work a midnight or graveyard shift. For two weeks, every other month, they work the 4 p.m. to midnight shift. According to Greg Johnson, a Customs Inspector in Blaine, the job provides added pressure when he leaves his family alone in the evenings and at night. Inspector Johnson knows first hand that law enforcement officers must maintain a heightened state of awareness and be engaged in constant decision-making during their hours at work. Often when they return home after a shift, they have trouble leaving their work behind. This leads to increased frustration by spouses and children and contributes to the high divorce rate among law enforcement officers.

COPRA

In 1911, recognizing that the type of work performed by Customs inspection personnel was different from that of the typical federal employee, Congress passed an Act that paid Customs Inspectors for minimum periods of overtime rather than for hours of overtime that they actually worked. This law was referred to as the "1911 Act." In 1993, determining that the 1911 Act left too much room for mismanagement and abuse of overtime, this Committee was instrumental in replacing the Act with the Customs Officer Pay and Reform Act (COPRA). COPRA was drafted to ensure that hours paid to Inspectors bore a more direct relationship to hours worked. Since 1994, COPRA has been the exclusive pay system for Customs officers performing inspection duties. While eliminating the rare instance when a Customs officer could earn 32 hours of pay for 2 hours of overtime work, provisions of COPRA continued to recognize that Customs officers deserved pay incentives and enhanced compensation for their arduous shift work and irregular hours.

The pay system for Customs inspection personnel is not unique in the federal government. Most federal employees who perform law enforcement duties are paid under pay systems tailored to specifically compensate them for their work. This is the case for inspection personnel and criminal investigators of the INS, DEA, FBI, Border Patrol, and National Park Service. INS Inspectors are paid for minimum periods of time regardless of their actual hours worked. The FBI, DEA and other federal law enforcement agencies pay employees premium pay on an annual basis to compensate them for working irregular, unscheduled overtime duty. Sometimes this can amount to an additional 25% increase in their rate of pay although the officer may not work even one hour of overtime or at night during any given week. Other federal criminal investigators and Customs pilots receive 25% higher rate of pay annually. This pay incentive is known as availability pay and compensates these employees for being available to work outside their regular shifts. Like in the Customs Service, these pay schemes are necessary to attract and retain a high quality and professional workforce.

Under COPRA, a Customs Inspector is paid overtime only when he or she works overtime hours as scheduled. The rare instance that an Inspector might receive a paycheck for overtime without having worked the hours occurs only when there is an administrative or judicial proceeding in which Customs is ordered to pay back pay for an overtime assignment unlawfully denied to an employee. This situation is not governed by COPRA. Rather the remedy complies with the Back Pay Act (5 U.S.C. 5596) that governs situations for all federal employees who are the subjects of improper personnel actions. This specific remedy of back pay has been determined by many judges and arbitrators to be the adequate remedy for such violations of law by managers throughout the federal government. According to arbitrators and judges, without a back pay remedy, employers do not have incentive to comply with the applicable law, regulations or collective bargaining agreements that they enter

into. Other remedies would be inconsistent with the remedies available to every other federal employee.

Many Customs supervisors have difficulty managing the annual overtime earnings cap of \$30,000. They regularly deny overtime to employees as they approach the cap. This situation can be addressed in many ways without denying employees their right to a legal remedy for an improper personnel action. First, the earnings cap could be eliminated or loosened to allow employees to exceed the cap by one assignment without penalizing the supervisor or employee.

Secondly, overtime could be tracked better. Last year, Customs implemented a new data system called the Customs Overtime Scheduling System (COSS). COSS provides overtime earning information for individual Inspectors and CEOs. The system tracks schedules and assignment data, maintains projected and actual costs, pay cap, equalization, staffing, budgeting, time and attendance and billing information. The system better enables management to monitor the current \$30,000 overtime earnings cap. Overtime disputes have dramatically decreased since COSS has been in place. Statutory changes are not appropriate to redress situations that the Agency can and is managing now.

PREMIUM PAY

In addition to overtime, COPRA governs premium pay for Customs inspection personnel. Premium pay is a higher rate of pay for working at night, on holidays or on Sundays. For night pay purposes, when a majority of regularly scheduled work hours occurs between 3 p.m. and 12 a.m., an officer receives an additional 15% of the basic pay rate added for the shift. When a majority of regularly scheduled work hours occurs between 11 p.m. and 8 a.m., an officer receives an additional 20% of the basic rate for the entire shift. When an officer's regularly scheduled work occurs between 7:30 p.m. and 3:30 a.m., he or she will receive 15% premium pay for the hours between 7:30 p.m. to 11:30 p.m. and 20% premium pay for hours between 11:30 p.m. and 3:30 a.m.. While this law requires an entire shift to be paid at the higher rate, if an Inspector works less than a majority of hours during the night, none of the evening hours are paid at the premium rate. For example, none of the hours in the shift 4 a.m. to noon are compensated as night pay.

The current Customs system for night pay is meant to compensate the inspection personnel for living with unpredictability and constant irregularity in their work schedules. For most Inspectors, daily shifts change every two weeks. That means one week an Inspector may work the graveyard shift, and the next week he or she may be on from 5:15 a.m. to 1:15 p.m. The unpredictability of these changing work hours often wreaks havoc on family life. At airports, the Agency can order a blitz of certain flights and the Inspector is forced to change his or her shift within the odd hour shift. Incentive pay systems are not unique to the Customs Service and are in place for most law enforcement jobs where irregular hours and shifts exist.

PREMIUM PAY WHILE IN LEAVE STATUS

Federal criminal investigators receive their annual overtime pay rate while they are in a leave status. Likewise, Customs Inspectors receive night differentials if they take leave while assigned to a night shift. Other federal employees who regularly work at night are entitled to night pay differential while on leave and on holidays. All federal employees, including Customs Inspectors, are not compensated at a premium rate when they take leave on a Sunday they would normally work. The small incentive derived from receiving night differential while on leave is a form of compensation for the irregular and unusual hours Customs officers work all year. Their sacrifices are far greater than the slightly higher remuneration they receive while on leave.

LAW ENFORCEMENT OFFICER STATUS

In addition to special pay adjustments, federal employees with law enforcement officer status receive full retirement benefits after 20 years of government service in law enforcement. Even Members of Congress have this benefit, but currently Customs Inspectors and CEOs, who carry guns, make arrests and seize more illegal drugs than any other federal group are denied this benefit. As in past years, NTEU will continue its efforts to enact legislation (H.R. 1228 and S. 718) to give Customs Inspectors and CEOs law enforcement officer status and end this disparity. But in the meantime, the current provisions of the Customs Officer Pay Reform Act must suffice as incentives for the sacrifices Customs Inspectors make to the Customs Service. NTEU believes that changes to this pay system are misguided and unnecessary.

According to Inspector McGannon in Laredo, he nets an additional \$3,500 in premium pay compensation *annually*. This is hardly adequate compensation for the disruptions this shift work causes. The extra money he earns is typically spent on the salaries of child care providers who assist with his children's schedules when he is not available. Inspector McGannon has hardly been overpaid during his ten years with the Customs Service. He should not be confronting an attack on his \$39,000 salary while members of Congress, who earn more than three times his salary and benefit from a 20-year retirement system, debate raising their own pay this year.

RECRUITMENT AND RETENTION

Factors including the uncertainty of irregular hours and the requirement to work overtime have contributed to a high turnover rate among the Customs inspection ranks. These turnover rates lead to increased training costs for the Agency. After being hired by Customs, many young Inspectors complete the training program, gain valuable on the job experience and move to positions with the Department of Justice, the Secret Service, the FBI or with state or local government, where they are guaranteed all the benefits of being a law enforcement officer.

I recently testified before an Appropriations Subcommittee on the issue of Customs integrity where the subject of mandatory Customs Inspector rotation was discussed. NTEU has been clear that requiring rotation for any percent of the Customs employees will have a devastating impact on the mission of the Agency, as well as the lives of the Inspectors and their families. There is no empirical evidence to show that uprooting experienced Customs officers and moving them around the country will lead to a reduction in corruption. In any case, Customs has stated that there is no systemic corruption problem to address, so a rotation program would be an astoundingly expensive endeavor that would do more harm than good. Implementation of a mandatory rotation scheme would contribute to the difficulty Customs has in attracting new hires in their inspection ranks. I believe retention problems would be insurmountable in light of the relatively low salaries, constant shift work and dangerous nature of the job.

COLLECTIVE BARGAINING

Evidence clearly demonstrates that the men and women of the Customs Service need better resources to better perform their mission. But, there is no evidence to show that the mission of interdicting drugs is impaired when the Customs Service lives up to the collective bargaining provisions it has negotiated. On the contrary, Customs and NTEU have an impressive working relationship. In 1998, the Customs and NTEU received the John N. Sturdivant Partnership Award in recognition of their contributions to reinventing government through labor-management cooperation. This year the parties have been nominated for the Office of Personnel Management Director's Award for Outstanding Alternative Dispute Resolution (ADR) programs focusing on resolving employee workplace disputes. A proposal allowing management to nullify bargained agreements will have a disastrous effect on employee morale and the current labor-management relationship.

No federal agency, including the Customs Service, would enter into labor contracts that it believes interfere with its mission. There is nothing in the current contract that hinders the interdiction of drugs or contraband. In fact, we have worked closely with Customs on many special programs, including Operation Brass Ring, that have resulted in record amounts of drugs seized in short periods of time.

Currently, Customs and NTEU have a process in place to work out differences between labor and management when they arise. After years of working together, the parties have agreed to what I believe is the most innovative collective bargaining agreement in the federal workforce. According to a provision in the contract, any party can reopen a negotiated article, at any time, if the party believes that the article is not working as intended. In addition, a provision in the contract allows Customs to take action prior to bargaining if emergency situations exist. The Federal Service Labor-Management Relations Statute (5 U.S.C. 7100 et seq.) allows Customs to take whatever actions may be necessary to carry out the agency mission during emergencies prior to bargaining with NTEU. There is no need for statutory provisions that eliminate negotiated contractual rights or undermine the entire labor-management relationship.

I know that the more than 13,000 Customs employees represented by the NTEU are capable and committed to the Customs mission. They are proud of their part in keeping our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently. But, they do not deserve attacks on their pay and restrictions on their rights.

I applaud this Subcommittee for recognizing the twenty-first century needs of the Customs Service. I urge each of you to visit the Customs ports in your home districts. Talk to the Inspectors and CEOs there to fully comprehend what their regular work lives are like. Then you may understand why NTEU will support a Customs authorization bill, but will strongly oppose any legislation that would limit the pay or rights of the rank and file men Customs officers.

Thank you for the opportunity to be here today on behalf of the Customs Service employees to discuss these very important issues.

Chairman CRANE. Thank you.
Ms. Hallett.

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

Ms. HALLETT. Thank you, Mr. Chairman, Mr. Levin, Mr. Becerra. It is a pleasure to be here with you today. I appreciate the opportunity to present the views of the Air Transport Association concerning the Administration's proposal to increase and create new user fee burdens upon the aviation industry.

Traditionally, the aviation industry has supported user fees that are properly cost allocated and cost effective. Thus, your efforts to authorize the use of Customs user fees to provide pre-clearance services in the Caribbean and Canada and to establish a user fee advisory committee are greatly appreciated. Moreover, termination or reduction of pre-clearance in Canada would have a devastating impact on U.S. tourism. We therefore urge you to authorize continued use of COPRA funds for service expansion, as well as enhancement.

Unfortunately, the Administration's proposal to increase the Customs' user fee and create a new user fee for automated systems is simply a device to further tax the aviation industry. Let me explain. In 1997, Customs stated that the true cost of pre-clearing an airline passenger was approximately \$3.25. Last month, Assistant Secretary Lubick testified that the cost was over \$5.00. In so doing, he implicitly attempted to justify the Administration's request to increase the fee to around \$6.40 per passenger. It is implausible that Customs' cost per passenger have doubled in only 18 months. We doubt there is adequate justification for these proposed user fee increases. They are tax increases masquerading as user fees.

This proposed tax increase would have a substantial effect upon the traveling public. In 1998, 54 million international passengers paid Customs' user fees. By 2010, that number will double. Meanwhile, Customs simply has failed to make a convincing case that this ever-increasing revenue stream from airline passenger traffic will not meet its legitimate financial needs. Moreover, the Administration's proposal to remove existing exemptions from the Customs user fee in Canada, Mexico, and the Caribbean, does not advance our national commitment to law enforcement, but rather, it appears to be merely another tax imposed upon passengers as a direct consequence of NAFTA. Any financial shortfalls necessary to underwrite these inspections should be covered by removing the restrictions from the COPRA fee. In addition, we believe that all ac-

cumulated fees should be reserved for the benefit of air and sea passengers.

International cargo and passengers encounter border crossings at air and seaports as well as land locations, all of which have one thing in common, a crossing of national boundaries. Every one of those crossings, especially for air cargo, results in increased transportation time, costs, as well as communication requirements.

Our member airlines cannot support the Administration's proposal to introduce an enhancement fee for the Customs automated systems. Nevertheless, we continue to support the common goal of an improved information processing system. Automated manifest system for air is in its ninth year of operation. Yet it requires the burden of paper submittal. We have invested millions of dollars to support this automated infrastructure, yet we still experience significant daily operational costs. Thus, Customs' attempt to introduce yet another automated system is very disturbing, because they have so far failed to deliver a high quality, cost-savings automation program for imports.

Carriers fear another wave of startup investments for the Automated Commercial Environment, while still bearing the costs of an incomplete AMS-Air. Air carriers want a fully paperless automated manifest process, but participation in ACE may seriously delay this goal. Future trade practices will be based on electronic commerce and the Internet. Unfortunately, the current ACE foundation has very little in common with those future practices or the Internet.

While the current programs need upgrading and eventual replacement, the Administration's proposal for an automation fee is unwarranted. It is simply another tax on top of the \$800 million already paid annually in the merchandise processing fee. We believe that maintenance of Customs automation programs should be funded out of those fees.

Mr. Chairman, it is unclear, particularly to us, what the benefit of any automation fee would be. Development costs have sky-rocketed, from an initial estimate of \$600 million, to \$1.48 billion. That was told to us by Customs very recently, but without an explanation. Its developmental track, quite frankly, in this particular area is suspect. With a host of unresolved questions and with a lack of clear detail regarding how a user fee would be implemented, it is impossible for us to agree to an automation enhancement user fee.

Once again, Mr. Chairman, I want to express my appreciation to you, and particularly on behalf of all of our members, we do appreciate everything the Committee is doing, and to the Members of the Subcommittee, I hope that we will have an opportunity to respond to questions either verbally or in writing. Thank you very much.

[The prepared statement follows:]

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

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to present the views of the Air Transport Association (ATA) concerning the Administration's proposal to increase the U.S. Customs Service User Fee and to create a new user fee for the use of Customs automated systems. I welcome the opportunity to return to this subcommittee, not as Commissioner of Customs in which role I appeared before you many times, but from the perspective of a Customs Service customer—the airline industry.

ATA represents the major U.S. passenger and cargo air carriers in the United States. Our members transport approximately 95 percent of the passengers and goods transported by air on U.S. flag airlines. Last year, the U.S. airline industry safely and successfully carried over 600 million passengers. The Federal Aviation Administration (FAA) predicts that that number will reach one billion passengers by 2010.

COMMITTEE ACTION

I want to thank you Mr. Chairman for your continued efforts to authorize 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 our appreciation for the decision to include language in the Miscellaneous Trade bill to establish a user fee advisory committee to advise the Commissioner on issues such as the level of fees, proper application of funds to functions and activities, and the appropriateness of any proposed fee.

Although we are still awaiting Senate action on the Miscellaneous Trade Bill which contains the Customs user fee and advisory committee language, we hope that you will work with your Senate colleagues to ensure passage as soon as possible. We are fast approaching the busiest season for air travel and it is critical for Customs to have the authority to expend fees for preclearance operations in both Canada and the Caribbean.

Termination or reduction of preclearance operations in Canada would have a devastating impact on U.S. tourism, not to mention air carriers operating through the U.S. and utilizing this service both for Canadian originating traffic and for transit traffic originating in Europe and the Pacific Rim. We urge you to authorize continued use of COBRA funds for service expansion and enhancements in order to provide effective and seamless service to the travelling public.

ADMINISTRATION PROPOSAL

I would now like to address the Administration's proposal to increase the Customs User Fee and to create a new user fee for the use of Customs automated systems.

In August, 1997, at a meeting between U.S. Customs Service staff, House Trade Subcommittee staff, and ATA, Customs stated that the true cost of preclearing an airline passenger was approximately \$3.25. Last month, Assistant Secretary Lubick testified that the cost was over \$5.00, implying adequate justification for the Administration's request to increase the fee to \$6.40 per passenger. Mr. Chairman, doesn't it strike you as odd that in 18 months new found costs have almost doubled Customs' cost per passenger? With inflation so low, how could government be so inefficient as to result in its costs rising so much in excess of the CPI. In all candor, we think you should be particularly suspicious of the basis for these new found costs.

We doubt there is adequate justification for these proposed "user fee" increases. They are tax increases masquerading as user fees. As you know, airlines and the traveling public already pay more than their fair share in taxes and fees.

In 1998, 54 million international passengers paid the Customs user fees. FAA predicts that this number will likely double by 2010. With these dramatic increases in international air travel, revenues from the Customs user fee, and other taxes and fees will grow substantially. The question is, can Customs or Treasury efficiently use these fees at the rate they are currently collected, or, is the proposed fee increase just a tax increase?

PURPOSE OF THE USER FEE

Mr. Chairman, the collection of the Customs user fee on every international air passenger ticket has helped the Customs Service to make improvements in passenger processing over the years. However there are many restrictions on the use of the funds which need to be addressed. We suggest the establishment of a government/industry oversight committee, such as the one you have proposed, to assess the uses of these monies and to make recommendations for improvements. Through a useful government/industry dialogue, real gains can be made in Customs processing.

Additionally, the COBRA fee, which funds a baseline of Customs airport staffing, is highly restricted in its use. We would propose and strongly support the removal of restrictions, however, the fees generated should continue to be segregated from the general fund and reserved specifically for air and sea passenger-related Customs inspection activity. The removal of restrictions on spending for staffing will allow Customs the flexibility it needs to respond to transportation industry needs, trends, growth, and changes. The use of these funds should be clearly limited to activities

that benefit the overall provider of the funds—air and sea passengers. Therefore, unrelated activities or operations without a nexus to air and sea passenger inspection, should not have access to the funds.

ADMINISTRATION'S NAFTA TAX

The Administration has proposed once again to remove the existing exemptions from the Customs user fee for passengers originating in Canada, Mexico, and the Caribbean. This exemption exists to promote good will between North American nations and we appreciate Congress' recognition of their special status within North America. But to extend benefits through NAFTA, on the one hand, and then take them away, on the other, suggests that this proposal is just a NAFTA tax.

Just as with NAFTA, Open Skies agreements dismantle barriers with countries like Canada to facilitate the flow of people across our shared borders. The adjacent islands of the Caribbean also deserve an exemption because of their unique status within the Americas. Preclearance operations utilize the highest levels of Customs processing efficiencies without sacrificing our national commitment to law enforcement. Imposing the Customs user fee on these passengers does not advance these efforts.

Lastly, Customs user fees, collected from air passengers are being used for non-air passenger processing, such as land border overtime. These revenues are not used exclusively for the benefit of the persons paying the fee. Thus, industry participation through a user fee advisory committee would enhance the appropriate and efficient use of these resources.

CUSTOMS AUTOMATION ENHANCEMENT FEE

We want to commend the on-going efforts of Customs to bring its procedures and processes into the 21st Century. International cargo and passengers encounter border crossings at air and sea ports, as well as land locations; all of which have one thing in common—a crossing of national boundaries.

The result of crossing that imaginary line, specifically for air cargo, is an off-the-chart spike in increased transportation time, costs, and communication requirements. In like manner, the number of participants involved in the transaction increases significantly, creating the need to coordinate activities with numerous transportation partners and government agencies at both origin and destination with similar, if not identical, information.

Unfortunately, after thorough review and consultation with our member airlines, we cannot support the Administration's proposal to introduce an automation enhancement fee for the Customs automated systems. Notwithstanding our opposition to the fee, we want to remain actively engaged with the Administration and Congress in identifying the right mechanisms to develop our common goals to improve the information processing system.

It is important to recognize that there are other influences that inhibit further engagement by air carriers in Customs automation development, specifically the Automated Commercial Environment (ACE). It is our view that Customs' current Automated Commercial System (ACS) and the current path of ACE produces a magnification of existing problems inherited from a manual document process. Converting a document into an electronic data format does not take full advantage of automation and information technology development. No less can be said of the recent Automated Export System (AES) implementation; the system attempts to automate a flawed export document process. As a result, a multitude of problems has surfaced for Customs and the trade community.

Furthermore, several problems intrinsic in the Automated Manifest System (AMS-Air) for imports have been carried over to AES. For example, the attempt to reconcile trade data with transportation data in AMS-Air has been consistently difficult, thereby increasing processing costs and delaying cargo movement. It remains an elusive goal after more than nine years of operation.

Having said that, we have several areas of concern related to ACE and AES development that are made worse by continuing frustrations with Customs' current import system, AMS-Air. While we want to develop a fully paperless automated manifest process, industry-wide participation in ACE may be seriously delayed due to a number of contributing factors.

Customs' support for AMS-Air has become a very important issue for our members. We have invested millions of dollars in AMS-Air and incur significant daily operational costs. Customs' attempt to introduce a new automated system at this time is very disturbing, more so since Customs has not yet delivered a high quality, cost saving automation program for imports. Quite logically, we fear another wave

of start-up investment for ACE and AES, all the while still bearing the costs of an incomplete AMS-Air.

AMS-Air is in its ninth year of operation with a steady growth to over 130 participants and 28 ports nationwide. However, serious flaws remain, some since the October 1989 start-up date. For example:

- After nine years of operation, paperless processing is available at only one of 28 ports nationwide;
- Only five freight forwarders nationwide participate in AMS-Air and at only three ports;
- AMS-Air is not fully endorsed by local Customs and USDA personnel. In fact, USDA refuses to participate at some ports, thereby preventing a truly paperless environment;
- Split manifest processing, a common event in air cargo, is bug ridden; and
- Programming enhancements and system corrections vital to air carrier operation and freight forwarder participation, such as Project 323 (in-bond enhancements) and others, are over seven years behind schedule.

Again, we want to be clear—the ACS legacy systems are in the twilight of life expectancy, the export process is paper intensive, and it is in dire need of automation. However, the foundation of automation cannot be built on the premise that automating the existing manual process will address our mutual concerns. The ideal system fully re-engineers the flow of data to minimize the cost to the trade and government while maximizing information for compliance, quality of statistics, and information enforcement.

Nonetheless, the cornerstone of Customs' effort to maintain pace with the growth of international trade is eroded by the exceedingly long time it is taking to deliver on the promise of the Modernization Act. In fact, it is acknowledged by many in the trade that the Mod Act needs to be rewritten and ACE redesigned.

Our concern is not that Customs is an unwilling partner in automation development, but is on a collision course with information technology development and its effect on trade practices. We believe that it is imperative that Customs become a part of the transportation process rather than creating a detour for international shipments caused by manifest and commodity data requirements of a closed proprietary system. The flow of legitimate goods is enhanced if Customs becomes a part of the transaction rather than attempting to manage it. The blueprint of future trade practices is based on electronic commerce and the Internet; however, the ACE foundation to date has very little in common.

While we agree that current ACS programs need upgrading and eventual replacement, the Administration's proposal for an automation fee, is unwarranted and unacceptable, as traditional budget request procedures have not been followed. It is nothing more than a tax on top of the \$800 million paid annually in Merchandise Processing Fees (MPF), a portion of which should be used to enhance and maintain Customs automation programs.

Mr. Chairman, until Customs breaks-out development costs by trade functionality and internal Customs requirement, it is unclear what the industry is paying for. Moreover, the development costs have skyrocketed from an initial estimate of \$600 million to \$1.48 billion without a detailed explanation from Customs.

These investments obviously require careful planning in the context of industry/government partnership and return on investment. With numerous outstanding questions and issues, and the lack of detail on how a user fee would be implemented, it is impossible for our air cargo carriers to agree to an automation enhancement user fee.

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.
Ms. Ross.

STATEMENT OF SUSAN KOHN ROSS, CHAIRPERSON, S.K. ROSS AND ASSOCIATES, P.C., LOS ANGELES, CALIFORNIA, ON BEHALF OF THE BORDER TRADE ALLIANCE, PHOENIX, ARIZONA

Ms. ROSS. Thank you, Mr. Chairman, Mr. Levin, Mr. Becerra. I am here today on behalf of the Border Trade Alliance. Our focus is folks that live and do cross border business with Canada and with Mexico. For us, the reliability of the Customs computer is a key to the economic viability, both of the communities along the border, those on the north and south of those borders, as well as the folks in the international trade community as a whole. From our point of view, if Customs is unable to promptly and efficiently process legitimate trade in goods, it can only harm the currently robust U.S. economy.

Folks cross the border every day for a variety of reasons. If Customs is unable to segregate the legitimate crossers from those with whom it needs to spend more time, it must have a reliable operating computer system. We fully support the efforts of the Customs Service to interdict drugs and other contraband. We think reliable and up-to-date computer equipment can only help Customs deal with those legitimate concerns, as well as the ever-growing quantity of vehicles and goods entering the United States. The key of course is how that should be paid for.

We think that there is a distinction that should be drawn between funding for the existing ACS system and its replacement, whatever that replacement should be. I am here today to urge Congress to continue from appropriated funds to make sure that the ACS system continues in operation. We have already heard it is going to be another 5 to 7 years before we have got ACE. We have got to have something reliable in the meantime.

The delays caused by the antiquated nature of ACS have gone from shipments being released in seconds to being released in minutes. Now it is often hours, and on occasion, it is even days. It simply cannot continue. You heard Ms. O'Dell talking about the requirements on the part of The Limited. Large companies are in perhaps a better position. If they are not able to get the imported goods, they at least have the financial wherewithal to seek replacement goods. The vast number of importers and exporters, for that matter, are small companies that simply don't have the financial viability to be able to do that. If they are not able to deliver on time, they simply lose their orders.

I asked a port director at one of the ports recently what his folks had done to prepare for the potential possibility of ACS going down. His answer was that they had ordered red pens. Customs does not recall how to do paper entries. Frankly, I don't think there are too many of us in the trade that date back any more to when the computer was not around.

The Border Trade Alliance is an early supporter of the Coalition for Customs Automation Funding. We agree that the funding which comes forth either for ACS or for whatever the replacement may be, should come from appropriated funds. We do not, however, wish to take a position on whether the ultimate replacement for ACS should be ACE or ITDS or something altogether different. We think that decision ought to be made by the experts at Customs, Treas-

ury, Congress, and the Administration. I would, however, point out one obvious fact. That is, for every dollar that is spent on ITDS, it is not spent supporting the current system, the ACS system.

Not only does Customs need a reliable long-term solution to the funding question, it also needs short-term reliable support to fund and operate the current system. The last figures that we saw from Customs are that there are 384,000 importers in their data base. Only about 100,000 of them import twice or more a year. If those 284,000 importers that only occasionally import are asked to pay an additional user fee, I don't think it is unrealistic to expect that they will try to take advantage of the computer to get their goods released and then file their follow-up entries manually on paper. If the condition is put on them that if you file one electronically, you have to file the other electronically, I would not be surprised to see them begin to go to paper all the way around.

Of the 100,000 other importers, we are told by Customs that the top 1,000 importers account for 61 percent of the value of all imports. So if the other 99,000 importers that import twice or more a year are faced with an additional user fee, one has to ask how many of them would try to file what portion of their transactions manually with paper?

There is another question that needs to be dealt with in all of this. That is, if we indeed begin to access an additional user fee, what are our colleagues in Canada or Mexico going to do by way of additional user fees on their part? We also have to ask what that does to the cost of goods, what that does to the American consumer, when all we are really going to end up doing is that cost is going to get passed through and drive up the cost of goods in the marketplace.

There was a question asked earlier about NAFTA and GATT. I would refer the Committee to article 403 of NAFTA, which specifically says that there are to be no additional user fees imposed. In the GATT context, it is article VII (1)(b).

I want, with the time that I have remaining, to just touch on a couple of other issues, because others have talked about the computer, and I don't want to repeat what they have said. The one issue I want to talk about quickly is unintended consequences, or what often gets referred to as unfunded mandates. I want to talk quickly about section 110, which admittedly is an immigration issue, but because we are talking about the land borders, at least from the BTA context, it is Customs that is being asked to enforce this law. It is being asked to enforce this with no additional funding. It doesn't have the manpower. It doesn't have the money. It doesn't have the equipment.

There is also the Border Smog Reduction Act of 1998. It is an attempt to clean the air in San Diego. It requires the Customs Service to make a determination of whether a Mexican-plated vehicle comes into the United States for specific purposes more than twice a month, and if so, to bar it from entry. Again, there was no funding allocated.

The last thing I would like to do is refer the Committee, because I am out of time, to some comments in my written materials about a public-private partnership that was generated initially at the suggestion of the Customs Service, and ask the Committee to en-

courage the Customs Service to continue to be as innovative as it has been in the past.

On that note, I will close with a continuing offer on the part of our members to serve as a resource for the Committee and for the Members. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Susan Kohn Ross, Chairperson, S.K. Ross and Associates, P.C., Los Angeles, California, on behalf of the Border Trade Alliance, Phoenix, Arizona

The Border Trade Alliance (BTA) was founded in 1986 and consists of individuals, entities and companies which live and do cross-border business with Canada and Mexico.

Over the past decade, our agenda has consistently focused on trade facilitation, fast track authority, NAFTA implementation, trade expansion, border transportation and environmental infrastructure issues, and regional industrial and economic development.

We are here today to testify regarding the automation efforts of the U.S. Customs Service. The reliability of the Customs' computer is a key to economic viability for all communities along the land borders—both north and south and on both sides of each of those borders, as well as the international trade community as a whole. We are all too familiar with long lines of cars and trucks coming south at the Detroit-Windsor tunnel as well as long lines of cars and trucks coming north through Laredo, El Paso and Otay Mesa. If Customs is unable to promptly and efficiently process legitimate trade and goods, it can only harm the currently robust U.S. economy.

At the land borders, some Mexicans and Canadians cross for the day to conduct legitimate business while others cross for pleasure. They also cross into the U.S. on holiday or to attend school. In all instances, it is important for U.S. Customs, and the Immigration and Naturalization Service with which it cross-trains and serves, to be able to segregate legitimate crossers from those with whom it needs to spend more time. It requires a fully operational computer system to do so.

We fully support the efforts of the Customs Service to interdict drugs and other contraband. We think reliable and up-to-date computer equipment can only help Customs deal with those legitimate concerns as well as the ever-growing quantity of vehicles and goods entering the U.S.

The question is how should that computer system be paid for? We think a distinction should be drawn between funding for the existing ACS system and its replacement, whether that replacement is ACE or something else. I am here today on behalf of the BTA to urge Congress to continue to adequately fund ACS while the question of its replacement is debated and decided.

There is little question neither Customs nor the trade can afford to have the existing computer system crash or "brown out." Brown-outs have already occurred on several occasions. Delays in the release of shipments have already exploded from seconds to minutes and now often to hours and, on occasion, even days. The impact of extended delays can be catastrophic. In the current just-in-time environment, many large companies have inventory on hand for one shift. Others have sufficient inventory for the equivalent of a half to a full day's production. Smaller companies have it more difficult. If they are not able to receive product in a timely fashion, they do not have the resources to obtain replacement goods. They simply lose their orders.

When asked recently what the local port had done to prepare for the possibility of paper processing of entries, one Port Director responded by stating he had purchased red pens for his staff! Customs is simply not set up to timely process paperwork in a manual environment and neither is the trade.

The BTA is a supporter of the Coalition for Customs Automation Funding. We agree with other Coalition members that funding for Customs' automation efforts should be accomplished from appropriated funds. Like many other members of the Coalition, the BTA also does not take a position on whether the ultimate replacement for ACS should be ACE or ITDS. That decision is one for the experts at Customs and Treasury to make in concert with the Administration and Congress. The only point we would make is the current system is in dire need of financial and technical support. Until a decision is made about the long-term replacement of ACS, we would point out the obvious—every dollar spent on ITDS is a dollar not used to keep ACS operating.

Not only does Customs need a reliable long term solution to the funding question, it also needs short-term reliable support to fund and operate the current system.

To that end, we are opposed to the Administration's proposal for an electronic user fee. The last figures we saw published by Customs state there are approximately 384,000 importers in its database. Only about 100,000 import more than twice a year. If the 284,000 importers who only occasionally import were now asked to pay an additional user fee for electronic processing, we see a real possibility they would opt to obtain release of their goods electronically but file their follow-up entry summary in paper form.

Customs has stated the top 1,000 importers account for 61% of all imports by value. What would happen if even a small portion of the 99,000 other regular importers chose the same option and filed their entry summaries in paper form?

Against a back-drop of the additional electronic user fee envisioned by the Administration, we question what steps either Canada or Mexico might take to retaliate for the fee increases imposed on their traders which serves to only drive up the cost of the goods they are selling? What about the impact on U.S. consumers? The retail sector still suffers the irritant of different personal exemption levels in the U.S., Canada and Mexico, a never-ending thorn in the side of particularly U.S.-Mexican relations. At a time when duty rates are dramatically falling but duty collections are rising just as dramatically, we question the wisdom of imposing any additional user fees on traders.

In addition, both NAFTA and GATT have as one of their goals, the reduction and/or elimination of user fees as part of an overall process of streamlining import procedures. How does imposing an electronic user fee square with U.S. obligations under GATT Article VII (1)(b)? With think it is anathema and against the general purposes of all multi-lateral trade agreements.

There are some additional issues we take this opportunity to bring to the Committee's attention. These issues fall in the category of unintended consequences, otherwise known as unfunded mandates. One example is Section 110 which revised the Immigration and Naturalization Act to include entry and exit controls. We support its repeal through S.745 and H.R.1250. We think there are other ways currently in the law which allow the U.S. to manage and control its borders.

It is true Section 110 is an immigration issue. However, at the land borders at least, it is both INS and Customs which will be called upon to enforce this law. Customs has received no additional funding for this effort. Where is it supposed to find the money and personnel to enforce this new requirement? While we have from time-to-time had our differences with Customs, we support their efforts and contend they do a remarkable job given the fact the agency has not been supported with either increased funding or personnel while increased funding and personnel for the Border Patrol and INS has been setting records. For this reason, we whole-heartedly support S.658 recently introduced by Senator Gramm of Texas and others.

Another example of unintended consequences is the Border Smog Reduction Act of 1998. Its effect is currently limited to the San Diego area. It will be implemented on April 27, 1999 and is intended to allow San Diego to improve its air quality by limiting the entry of Mexican automobiles. Implementation requires a distinction to be drawn between Mexicans entering the U.S. to work or study from those just visiting. Many visitors will be allowed to take their Mexican cars into the U.S. However, workers and students will not. The way it is written, it would appear this law denies a Mexican the ability to bring his Mexican registered vehicle into the U.S. if that car even transports a U.S. citizen, green card holder, student, worker or even a visa holder.

In order to properly implement this law, Customs personnel will be required to stop every Mexican automobile which does not meet U.S. federal emission standards. Since their inspectors are not experts in smog emission standards, Customs has stated for the first sixty (60) days, it will not impound vehicles or turn them back. However, thereafter Mexican plated vehicles will be subject to being impounded or refused entry.

We are also concerned about the cost to Mexicans as the fee is \$20.00 per year plus a tax based on 2.6% of the car's value. A car worth \$20,000 would pay an annual fee of \$540.00, a real disincentive to visit the U.S. and shop! These costs are in addition to registering the vehicle in Mexico.

Especially in light of the fact that the winds in San Diego generally blow south so the pollution caused by these vehicles generally flows back into Mexico, we contend a better way to address pollution concerns at the Southwest border is to shorten wait times.

The *San Diego Dialog* recently published figures which make clear a large contributor to pollution in the area is wait times. The latest figures available are through January 1999. For San Ysidro on January 5, the average length of the line was 85 vehicles, the wait time was approximately 27 minutes. The average length of the line increased to 180 vehicles and 47 minutes by January 30th. On weekends, the

situation worsened. The numbers span from 100 vehicles and 14 minutes to 180 vehicles at 52 minutes.

At Otay Mesa on weekdays the queue ran from 75 vehicles and 26 minutes to 165 vehicles and 61 minutes average waiting time. On weekends, the numbers rose from 55 cars and 20 minutes to 180 cars and 61 minutes.

For San Ysidro, wait times greater than 20 minutes varied. In November 1998 it was 41% of the time, in December 1998 it was 36% and in January it was 14%. The average wait time of 30 minutes was 10% of the time in November, 18% in December and 6% in January. At Otay Mesa, the 20 minute wait time in November was 26% of the time, 41% in December and 6% in January. A 30 minute wait time occurred 6% of the time in November, 2% in December and not at all in January 1999.

Similar figures undoubtedly exist for other crossing points. It is for this reason we support Senator Gramm's bill. We have seen evidence of the increased speed with which cargo and commuters move as Customs and INS have been able to technologically keep up with the times. In July 1998, Customs implemented Operation Brass Ring. Despite the fact that more cargo and conveyances were examined, there were no appreciable delays nor did the trade complain for the simple reason Customs was able to use advanced technology to accomplish its interdiction mission with minimum interruption of the flow of goods.

BTA also wants to take this opportunity to bring to the Committee's attention a public-private partnership with which it is proud to be involved. The U.S. Customs Service, Immigration and Naturalization Service, Department of State, Food & Drug Administration, Dept. of Agriculture (APHIS), Department of Transportation-Federal Highway Administration, Drug Enforcement Agency, and Environmental Protection Agency, as well as the Embassies of Canada and Mexico are participating with us in an effort to conduct long-term planning for the land border regions, north and south. Observing these efforts are the General Service Administration and the General Accounting Office. In this strategic planning effort, we are looking at a variety of issues revolving around how business is currently conducted at the border by these U.S. federal agencies, including a focus on innovative programs which have worked, if there are changes which should be made, and programs which are operating at one location which address specific problems present at another location. Our purpose in participating together is to see what can be done within the existing legal and regulatory framework to have the agencies join with the trade to envision the future and arrive at what is needed to address the ever-exploding land border trade corridors.

We are organized into four (4) public-private working groups: (1) Compliance and Interdiction—dealing with law enforcement concerns; (2) Infrastructure—addressing traditional brick and mortar concerns such as facilities but also quality of life concerns; (3) Environment; and (4) Trade and Travel Standards—looking at operational concerns. The fifth working group is focused on legislative issues and so is limited to private sector participation.

Following we have included a summary of our legislative agenda presented for fiscal year 2000.

A. LEGISLATIVE AGENDA ITEMS FOR FISCAL YEAR 2000

- (1) U.S. Mexico Border Capital Improvement Initiative
 - \$75,000,000 in fiscal year 2000; \$200,000,000 over four years to fund port-of-entry, non-transportation related infrastructure projects.
 - Resurrects a program initiated by the Congress in the Treasury, Postal Service and General Government Subcommittee in 1987/\$350,000,000+ appropriated to-date.
- (2) Support Senator Phil Gramm's Authorization Legislation to Increase U.S. Customs Service Staffing and Fund Border-Related Inspection and Control Technologies
 - Last year Senator Gramm introduced and had passed his bill to authorize an additional \$347 million for U.S. Customs Service (S.1787). It was not approved in conference.
 - Senator Gramm has reintroduced legislation this year. We are supporting his legislation.
- (3) FDA/U.S. Customs Service Coordination—Legislation of Senator Susan Collins of Maine
 - Senator Collins intends to introduce legislation to enhance cooperation between FDA and Customs on several fronts. We are supporting her efforts.
- (4) Section 110

- BTA continues to strive for a reasonable solution to the Section 110 problem. Negotiations are ongoing. BTA supports the efforts of Senator Abraham, Representative LaFalce and other and the provisions of S.745 and H.R.1250

(5) Off-Dock Non-Narcotic Examinations

- We are seeking a study of this proposal for off-site cargo examination approach through U.S. Customs.

(6) Upgrade of U.S. Customs Service Cargo Release Computer Systems

- Border trade community is very concerned about failure of Customs to upgrade the current ACS system or to reach closure on the new ACE system for cargo release.

- BTA is supporting enhanced appropriated funding to ensure this problem is resolved immediately.

(7) Agriculture Plant and Health Inspection Service (APHIS) Re-Authorization Legislation

- BTA is supporting an agency-backed bill to re-authorize APHIS program in fiscal year 2000.

(8) Environmental Border Initiatives, Fiscal Year 2000

- BTA is supporting (4) Legislative Initiatives for FY 2000—action

(a) EPA to establish environmental benchmarks from which to measure progress in achieving environmental mitigation goals on the Southwest border.

(b) EPA to establish a Southwest Border Environmental Information Clearinghouse within the Southwest Center for Environmental Research and Policy to serve as a “one-stop-shop” for such information on programs, policies and funding sources along the border.

(c) EPA to establish a Southwest Border Center on Environmental Technologies with Texas Regional Institute for Environmental Studies at Sam Houston State University in order to provide a tool to better identify and verify technologies for application on the border.

(d) Department of Energy to carry out a multi-year Southwest Border Region Technology Deployment Initiative for hazardous waste along the border. We are seeking \$2,600,000 in fiscal year 2000 to carry out the first year of this plan.

(9) Southwest Border Region Partnership Act of 1999

- Freestanding bill to authorize formation of a Southwest Border Action Plan for economic development, infrastructure, education, health care and related matters to enhance community development along the Southwest Border.

- Authorizes formation of a Revolving Loan Fund to leverage private resources to fund community development and economic development projects along the border with a “community-based” approach.

On behalf of the BTA, I close by thanking the Committee for the opportunity to participate at today’s hearing and again express our willingness to serve as a resource for the Committee and its staff.

Chairman CRANE. Thank you, Ms. Ross.
Mr. Rogers.

STATEMENT OF JAMES A. ROGERS, CHAIRMAN, INTERNATIONAL COMMITTEE, AIR COURIER CONFERENCE OF AMERICA, FALLS CHURCH, VIRGINIA

Mr. ROGERS. Thank you, Mr. Chairman. It is a pleasure to appear before you today. I am the chairman of the International Committee of the Air Courier Conference of America. ACCA is the trade association representing the air express industry. Its members include large firms with global delivery networks such as DHL, FedEx, TNT and UPS, and small businesses with strong regional delivery networks. Together, our members employ approximately 510,000 American workers who move more than 25 million packages each day, operate 1,200 aircraft, and earn revenues in excess of \$50 billion.

I would like to focus my comments on three of the issues being examined today by the Subcommittee: Customs automation pro-

grams and their funding, the International Trade Data Systems, and Customs user fees.

Almost exactly a year ago, I testified before the Trade Subcommittee that Customs automation efforts had not adequately confronted the express industry and the rest of the trade community. Today I want to commend U.S. Customs for making impressive strides in the last 12 months. Most important in this regard, is Customs' resuscitation of the trade support network, through which it has actively consulted with the trade community on the development of its next generation automated system, ACE.

ACCA believes that Customs is moving in the right direction with ACE. As the Subcommittee knows, the current Customs automation system is in desperate need of replacement. All the witnesses here have testified to that. ACCA is extremely concerned about the impact of future brownouts, and even blackouts, because the express industry more than any other mode of transportation, relies on automation. Without automation, thousands upon thousands of international shipments every day would fail to be processed in time to meet their express delivery deadlines, stranding those who rely on our industry for just-in-time parts, keep manufacturing lines in operation, computers, telecom, and other equipment they need to keep offices running, critical care pharmaceuticals, et cetera.

In short, an interruption in Customs automation programs would devastate our ability to meet our express delivery deadlines, and would harm a significant portion of the U.S. economy. As a woeful illustration of this, you need only think back to the havoc wreaked through the U.S. economy by the UPS strike in 1997.

ACCA is extremely concerned that the Administration's proposed user fees for automation fails to acknowledge the true cost of developing ACE or the fact that ACE must be developed over the next 4 years because the trade community and the U.S. economy simply cannot wait longer than that.

The Administration's proposal also fails to acknowledge that the trading community pays roughly \$800 million annually in merchandise processing fees that should be directed to U.S. Customs operations, including automation programs. ACCA understands Congress' past hesitation to appropriate moneys for Customs automation was fueled by their well-founded reservations about Customs' approach to these problems. However, as we have already testified, Customs has taken giant strides to rectify these problems.

ACCA urges Congress to acknowledge this, as well as the critical importance of this issue to the U.S. economy by appropriating MPF money specifically for the development of ACE over the next 4 years.

With respect to ITDS, ACCA supports the general objectives in theory underlying ITDS, but has numerous concerns about its practical implementation. ACCA is especially concerned with the apparent lack of coordination between Treasury's work on ITDS and Customs' development of its next generation automation systems. These systems seem to be being developed side-by-side rather than together. We may end up with two different systems.

The cost of double reprogramming expense, because Customs and ITDS are unable to agree on a joint approach, would be ridiculous.

ACCA urges the Trade Subcommittee to exercise its oversight authority to prevent the U.S. Government from imposing this needless cost on U.S. industry simply because of the Government's inability to work with itself.

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 express facilities, we agreed years ago to pay reimbursables 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 that they have become a serious burden on the express industry. Customs is expanding even further the scope of services for which it is billing the express industry.

It bears noting that when we first agreed to pay reimbursables years ago, Customs considered express facilities to be a special service, divorced from the mainstream of U.S. commerce, and to a great extent that was true. Today however, the express industry is an integral part of the U.S. economy. Its demise, as we have testified, would harm a wide swath of U.S. commerce.

We believe that a resolution to this issue will probably require legislative action. ACCA expects to be approaching Members of this Committee soon to discuss ways to redress this situation.

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 the 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, Falls Church, Virginia

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 air express delivery industry; its members include large firms with global delivery networks, such as DHL Worldwide Express, Federal Express, TNT Skypack International Express and United Parcel Service, as well as smaller businesses with strong regional delivery networks, such as Global Mail, Midnite Express and Quick International. Together, our members employ approximately 510,000 American workers. Worldwide, ACCA members have operations in over 200 countries; move more than 25 million packages each day; employ more than 800,000 people; operate 1,200 aircraft; and earn revenues in excess of \$50 billion.

The express transportation industry specializes in time-sensitive, reliable transportation services for documents, packages and freight. We are a relatively new and rapidly expanding industry, having evolved during the past 25 years 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 move-

ment 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 10 million other manifest entries on low-value shipments, plus millions of clearances on letters and documents. In short, American business is dependent upon our industry, and we are dependent upon an efficient and effective Customs Service.

I would like to focus my comments on three of the issues being examined today by the Subcommittee: Customs' automation programs and the funding mechanisms for these efforts, the International Trade Data System (ITDS), and Customs' user fees.

IT IS ESSENTIAL TO THE U.S. ECONOMY THAT CUSTOMS' NEXT-GENERATION
AUTOMATION SYSTEMS BE BROUGHT ON-LINE RAPIDLY

Almost exactly one year ago, I testified before the Trade Subcommittee that Customs' automation efforts had not adequately accommodated the needs of the express industry and the rest of the trade community. Today, I want to acknowledge that U.S. Customs has made impressive strides in the last 12 months, and ACCA commends Customs for this. Most important in this regard is Customs' resuscitation of the Trade Support Network, through which it has actively consulted with the express industry and other members of the trade community on the development of its next-generation automated system, the Automated Commercial Environment (ACE). While many important issues with respect to ACE remain to be decided, we are encouraged that Customs appears genuinely committed to working with the trade community to develop its next-generation automation system.

ACCA believes that Customs is moving in the right direction with ACE. If Customs adheres to its current plans, ACE should provide the functionality and enhanced automated abilities—processing of data, remote entry filing, account-based systems, reconciliation, etc.—mandated by the Customs Modernization Act. Customs also plans to incorporate into ACE features that will enable Customs to adjust and upgrade the system as technology developments warrant, rather than having to create entirely new automation programs every few years.

As the Subcommittee knows, the current Customs automation system—the Automated Commercial System, or ACS—is in desperate need of replacement. The system is rapidly nearing the end of its lifespan and is increasingly subject to brownouts. ACCA is extremely concerned about the impact of future brownouts and even blackouts because the express industry, more than any other mode of transportation, relies on automation. We have 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. Without automation, thousands upon thousands of shipments every day would fail to be processed in time to meet their express delivery deadlines, stranding thousands of individuals and small, medium and large businesses who rely on our industry to provide them with the parts and components they need on a just-in-time basis to keep their manufacturing lines in operation; the computers, telecommunications and other equipment they need to keep their offices running; the blueprints they need to keep their construction projects on schedule; the critical-care pharmaceutical and medical devices they need to provide urgent patient care; the wedding gown they need for their marriage ceremony; and, I would venture to say, the next-day documents and packages Congressional offices need to conduct their work every day.

In short, an interruption in Customs' automation programs would devastate our ability to meet our express delivery deadlines and would harm a significant portion of the U.S. economy. As an illustration of this, you need only think back to the havoc wreaked throughout the U.S. economy by the UPS strike in 1997.

THE CLINTON ADMINISTRATION'S PROPOSAL FOR A USER FEE TO FUND AUTOMATION
PROGRAMS IS ILL-CONCEIVED AND ILL-ADVISED

ACCA is extremely concerned that the Clinton Administration budget fails to acknowledge the critical importance to the U.S. economy of maintaining and improving an automated Customs environment. The budget proposes a new user fee to pay for automation, with the expectation that this would generate \$163 million in the next fiscal year. This proposal fails to acknowledge the true cost of developing ACE and also fails to acknowledge the fact that the trading community has been and continues to pay an enormous annual stipend in the form of the merchandise processing fee (MPF) that should be directed to U.S. Customs' operations, including automation programs.

First, with respect to the true cost of ACE development: Customs estimates that the trade portion of ACE will cost roughly \$1.2 billion dollars if the program is developed over four years. The Administration's proposal would therefore only provide approximately half of the money needed for the first year of development. The costs of ACE development will be far greater than \$1.2 billion if the project is stretched over more than four years. Furthermore, given the imminent obsolescence of ACS, the trade community and the U.S. economy simply cannot wait more than four years for development of ACE.

Second, with respect to the trade community's annual contributions to the U.S. Treasury: throughout the 1990s, U.S. importers have paid MPF on most imports into the United States. MPF revenues total about \$800 million annually. When first imposed, the MPF was challenged as being illegal under the GATT; it was determined that the surcharge would be consistent with GATT requirements only if it was directly related to the costs of U.S. Customs' operations. Notwithstanding the subsequent U.S. modifications of the MPF to bring it into GATT compliance and the U.S. assertion that the purpose of the MPF is indeed to offset Customs' operating costs, the fact remains that MPF revenues have not been channeled to U.S. Customs. Instead, they have gone to the general revenue fund of the U.S. Treasury.

The problem, therefore, is not that the money is not there for modernization of Customs' automation systems, it is that the Administration has refused to request and Congress has refused to appropriate MPF monies for this purpose. ACCA understands that Congress' past hesitation in this regard has been fueled by well-founded reservations about Customs' automation efforts. However, as we have already testified, Customs has taken giant strides to rectify these problems. ACCA urges Congress to acknowledge this, as well as the critical importance of this issue to the U.S. economy, by appropriating MPF monies specifically for the development of ACE over the next four years.

DEVELOPMENT OF THE INTERNATIONAL TRADE DATA SYSTEM MUST TAKE PLACE IN COORDINATION WITH CUSTOMS' AUTOMATION PROGRAMS

With respect to the International Trade Data System (ITDS), ACCA supports the general objectives and theory underlying ITDS, i.e., elimination of redundancy in government reporting requirements related to trade, confusion in data requirements, and incompatible data exchange methods. However, we have numerous concerns about the practical implementation of such objectives—for example, with respect to potential delay in express operations and burden on the industry in collecting all the ITDS required data elements. We have held several meetings with the ITDS team to discuss these issues and plan to continue this process.

ACCA is especially concerned with the apparent lack of coordination between Treasury's work on ITDS and Customs' development of its next-generation automation systems. One noteworthy aspect of this applies to exports. The existing automation program for reporting exports—the Automated Export Reporting Program, or AERP—expires this December 31. Customs has announced that it will be replaced by the Automated Export System, or AES. The trade community is now being asked to bear the costs of reprogramming commercial systems for AES, at considerable expense. At the same time, the ITDS team is informing the trade community that it could be required to re-program its systems once again to accommodate the ITDS-based export reporting program as early as 2002. Both U.S. Customs and ITDS officials privately acknowledge that this redundant re-programming would be a waste of private sector resources, yet they also indicate that, because Customs and ITDS are unable to agree on an appropriate joint approach, they fully expect that industry will face this double reprogramming expense. ACCA urges the Trade Subcommittee to exercise its oversight authority to prevent the U.S. government from imposing this needless cost on U.S. industry simply because of the government's inability to work with itself.

THE COST OF REIMBURSABLES TO THE EXPRESS INDUSTRY HAS GROWN OUT OF BALANCE AND THE SYSTEM NEEDS TO BE ALTERED

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 12 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 12 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. Rather, U.S. Customs pays the Postal Service for the privilege of being on-site at its international mail clearing facilities.

Recently, Customs has expanded even further the scope of services for which it is billing the express industry. For example, the express industry fought for several years for a technical correction to the law that would permit Customs to provide additional inspection personnel at our facilities during daytime hours in response to the industry's request, and that provision was finally enacted in 1996 as part of Public Law 104-295. Now, however, Customs has deliberately misinterpreted the provision as allowing it to bill for all daytime services, whether requested or not. Clearly, it was never the intention of the industry or of Congress in enacting this provision to provide a windfall to Customs to bill for services which it routinely provided free of charge in the past and which it continues to provide free of charge to all other members of the transportation industry. Furthermore, Customs has indicated to us that it plans to expand its billing for export-related services, even though there is no legal authority for it to do so.

Reimbursable charges cost the industry close to \$20 million last year—and the bills are mounting rapidly. On top of that, the express industry generated almost \$75 million in MPF in 1998. Since the MPF collected already exceeds the cost of services provided by Customs for express operations, reimbursables represents a hidden tax that is borne by the express industry and that is ultimately paid by U.S. importers.

It bears noting that, when we first agreed to pay reimbursables years ago, Customs considered express facilities to be a special service divorced from the mainstream of U.S. commerce and, to a great extent, that was true. Today, however, the express industry is an integral part of the U.S. economy and its demise, as we have testified, would harm a wide swath of U.S. commerce. In addition, I should also note that the express industry has pioneered automation innovations for Customs that enable Customs to process express shipments far more efficiently than it can for any other mode of transportation, while retaining high rates of compliance.

We believe that a resolution to this issue will probably require legislative action, and ACCA expects to be approaching members of the Ways and Means Committee soon to discuss ways to redress this situation.

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.

Mr. Tobias, what is the status of negotiations concerning the use in El Paso of that very successful drug interdiction approach called Pre-primary roving, which is used everywhere else in the Southwest?

Mr. TOBIAS. The resolution of that is over a year old, Mr. Chairman. It is being used. It has been used.

Chairman CRANE. In El Paso?

Mr. TOBIAS. Yes, Sir. It has been used for a year. There is a final agreement, in place right now. I just checked an hour ago. I called to make sure that I was correct on that. It has been in place for a year, over a year.

Chairman CRANE. Because we had a witness earlier who said that it's been going on for years.

Mr. TOBIAS. Well, I think that witness spoke in error.

Chairman CRANE. Well that is encouraging. I am glad to hear that. OK.

Carol, how will an increase in the passenger processing fee affect your industry?

Ms. HALLETT. Well, obviously the increase will be one more nail in the coffin of not only our industry, but industry in general. The continuous increase of user fees when we have not received an adequate explanation as to how the money is being spent, and particularly in the one instance that I gave you, where you have the Customs Service explaining that it only costs \$3.25 per passenger to process a passenger, and then they want to increase it to \$6.40, is an example of why business is going to have more and more trouble being able to provide the service that is expected of them when you have costs that are increasing rampantly.

We really believe that because we have already been contributing along the years, as has everyone else in business through the merchandise processing fee, that that is the appropriate way in which to be able to establish ACE and to move it forward in a very quick fashion. Four years is a long time, but that nevertheless is the way it should be done.

I certainly heard Mr. Levin today when he said we should be more aggressive on this. We have already been to the Appropriations Committee, Mr. Levin. We will continue to pursue this because we believe it is the right way to go.

Chairman CRANE. Finally, for any member, any or all members of the panel, do you believe from your daily experience with Customs that Customs can effectively plan and manage a program of the magnitude of ACE?

Ms. ROSS. Absolutely. We have seen them do it in all kinds of different circumstances. We have seen them respond to outside pressures and put all kinds of programs in place. Admittedly, this may not be the best of analogies, but Operation Brass Ring the response to the criticism that Customs was not doing enough to interdict drugs. In the span of, I think, a short a period of 4 to 6 weeks, we saw a very successful program put in place using high technology, using the same manpower, and interdicting more drugs.

Chairman CRANE. Has anybody else got a perspective?

Ms. HALLETT. Mr. Chairman, having served as the commissioner of Customs for almost 4 years, I would have to say that the Customs Service does a remarkable job. At the same time, I also feel that it needs to operate even more on a business-like fashion. I think that Commissioner Kelly's proposal to go outside with a private contractor may be on the right target.

When Ed Kloss arrived at Customs Headquarters from the New York Region to take over it—the ACS and the ACE program, they were on the right track. But it's 9 years later, and where are we? If there is an indictment, it is the failure of ACE to succeed, that is what worries me. It is taking too long for something like this to be done. That isn't to say that one of the flaws has not been the lack of funding; but that decision comes directly from the Administration.

I would like to just take 1 minute to say that one of the biggest problems Customs has is that they are part of the Treasury family. What happens is that Treasury, no matter which party is in the White House, dictates how much money Customs will be allocated. Believe me, Treasury and Customs and the other branches in Treasury are all in lockstep. But then you go over to Justice, where you

have INS and DEA and the other agencies, they literally do not pay the same kind of attention to budget controls. So there is a disproportionate amount of adherence to the budget process on the Treasury/Customs side, that does not exist in some other agencies. It is to the disadvantage of the Customs Service in doing a dual role with much of the same functions as the INS, with fewer resources.

Sorry. I had to get that off my chest, but I'll tell you, it is very important for Customs to be treated fairly and equally.

Chairman CRANE. Thank you.

Mr. Levin.

Mr. LEVIN. Mr. Chairman, this has been a long and excellent hearing. We appreciate your patience. Let me just then omit a question and just two quick reflections.

Mr. Tobias, I think it would be good if I might suggest that if you and Mr. Kelly came in and would talk to as many members as would talk to you about labor-management relations. I think there are some, let me put it this way, gaps in information here about what is happening. There are some outstanding questions. But I think it would be helpful so that people don't kind of choose up sides. I think that would be useful. It won't resolve all issues. We will have to face some of them, but I think it would help.

Mr. TOBIAS. I would be pleased to do that, Mr. Levin.

Mr. LEVIN. Mr. Kelly talked about the general State of labor-management relations. You have responded to some questions. I think it would be a good idea if you would do that.

Then let me just say to the three of you, everybody here has testified as to the critical needs for an adequate modern information system. I am afraid you are in a catch-22 situation conceivably. That is, how it is going to be paid for. Your kind of overview of the problem may be totally salient or totally accurate, but it may not be relevant in terms of appropriations this year, if I might say so.

It is hard to know, I mean no one here has come and said that we don't need to fortify the information system, no one. I mean everybody said the opposite. Mr. Zimmer was as categorical. Of course I guess he is getting paid for it, but he was so categorical about the adequacy of what Customs is trying to do. Not the adequacy, but the effort.

Now I mean how are we going to pay for this? We are going to get into the usual tug and pull, right? Appropriations, user fees? You don't like the exclusion of Mexico, Canada and the Caribbean, though they represent a substantial amount of our trade. The spirit of NAFTA is invoked, but we are still going to have to find the money somewhere.

So I think the answer is for everybody to kind of dig in and keep in touch with each other and see how we are going to find the resources, because your concerns, your forebodings, if they were to occur, would have major ramifications through our trade system and through our economy. Right? Or they could. I think we all should be realistic. I mean there is no easy answer to this issue. To simply say a user fee is violative, we'll have to see, or is out of the question, Congress doesn't always abide by that.

So I wish you good luck. I just again want to urge that these efforts be intensified because the wheel has to squeak here. Whether

it picks up appropriations or a user fee, is the second question. But it won't pick up either unless there is a greater understanding, I think, of the urgency of this situation.

Mr. Chairman, I think this has been really an excellent hearing with a lot of good testimony. I wish us well.

Chairman CRANE. Well, I share that view.

Mr. Becerra, before we wrap up here, do you have any questions?

Mr. BECERRA. Yes, Mr. Chairman. I do.

First, let me thank all the panelists for their testimony. Mr. Tobias, maybe I can ask you, and actually I think Congressman Levin, again, has done a good job of touching on some points where maybe it would be good to have individual follow-up as well. But what was the resolution in El Paso?

Mr. TOBIAS. One of the real issues was whether or not there would be three people doing the pre-primary roving. That was sort of the sticking point. We wanted to have three people there for purposes of safety.

Ultimately, we agreed to two, because El Paso is not staffed at the level which would really allow for three. So we finally agreed to two in order to have the pre-primary roving and also have people directed to all lanes.

Mr. BECERRA. How is that working so far?

Mr. TOBIAS. Well, it's working. I mean it is working. You know, it's interesting, last year there was a great deal of discussion at this Committee about bad labor-management relations at a time when everyone at the same time cites Operation Brass Ring, for which we received an award, a national award for our ability to cooperate and collaborate.

I think the record speaks for itself in terms of the success that we have had and the success that we are having now.

Mr. BECERRA. Actually, I think Commissioner Kelly actually testified that relations were in good standing. While he indicated that there were some wrinkles that had to be ironed out between Customs and its employees, he did say he believed that there were good working relationships between the two.

Mr. TOBIAS. That is accurate. Nobody agrees with anybody else all of the time.

Mr. BECERRA. You're kidding.

Mr. TOBIAS. But what is true is that we have created a relationship with the Customs Service which has really allowed us to focus on accomplishing the business of the Customs Service, while at the same time, including the efforts, and ideas of employees in the work place. That has really been the goal of the effort.

Mr. BECERRA. Let me ask you two questions. I would ask you to answer them as quickly as you can. First, is overtime optional for employees or is it if not mandated, close to a requirement in order to have the Customs Agency fulfill its obligations? Second, how common is it for an employee, an inspector, to experience changes in his or her work schedule, on these rotating shifts? Please answer as quickly as you can.

Mr. TOBIAS. Well, overtime is really a mandatory part of the job. Most Customs inspectors and canine enforcement officers are working a minimum of 16-hours of overtime a week. Second, the shifts

change depending on the port. They can change every week or every 2 weeks. But that is sort of the common change in shifts.

Mr. BECERRA. So it is pretty common for any employee, any inspector, to have a different work shift at any given month of the year?

Mr. TOBIAS. For sure. At least in a month. More likely, every 2 weeks. In some places, every week.

Mr. BECERRA. Is there some accommodation made for people who have personal and family obligations?

Mr. TOBIAS. Well, sometimes people can swap out of shifts if there is another person who is available to do the work. But what that means is that the person who is doing the work is doing a double shift to accommodate someone who is swapping.

Mr. BECERRA. Thank you for the responses.

Let me ask a couple of questions with regard to the automation fee. Some of the panelists in the previous panel as well have mentioned that the merchandise processing fee should really be one of the fees that we resort to to try to pay for this automation.

Let me just ask some questions and perhaps we can get some answers into the record later. I understand that this merchandise processing fee raises something over \$800 million. What does it get spent on as far as you know, and what is it supposed to be spent on, as far as you know? I will check with Customs to find out how they respond to those two questions.

Can you think of any other fees that are already imposed on the various industries that should be used to help pay for the automation that perhaps Customs hasn't told us about or identified? It would be nice to know what your sense would be if we don't go forward with automation because one, we don't go forward with the fee, and two, Congress and the Administration don't put it in a budget in an appropriations bill. What then? What do we do about the delays, the brownouts? What is the scenario?

Finally, if I could perhaps ask for a response at this point for this final question. The INS last year, actually beginning January 15 of this year, increased its fees for people who were applying to naturalize. The fee went from \$95 to \$225. The INS saying it needed to charge that to recoup the costs of the service, the user fee. That is what the use would cost. That is about 150 percent increase. It would be nice to hear what the industries say in response to that. On top of the merchandise processing fee and so forth, do you all believe that you are paying the full cost of the service being provided by Customs?

Ms. HALLETT. Mr. Becerra, let me just respond by saying that all agencies of the Government are by and large looking to increase fees, from the FAA to the Customs Service, to INS, across the board. This is part of the problem. I would refer back to my comment about the fact that Customs testified or told us 18 months ago that it only cost them \$3.25 to process each passenger. Even though we have been paying \$5, or I should say collecting \$5 from our passengers, we have never asked for the difference between the \$3.25 and the \$5. Now they want to go to \$6.40. We believe the Congress should at least receive an explanation as to how that money is being spent. That is an example of part of the problem.

I would also say that we have been aggressively opposing the INS fees just as we are these Customs fees. But unfortunately, we are not always successful.

Ms. ROSS. If I could just add to that. Your question is very salient in terms of what is the money being spent on. It is very difficult to say "yes" or "no" in terms of whether we are paying for the whole thing, because nobody is—well, let me back up. The MPF was supposed to pay for Customs' commercial operation. There are some reporting requirements that apparently have never been met in terms of really tying the MPF expenditure to the cost of the operation.

In the absence of those kinds of reports, well, you know, there are statistics, there are statistics, and there are damned lies. You can pretty much take the numbers and make them say whatever you want. So it would be very difficult to really be able to give you a straight answer to that without getting the necessary reports from Customs. But certainly at \$800 million a year, or thereabouts, and enumerable importers saying they are paying more in user fees than they are paying in duties, it is a pretty safe generality to say we are probably not only paying for it, but we have paid for it two or three times over.

Mr. BECERRA. Thank you. Thank you, Mr. Chairman.
[The following information was subsequently received:]

BOARD TRADE ALLIANCE
April 19, 1999

The Honorable Philip Crane
Chairman, House Ways & Means Committee
Subcommittee on Trade
*1104 Longworth House Office Building
Washington, DC. 20515-6354*

Re: FY 2000 Budget

Dear Congressman Crane:

Thank you again for the opportunity accorded the Border Trade Alliance (BTA) to testify at the April 13th hearing before the Subcommittee on Trade regarding the President's FY 2000 budget and the proposed electronic processing fee.

As you know, the President's budget includes a provision authorizing the imposition of a fee on users of the Customs computer system ostensibly to offset the costs of modernizing that system. We see several problems with this approach and appreciate the opportunity to further articulate those concerns.

First, the proposed electronic processing fee is clearly in violation of the North American Free Trade Agreement (NAFTA). NAFTA Article 403 states:

1. Neither Party shall introduce customs user fees with respect to goods originating in the territory of the other Party.

That the electronic processing fee is a user fee is supported by the language of the budget proposal itself which characterizes the method in which the fee will be charged as one based upon usage.

Whether looking at NAFTA Article 403 or Annex 310.1, whether calling the fee a merchandise processing fee or an electronic processing fee, the result is the same. It is a user fee. The clear language of the NAFTA agreement bars the imposition by the U.S. of an electronic processing fee (or any other user fee) on goods which originate in Canada or Mexico. A similar prohibition applies to U.S. goods being imported into either Mexico or Canada.

The same result likely arises in regard to the obligations of the United States under GATT. Article VIII.1. provides:

(a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in subparagraph (a).

Also of interest are the provisions of Article VIII.4.:

The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (e) statistical services;
- (f) documents, documentation and certification;
- (g) analysis and inspection . . .

The Customs computer has many users. For example, one source for balance of trade calculations is the Customs database. Hence, its use could be argued to provide statistical services as defined in Article VIII.4.(e). Likewise, a major purpose of the Customs computer is to certify the accuracy of information used for the purpose of releasing goods and paying duty. A fee for such purposes might well fall within the prohibitions of Article VIII.4.(f) or (g). It is also obvious that the purpose of the electronic processing fee is fiscal in nature. It is part of a budget proposal and is characterized as a means to raise money to pay for modernizing Customs' computer and is assessed based upon usage. As such it would appear to be a tax prohibited by GATT Article VIII.1.

In addition, the electronic processing fee as proposed is to be assessed on all non-government users of the Customs computer. As such, it would be seem the fee is to be assessed against importers as well as exporters. The President's budget does not specify the amount at which the fee is to be set. We raise this lack of detail because of the debacle surrounding the harbor maintenance tax which you may recall was ruled unconstitutional as a tax on exports. *United States vs. United States Shoe Corp.*, 118 S.Ct. 1290 (1998). We see the likelihood of a similar result with the electronic processing fee.

Our concern arises by analogy to the merchandise processing fee (mpf) situation. GATT found the mpf to be acceptable only because the U.S. successfully argued the amount of the mpf was related to the costs it sought to recover—Customs commercial operations. 19 U.S.C. § 58c(4) (in addressing assessment of the mpf fee) provides:

At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives . . . regarding how the fees imposed under subsection (a) . . . should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. . . . The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

The best information we have is that no such reports have been submitted nor has the requisite opportunity for public comment occurred. In other words, in the absence of a similar reporting requirement (and its enforcement), how is the U.S. going to be able to establish the amount of the electronic processing fee which the Secretary of Treasury has yet to set is, in fact, a reasonable one under the circumstances? The way in which the budget proposal is framed imposes no such requirement. Further, the President's proposed budget places no limitations on this user fee other than to state \$13,000,000 is to allotted to the ITDS system and \$150,000,000 is to be reimbursed to the General Fund. In other words, a total of \$163,000,000 must be raised by this user fee regardless of whether than sum bears any rational relationship to the costs associated with non-government use of the system.

Can an electronic processing user fee be established which is able to raise such a sum of money and be GATT compliant if imposed on imports alone? Probably not as GATT requires us to treat our imports and exports similarly. If assessed on imports and exports, is the user fee violative of the U.S. Constitution as a tax on exports? Probably so for the reasons articulated by the Supreme Court in the *U.S. Shoe, supra*, decision.

In round numbers, over the last three (3) years, Customs has collected \$2,486,000,000 in merchandise processing fees (1996—\$751,000,000; 1997—\$831,000,000; and 1998—\$904,000,000). Because the reporting requirement of 19 U.S.C. § 58c(4) has not been met, we do not know how those monies have been expended. We do not know if those sums approximate the cost of Customs commercial operations as they have been taken into the general fund rather than allocated as statutorily mandated.

There are special Customs fees currently imposed on a variety of users including commercial vessels, trucks, rail cars, private aircraft and vessels, passengers, mail,

customs broker permits, and barge and bulk carriers. There are a plethora of additional user fees imposed on such industries as beef, pork, honey, cotton, pecans, potato, and mushroom importers. These user fees are, of course, in addition to the mpf which is currently set at 0.21% ad valorem, with a minimum of \$21.00 and a maximum of \$485.00.

In addition, the harbor maintenance tax continues to be assessed on all imports. 26 U.S.C. § 4461(b) sets this tax at 0.125% ad valorem. Since neither a minimum nor a maximum is imposed, A \$1.3 billion surplus has arisen. In reaching its decision in the *U.S. Shoe case, supra*, one point made by each court in turn was the tax is collected but not spent in proportion to where it is collected. It also continues to be collected while the account has a huge surplus. In other words, the tax bears no rational relationship to the costs on which it is intended to be spent, nor does it fairly compensate the government for the expenditures it incurs in keeping the nation's harbors and waterways modernized. What is to prevent the electronic processing fee from a similar fate?

The final question posed was if not ACE, then what? It is clear a more modern computer system is needed if Customs is to meet the ever growing demands of international trade. We do not have an opinion as to whether ACE is the answer, whether it should be ITDS in a revised fashion or whether some other system is more appropriate. We think that decision is better made by the experts in Customs and Treasury in consultation with Congress and the Administration. We can say we are intrigued by the idea behind ITDS—that there is one place where all the necessary data is inputted and that the required data elements are reduced. However, our understanding is ITDS does *not* reduce the data elements but rather increases them. Further, ITDS does not duplicate the function of the Customs computer—the release of goods. ITDS would appear to simply funnel certain required information to Customs while serving as a data input central point for all the government agencies which chose to tie into it. With that idea in mind and because of the impending demise of ACS, we again urge that as much appropriated funding as possible be quickly dispatched to allow Customs to continue to support the functionality of ACS while the decision regarding its replacement is considered, decided and funded.

As a last comment, we would like to take this opportunity to amend our written testimony to include the Federal Highway Administration, Dept. of Transportation as one of the government agencies participating in the Strategic Planning Working Group mentioned at the end of that testimony. Please excuse the inadvertent omission.

If we can provide any further information, please feel free to contact us. I can be reached at: S.K. Ross & Assoc., P.C., 5777 W. Century Blvd., Suite 520, Los Angeles, CA 90045-5659; 310-410-4414; Fax 310-410-1017; e-mail—skross@skralaw.com

Your continuing courtesies and cooperation are appreciated.

Very truly yours,

SUSAN KOHN ROSS
Chair, Ports of Entry Committee
Member, Board of Directors

Chairman CRANE. Well again, let me express appreciation to all of you folks for your participation. We look forward to a continuing working relationship with you. With that, the Committee stands adjourned.

[Whereupon, at 3:34 p.m., the hearing was adjourned.]

[Submissions for the Record follow:]

Statement of the American Iron and Steel Institute

The American Iron and Steel Institute (AISI) submits this testimony on behalf of its U.S. member companies who together account for approximately two-thirds of the raw steel produced annually in the United States.

AISI has maintained a strong working partnership with the U.S. Customs Service since the mid-1960s. AISI's Customs Liaison Subgroup is an especially active unit of our U.S. producers' Trade Committee. We meet regularly with headquarters and field personnel in Customs' Offices of Strategic Trade and Field Operations. We also conduct an ongoing series of seminars for Customs personnel to help officials of the U.S. Customs Service better understand how to properly identify and classify steel mill products. In addition, we provide a network of technical and commercial experts to help answer questions from Customs on an as-needed basis. As a result of these

activities, AISI has a thorough understanding of Customs' responsibilities and capabilities in the enforcement, classification, processing and facilitation of steel trade. In this regard, we offer the following comments on budget-related Customs issues for FY 2000 and 2001.

AUTOMATED COMMERCIAL ENVIRONMENT (ACE) MODERNIZATION AT CUSTOMS

There is an urgent need to fund and implement Customs' computer and software capabilities, through the proposed new ACE system, *now*. The weaknesses and inadequacies of the current Automated Commercial System (ACS) have been well documented. Virtually everyone agrees that the ACS is headed toward near-term failure, possibly within a year or less. AISI therefore strongly supports the immediate and rapid funding and development of a comprehensive, flexible and durable ACE, through the general appropriations process. At the same time, we remain opposed to the enactment of various special fees as a means of funding ACE.

Failure to develop and implement ACE in a timely manner could invite a trade disaster for the United States. Failure of the ACS would probably not cause U.S. imports to slow. Rather, the most likely result of any massive failure of Customs' current computer capability would be to prompt political pressure from importers that could instead result in a relaxation of Customs' vigilance, thus opening the floodgates to imports *without any ability to allow proper enforcement* to ensure that these imports comply fully with United States' and Customs' rules, regulations and laws.

It is not in the interest of the U.S. economy or U.S. industry to allow the ACS to fail, because the resulting flood of imports would almost certainly include a significant amount of unfairly traded and even fraudulent product that would cause substantial harm to U.S. producer and consumer interests alike. Moreover, any benefit to U.S. importers from such a breakdown in Customs' computer capability would be short-lived, while the injury to competing manufacturers in the United States would be *long term*.

STEEL IMPORT MONITORING AND NOTIFICATION SYSTEM

Calendar years 1997 and 1998 were the two highest steel import years on record but, in 1998, the United States imported a record 41.5 million net tons (NT), exceeding the previous record tonnage of 1997 by over 10 million NT—or 33 percent. What occurred in the U.S. steel market in 1998 was a *supply-driven crisis* caused by unprecedented levels of unfairly traded imports. In 1998, the U.S. steel trade deficit was a whopping \$11.7 billion—or nearly 7 percent of the total record U.S. trade deficit last year. In 1998, the 8 months April–November were *the 8 highest individual monthly totals for steel imports in U.S. history*. With our docks and warehouses full to the brim with imports and with U.S. steel inventories at all-time levels, this record surge of steel imports was a cause of serious injury to U.S. steel companies and employees, including layoffs, short work weeks, severe price depression, production cuts and lost orders.

Unfortunately, *America's steel trade crisis is not over*. We believe it's important to put the numbers into proper context. What we've seen is just a couple of months of lower imports overall since November and a modest, halting improvement in market conditions in some steel product lines. Meanwhile, expectations are that, when first quarter 1999 financial results are released, the vast majority of U.S. steel companies will report either losses or sharply reduced profits compared to first quarter 1998. In addition, in certain product lines such as plate and special quality bar, both orders and prices remain extremely depressed. Accordingly, it is very premature to claim that this crisis is over. It is not over because:

1. severe economic difficulties abroad continue, and there remains enormous excess capacity offshore;
2. steel inventories in the United States remain at record levels;
3. the large, open U.S. market continues to be especially vulnerable;
4. America's steel companies and employees continue to suffer injury;
5. steel producers have not recovered from the serious injury caused by record imports in 1998;
6. imports of products that are temporarily down are down because of trade cases;
7. fair pricing in these products has not been restored;
8. concern is growing about import source and product switching;
9. imports of other products not subject to investigation are increasing; and
10. imports overall, even at an annual 25–30 million NT rate, are still very high and imports from many countries remain at historically high levels.

On the subject of import source and product switching, it is important to stress, first of all, that the imported steel share of the U.S. market remains *well above* lev-

els in recent years, even though import volumes have declined since November 1998. Looked at on a monthly basis, while the import market share has come down since its peak in November 1998—primarily due to trade cases—it also remains well above levels in recent years. In fact, aside from the current crisis period, the January 1999 import share of 27.8 percent was *higher than all but 2 months going back all the way to 1994*.

In addition, imports of many products from many countries continue to increase. For example:

- imports of hot rolled flat products are continuing to surge from China, Indonesia and other countries not covered by unfair trade cases;
 - imports of cold rolled sheet from Brazil have increased sharply after cases were filed against hot rolled sheet in September 1998;
 - imports of hot-dipped galvanized steel products have increased in recent months;
 - imports of rail steel products have surged significantly since November 1998;
- and
- imports of tin mill products have also surged significantly since the end of 1998.

It is therefore clear that (1) America's steel import problem is not limited to a single product or 2 or 3 offshore suppliers and (2) there must be more forceful action to address the ongoing steel trade crisis in the United States.

On behalf of our U.S. member companies, AISI supports an *effective, global solution* to the steel trade crisis in the United States. As a part of any such solution, it is imperative that the United States government and U.S. steel industry have access to the most up-to-date information possible on potentially disruptive and unfairly traded steel imports. Therefore, AISI continues to support strongly legislation to develop and implement a U.S. steel import monitoring and notification system capable of providing as near as possible "real-time" data on steel imports.

An effective steel import monitoring and notification system would require that an electronic notice of importation accompany each import entry. Steel import notices would be accumulated, updated and published weekly in summary form on an Internet web site. Such data would provide the information needed for the U.S. government and steel industry to assess the steel import situation in near-real-time. This would enable U.S. policy makers to anticipate trade problems before they become crises and enable U.S. steel producers to respond as early as possible to potential disruptive and unfair trade.

America's NAFTA partners Canada and Mexico already employ steel import monitoring and notification programs that provide, as close as possible, real-time data. The U.S. system that is being proposed would be modeled on the Canadian system. In Canada, the steel import monitoring and permit system is administered outside of Customs, and does not appear to present a burden to Canada's Customs Service. Canadian Customs does, however, have a modern automated computer system in place. We therefore recommend including a steel import monitoring and notification program in the development of ACE, to ensure both compatibility and efficiency.

Most importantly, the proposed U.S. steel import monitoring and notification system would not constitute a nontariff barrier to trade. Under the automatic notification system that is being proposed, (1) steel import notice applications could not be refused, (2) any nominal fee would not be an economic burden and (3) import entries would not be delayed. Again, Canada presents a good example. In Canada, record steel imports occurred in 1998 in spite of that country's steel import monitoring and permit program.

Based on the experience in Canada, a similar U.S. steel import monitoring and notification system should not pose either a budgetary or a human resource burden on the U.S. Customs Service. It is important to AISI and our U.S. members that Customs resources not be diverted from current enforcement efforts. As in Canada, we believe that a small fee for each steel import notice application could substantially fund a similar system in the United States. If, however, the nominal fee imposed on steel import notice applications were to prove inadequate to cover all necessary resources to implement and maintain this program, both within and outside of Customs, we would support additional funding through general appropriations.

The U.S. members of the American Iron and Steel Institute are grateful for this opportunity to express our views on budget authorizations for the U.S. Customs Service and other customs issues.

Statement of the American Textile Manufacturers Institute

This statement is submitted by the American Textile Manufacturers Institute (ATMI), the national association of the domestic textile mill products industry, in response to the Subcommittee on Trade's March 29, 1999 advisory inviting comments on U.S. Customs Service budget authorizations for FY 2000 and 2001.

It would be difficult to understate the importance of the Customs Service, the oldest federal agency, to the United States' national well being. The Customs Service is the second largest producer of revenue for the federal government (after the Internal Revenue Service) and guards our borders against the entry of dangerous, illegal and smuggled goods, while insuring that a bewildering array of laws and regulations is adhered to. With over 200 ports-of-entry to administer, nearly 20 million import entries to process annually, representing a value of over \$900 billion, and \$18 billion in duties to collect, Customs' task is a daunting one.

As the volume of imports has soared during the last few years, Customs' ability to efficiently process that value has diminished. This is acknowledged by Customs. Furthermore, as the volume of imports continues to grow, the problem will only get worse and will assume crisis proportions in the not too distant future. The reason for this is well-known: the Customs computer system used to process and record import entries is hopelessly antiquated and simply unequal to the task. To address the problem, Customs proposes to retire its current system and the architecture on which it runs, the Automated Commercial System (ACS), and replace it with a new system, the Automated Commercial Environment (ACE.) While everyone concerned agrees that this is a necessary step forward, there is not agreement on how its cost, estimated to be over \$1 billion, should be funded.

Numerous press reports indicate that the "trade community," i.e. importers, their agents, brokers and forwarders are reluctant to fund the changeover to the ACE through an additional assessment on imports. They believe that ACE should be funded out of the overall federal budget, i.e. largely by taxpayers, and the argument used to advance this point of view is that ACE will be good for the overall economy and therefore everyone should pay for it. This is wrong-headed thinking which ignores the incontrovertible fact that the primary beneficiaries of ACE will not be factory workers or farmers or teachers or stockbrokers; the primary beneficiaries will be a . . . importers. (This includes textile mills which import certain of their raw materials and machinery not made in the United States.) Users should pay for it. Drivers pay for highway construction and maintenance through gasoline taxes and tolls; airlines pay for the use of airports through landing fees; ships pay for the use of port facilities. These are user fees; the concept behind them is quite simple: if you use it and benefit from it, you pay for it.

The argument is also advanced that the operations of the Customs Service are already funded by the duties collected. While it is true that the Customs Service collects more in duties than it spends (its budget), the fact is that these revenues go into the general fund and have since 1789. Customs' operations must be funded by congressional appropriation. It is also a fact that the duties collected by the Customs Service during 1998 represented two percent of the value of merchandise imports, the lowest rate in history and hardly an undue burden on those who paid them. Under the Uruguay Round Agreement and other, preferential trade agreements entered into by the United States during the past several years, the volume of U.S. imports has expanded greatly while the tariffs paid on them have been reduced sharply. Both phenomena have proven richly rewarding to importers, so it does not seem unreasonable to require importers to pay a miniscule fee to continue to enjoy these benefits.

It is hard to understand the resistance from most importers about funding the conversion to ACE. If ACE is not funded and the present, outmoded, inefficient ACS is not able to handle future import volumes even "crashes," as many fear it will, who will suffer the greatest economic harm? The question is, of course, rhetorical.

Statement of M. Brian Maher, Chairman, and Steward B. Hauser, President; the Coalition for Customs Modernization, New York, New York

The Coalition for Customs Modernization was created in July 1998 by New York and New Jersey industry leaders to raise regional and national awareness of the critical possibility of a computer breakdown and the need for immediate funding for

a new system to replace the current system. A collapse of this system would affect every segment of the U.S. economy and jeopardize drug interdiction efforts throughout the country as well as the flow of goods and raw materials in and out of the country.

Presently the Automated Commercial System (ACS) Customs computer system is over 14 years old and requires continued funding to maintain its current operation. In the past 14 years international trade has grown exponentially and ACS is handling over 95 per cent of all Customs transactions and is operating at well beyond its design capacity. As a result, the system is subject to failures such as happened last September 14 costing the Government a \$60 million delay in revenue collections. Again, on October 1, the system failed and blocked the flow of \$2.2 billion worth of goods into the national economy. It is evident that a new and larger system is an absolute must and that the current system, ACS, must be funded until the new system Automated Commercial Environment (ACE) is in place.

The above financial impact was the result of just a few hours delay. Should there be a system breakdown of a catastrophic nature, the effect on the nation's industrial base would be even more devastating. Almost every industry in this country relies either directly or indirectly on the importing of raw or finished materials or the export of the products it produces. Every segment of the nation's economy would be affected by a Customs computer failure. The most immediate effects would be on the nation's air and seaports. Passengers would be substantially delayed at airports awaiting Customs clearance. Likewise air cargo shipments, by nature high value and very time sensitive, would also be substantially delayed at the airports. Within a week of a computer failure, ocean cargo necessary to our daily lives and long-term production would sit on vessels and even cargo on those vessels able to divert to Canada or Mexico would fare no better as border crossings would not be able to function. The nation's ports would be clogged with export/import cargo with resultant rail and highway congestion beyond belief. Ships arriving from foreign ports would be unable to neither unload their import cargoes nor would they be able to load their export cargo thus delaying shipping worldwide. To avoid the dire consequences of a Customs computer failure, funding must be provided immediately.

Equally important, a system breakdown will severely handicap crucial drug interdiction efforts. Significant progress has been made in this area; however, a system collapse may open the drug trafficking floodgates. Ultimately, a prolonged disruption of the system would affect the economic well-being, safety, and security of every man, woman and child in the country. To date the crucial national significance of this issue has not received the attention it warrants. The endless rhetoric on funding and technology should cease and in its place a unified public/private partnership should be formed to rapidly address the issue while there is still time to avert this impending crisis.

The \$1.2 billion funding to develop and implement the Automated Commercial Environment (ACE) must be appropriated immediately. Each year U.S. industry pays over \$22 billion in duties to the United States Customs Service to be deposited in the United States Treasury. Importers have been paying user fees for over 10 years for technology improvements, yet these funds have not been disbursed for use by Customs in its operations. Because of the importance of international trade to the nation's economy, trade, security and public health and safety, averting a major Customs computer collapse by immediately funding a new computer system for Customs should be viewed as a critical national priority.

Clearly, the Federal Government has an obligation to ensure that not only is there an adequate system to collect these funds, but also that an impending system breakdown, with catastrophic consequences to the national economy and drug interdiction efforts, be immediately averted.

We respectfully request that you take immediate action to fund this critically important and necessary function of the Federal Government.

Statement of James J. Havelka, KPMG LLP

KPMG's Assessment of U.S. Customs Service efforts associated with Customs Modernization and Automated Commercial Environment (ACE) Cost Estimating

BACKGROUND

Chairman Crane and Members of the subcommittee, I am Jim Havelka, a principal in KPMG LLP's Public Services practice based in our Washington D.C. office. I am the firm's senior representative responsible for our efforts within the U.S. Customs Service. KPMG is providing this Statement of Record as testimony to the Committee on Ways And Means to be used while preparing fiscal year (FY) 2000 and 2001 budget authorizations. KPMG LLP is one of the world's largest and most diversified professional firms, with more than 92,700 professionals in 157 countries and annual revenues in excess of \$10.4 billion. KPMG's Public Services practice, where I am engaged, employs more than 2,300 people and operates in over 90 geographic locations throughout the United States. The Public Services line of business is dedicated to serving the diverse needs of federal, state, and local governments.

Because of the extensive level of experience that KPMG has throughout the public services sector, the U.S. Customs Service has engaged our services under federal contract. We are tasked to provide advisory services to the Assistant Commissioner, Chief Information Officer (CIO) of U.S. Customs Service (Customs) and perform a number of Customs Modernization specific review tasks.

Between November 17, 1998 and continuing through the date of this Statement of Record, we conducted an assessment of the approaches and methodologies used to develop Customs Modernization budget estimates. It is important to emphasize from the onset that KPMG conducted an independent review and not an audit. By its very nature, this review was intended to provide Customs with a "snapshot" look at the progress the Office of Information Technology (OIT) was making with respect to estimating costs associated with modernizing their automated systems.

The scope of KPMG's efforts is limited to the following tasks:

1. Conducting an assessment of the approaches and methodologies used by Customs in developing life cycle costs associated with Customs Modernization.
2. Reviewing and providing comments on the Automated Commercial Environment (ACE) Budget Estimate, dated January 29, 1999, revised February 23, 1999.
3. Reviewing and providing comments on the Automated Commercial Environment (ACE) Cost Benefit Analysis (CBA), dated March 12, 1999.

Again, it is important to note that KPMG did not perform an audit of the estimates nor validate the values presented in the documents or the source data. In all tasks, KPMG was asked to provide an assessment as to the appropriateness, reasonableness, and soundness of Customs efforts. KPMG evaluated available artifacts and interviewed Customs and Contractor personnel associated with the development of Customs Modernization cost estimates. KPMG forwarded gaps and issues identified during our review to Customs. Customs, in turn, has closed, or is currently responding to these gaps and issues. Additionally, KPMG provided recommendations to Customs to assist them in developing a modernization roadmap.

TESTIMONIAL DETAILS

An outside contractor working in conjunction with Customs developed the ACE Budget Estimate. Although the Budget Estimate document is limited to the ACE program, it will become part of a larger series of documents that when completed, will form a roadmap for Customs Modernization. KPMG reviewed the document with the focus of identifying areas that contained inaccuracies, inappropriate methodologies, or where additional analysis might be necessary.

KPMG also reviewed the ACE Budget Estimate document for its overall value to Customs moving forward with their modernization plans. This included reviewing recent General Accounting Office (GAO) reports and evaluating the effectiveness of the document to satisfy or resolve GAO's issues.

Overall Observations

Customs has performed a large amount of work in developing the modernization cost estimates. While some of the information may seem unorganized on the surface and not easily traceable, through information provided during the interviews, we were able to map the detailed components to the rolled-up modernization estimates.

Assessments of the individual components of the Customs Modernization effort that were reviewed during our engagement are as follows:

ACE Application Software Development

Customs, with the support of a Contractor, used reasonable methodologies in developing ACE software development budget estimates. Customs used three different estimating techniques to extrapolate historical data, averaging the results to establish a point estimate. Although there are some minor issues, the three methodologies demonstrated a comprehensive approach by using historical data gained from previous experience as well as accounting for areas of risk. While ACE is in its infancy and discrete functional requirements have not yet been fully defined, we feel Customs has taken appropriate steps in preparing the ACE software estimate.

Automated Commercial System (ACS) Software Maintenance

Customs drew upon an experienced Contractor's estimate and incorporated historical data to develop the ACS Software Maintenance cost estimates. While there may be some areas where an apparent methodology could not be identified and only results were presented, the ACS estimates seem appropriate if the ACE program is fully developed. If ACE is not fully developed, additional costs may be incurred to keep ACS up to date with evolving Trade policies and procedures.

Infrastructure

One of the major cost drivers Customs is planning for is Infrastructure. A majority of this cost area is equipment and telecommunications that are required for both sustaining ACS operations and preparing the operational environment for ACE. As an aggregated cost area, Customs appears to have fully examined the breadth of possible costs. However, due to the Infrastructure being "shared", Customs has had some difficulty in apportioning this cost across the different programs. While there are some elements of the infrastructure yet to be finalized, KPMG feels that Customs estimate, as an aggregate for the infrastructure is appropriate at this time.

ACE Cost-Benefit Analysis

KPMG is currently reviewing the ACE Cost Benefit Analysis. Upon initial review, the document appears to follow a comprehensive approach, which addresses some of the previously mentioned minor issues.

Summary

Customs has had some difficulty in identifying and developing an effective and complete presentation format capable of satisfying a diverse audience. Additionally, Customs does not appear to have adequate personnel resources to effectively plan and manage a program with the magnitude of ACE. However, it does appear Customs has the information building blocks necessary to prepare a comprehensive ACE budget estimate and begin to develop a modernization blueprint for Customs.

KPMG feels that in whole, Customs approach to developing cost estimates are mostly sound and appropriate. The few exceptions should be considered minor and should be reevaluated as the modernization program matures. As an aggregate program, Customs seems to have applied reasonable methodologies to develop thorough modernization cost estimates.

We appreciate the opportunity to provide this Statement of Record as testimony during the House Ways and Means Committee, Subcommittee on Trade hearings relative to budget authorization for Customs.

**Statement of Maritime Exchange for the Delaware River and Bay, Lewis,
Delaware**

The Maritime Exchange for the Delaware River and Bay is a non-profit trade association and represents the interests of approximately 300 businesses which depend upon the economic health of the Delaware River port complex, which encompasses the states of Pennsylvania, New Jersey and Delaware. Established in 1872, the Exchange's mission is to promote and protect Delaware River port commerce.

There are several vehicles we utilize to achieve that mission, foremost among which is our port-wide community information system. In its role as the "electronic information hub," the Exchange operates a comprehensive automation system which tracks ships and barges and their cargoes. This data is provided to the Coast Guard, Immigration Service, USDA, and U.S. Customs. The Maritime Exchange developed its TRACS system, which is certified on the U.S. Customs Automated Commercial

System (ACS) since 1989. Over 40 businesses throughout the tri-state port business community use TRACS to clear cargo electronically with Customs on a daily basis.

The Maritime Exchanges port automation network is as integral a part of our port's infrastructure as are the cranes and warehouses. In total, nearly 200 companies operating at Delaware River ports depend on these systems to make day-to-day operational decisions and for long-term strategic planning purposes. The availability of electronic information has become an increasingly important component of our port community's competitiveness.

As a result, when any one of the components of this network is not functioning properly, it affects not only the performance of our entire system, but also the daily operation of our port.

CUSTOMS AUTOMATION

The delays in Customs ability to process cargo manifests and entry data over the last several months have resulted in significant delays in processing the cargo itself. These delays in turn result in significant costs to our port customers—and to their customers as well. Particularly at Delaware River ports, where one of the key cargoes handled includes time-sensitive perishable fruit products, delays in data processing which keep handlers from moving the goods in a timely manner can indeed result in the complete loss of entire shipments. Someone must absorb that cost. Other costs associated with system-related delays include increased storage expenses, lost time spent in monitoring and communicating—and miscommunicating—status, backups at the terminal when cargo cannot be transferred to an inland carrier, and an inability to meet just in time inventory orders.

According to one of our members, the issue can be very simply stated: in handling general cargoes, each hour is precious and each hour wasted in idle is costly. With perishables such as fruit, each minute is precious. Industry simply cannot afford these continual and ongoing delays.

The Maritime Exchange has long supported federal agency automation initiatives. We worked hard in the early 1990s to support the passage of the Customs Modernization and Informed Compliance Act. Subsequent to its enactment, we have dedicated both financial and human resources to working with Customs and other government agencies to ensure the system meets its users' needs. We have also worked closely with the local offices of Customs, Coast Guard, Immigration, USDA, the Corps of Engineers and others to identify opportunities to streamline operations, promote safety, and facilitate commerce through technology.

We don't believe that anyone at this point is arguing against enhancing the existing ACS. The question now facing us is how will the new system perform?

Shortly after the passage of the Mod Act in late 1993, Customs determined that rather than expend resources improving ACS, a more efficient approach would be to completely redesign a system which would mirror processes, rather than simply automating forms. The Automated Commercial Environment (ACE) would be the means to accomplish this objective. The Maritime Exchange and many other Customs constituents not only approved of this decision but offered to help in the design and development processes. These organizations which came together as the ACE Trade Support Network (TSN), including the Maritime Exchange, have spent, and continue to spend, a great deal of time and energy on this project.

In August of 1998 the ACE team presented a design and cost concept document for the new system to the TSN for review. Consistent with Customs ACS development philosophy, the ACE Team wanted to ensure its industry partners had the ability to comment on the design process and make suggestions for change if appropriate.

This is, however, where the process fell apart. At that time, looking ahead to FY '99 budget appropriations, Customs needed industry to support the proposal. Time, of course, was of the essence. Yet industry was reluctant to provide and communicate that support until Customs answered two key questions: (1) What is the detail behind the cost estimate? and (2) Are all those individual steps necessary—and in that order—to accomplish our goal? It is our understanding Congress has asked the same or similar questions.

Although Customs has been somewhat responsive to our inquiries, the members of the TSN have not yet received all the answers. However, given our past history with Customs, we are confident that they will be satisfactory.

In the interim, however, we've watched the existing system degrade severely and the reality is we cannot afford to wait any longer. Our entire international trade industry is in jeopardy.

Both individually and as a member of the newly-formed Coalition for Customs Automation Funding, the Maritime Exchange strongly supports the U.S. Customs ACE

system and encourages its immediate and full funding, including dollars to keep the existing ACS operational. We do not mean to suggest that Customs should be given free reign over the appropriated dollars; on the contrary, we expect both the federal watchdogs and the private business community to be vigilant in their oversight of Customs' activities. Yet Customs must be allocated the necessary resources to provide service to its primary constituency—the importers, exporters and other cargo carriers and handlers who drive our global marketplace.

The Maritime Exchange does not support the implementation of user fees to support these activities. The U.S. international trade community is already funding Customs activities through the payment of taxes, duties, and fees—including the merchandise processing fee, which has contributed approximately \$800 million to the general treasury over the last 10 years. These funds should be used to fund this critically needed system.

Business has further demonstrated its financial commitment by investing billions of dollars in the development of the systems, such as TRACS, that are used to communicate with the Customs system. By adding a new user fee to fund automation initiatives, the private business community would, in essence, be paying for both halves of a system—through three separate vehicles—that benefits every one of our nation's citizens. This is an unfair burden.

INTERNATIONAL TRADE DATA SYSTEM

Given that the Exchange has gone on record in support of ACE, which includes automation for certain Other Government Agency interfaces, such as USDA, INS, DOT and others, it may appear illogical to also support the ITDS. Yet we do.

It is not necessarily “the” ITDS but “an” ITDS which would be of tremendous benefit to the port business communities throughout our country. It is the concept we wholeheartedly endorse.

With an ITDS, the commercial maritime industry would have the opportunity to take advantage of technologies in a way that will provide demonstrable efficiencies in terms of our providing commercial trade data to the federal government and to our other partners in the transportation chain. As we have learned from our experience in building our own network, centralizing and unifying data processing and distribution—as ITDS seeks to do—significantly saves time and paper costs, reduces errors, and expedites the flow of information. Centralized databases also greatly reduce programming, communications, and technical support costs. And, the ITDS plan to utilize world-wide Internet standards as a communications option is undoubtedly the correct approach.

In short, the current international trade environment demands new logic with regard to data exchange. The existing systems are antiquated and must be replaced. New systems which capitalize on technologies must be implemented.

We are willing to support the existing ITDS as it has been proposed, subject to the following caveats:

- ITDS must work with other agencies who may already be operating/developing systems to ensure the federal government avoids duplicative costs
- ITDS must ensure that all communications between industry and the government are in fact centralized and that there are options; multiple connectivity requirements, as may be necessary under the current plan, are inefficient and unnecessarily expensive.
- ITDS must provide options. Allowing only one file format type or one communications interface does not allow for the unique nature of the various industry business types.
- ITDS must involve industry during the development/implementation process.

SUMMARY

The Maritime Exchange absolutely opposes the development of multiple, redundant federal agency automation systems.

We believe the federal government must keep pace with its industry partners. Many agencies have no electronic interface with the private sector; and for those which do, the existing systems will not meet our business needs going into the next century.

ACE works because Customs abilities and methodologies are proven; we have a system which, while perhaps not complete with regard to the automation of all Customs processes, has served us well since the early 1980s. ACE will encompass the full array of data reporting requirements for Customs.

ITDS works because the individual agency approach can only hamper our ability to make the best use of our resources. Not only does this government insufficiency devalue our own investments, it also greatly hampers our ability to service our cus-

tomers. However, ITDS as proposed is not as comprehensive as it needs to be; the system will not meet the full international trade data reporting requirements.

It is our view that the federal government must take the best components of ACE and ITDS and merge them into one comprehensive U.S. import/export data processing and distribution system.

**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, I thank you for the opportunity to present this statement for the record to the Subcommittee hearing on U.S. Customs Service issues. My name is Karen Sager. I am the President of the National Association of Foreign-Trade Zones.

The NAFTAZ is a nonprofit trade association representing over 700 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 one hundred eighty billion dollars. The total value of merchandise exported from foreign-trade zones is approximately seventeen billion dollars. Over 2,900 firms utilize foreign-trade zones and employment at facilities operating under FTZ status exceeds 367,000. The NAFTAZ provides education and leadership in the use of the FTZ program to generate U.S.-based economic activity by enhancing global competitiveness.

The growth in the number of zone projects throughout the United States and the increased use of those projects by U.S.-based companies is a strong indication of how important participation in the international marketplace has become to the U.S. economy. A key to the success of those endeavors is the ability to move merchandise quickly and cost effectively with a reasonable degree of predictability. Critical to that movement is the processing of merchandise by U.S. Customs.

The Customs Modernization and Informed Compliance Act, commonly referred to as the "Mod Act," was passed in November 1993 to give the U.S. Customs Service the tools that it needed to streamline and automate its commercial operations. There were two major elements to Customs' "modernization" efforts—the revision of the regulations themselves to eliminate obsolete or unnecessary procedures and requirements and the development and implementation of the systems needed to support the revised regulations that now govern the movement of merchandise across U.S. borders.

Customs has made significant progress in rewriting and revising its regulations to incorporate the changes envisioned in the Mod Act. To their credit, Customs has involved the trade community in their efforts in order to develop regulations that address both the needs of Customs to ensure compliance and the needs of trade to be able to move their merchandise smoothly, efficiently and predictably. The trade community has responded with increased compliance and by developing their systems and procedures to address Customs requirements. It is now time for Customs to be given the resources to develop and implement their own systems to realize the full benefits envisioned in the Mod Act. Customs' current system, the Automated Commercial System (ACS) is a 15 year old system that is now operating at 90%+ of its capacity. There have been several instances of system "brownouts" and failures that have impacted the movement of critically needed merchandise to U.S. based production facilities causing production slowdowns with a potential loss of employee earnings. It is only a matter of time before ACS experiences a prolonged shutdown with the potential for a severe negative impact on the U.S. economy.

The U.S. Customs Service has been working with the trade community to develop a replacement system for ACS. Their efforts to date have come under a great deal of criticism principally for a lack of cost accountability and a lack of written plans for development, evaluation, implementation and ongoing monitoring for their proposal. While the NAFTAZ agrees that these weaknesses must be addressed, the international trade community cannot afford to wait much longer for the unveiling of a "perfect" system. Customs' proposed system, the Automated Commercial Environment (ACE), in conjunction with the International Trade Data System (ITDS), successfully addresses many of the processes and procedures needed to implement the full benefits of the Mod Act. Rather than waste all the time, effort and resources expended to date by both Customs and the trade community on the development of ACE, the NAFTAZ urges Congress to support the appropriation and release of the funding required to address the identified weaknesses in ACE so that a new Cus-

toms automation system can be developed and implemented within four years. Oversight by Congress, with continued input from the trade community, should be a condition of the appropriation and release of these funds.

In the President's proposed FY2000 budget, there is a request for a new user fee to fund Customs' automation. The proposed user fee is *in addition to* the current merchandise processing fee (MPF) which was established to offset the cost of commercial operations. We object to this proposal for two reasons. First, the NAFTAZ believes that given the amount of money paid to date in addition to the ongoing payments currently being paid by the importing community through the MPF this fund alone should be more than adequate to cover Customs' cost of automation. More importantly, the underlying basis of this proposed user fee shares the same problems inherent in the current merchandise processing fee assessment.

The current MPF is assessed on an entry by entry basis. Simply put, if Customs processes more entries, more MPF is collected. Customs defines what constitutes an entry. Therefore, if Customs wants to collect more revenue, it can cause more entries to be processed. This becomes a disincentive to the implementation of modernization measures designed to increase productivity and maximize efficiency.

In addition, the MPF as it currently exists lacks cost accountability. The MPF collected is directed to the General Fund rather than being dedicated to the cost of Customs commercial processing. Further, there is no cost-basis accounting system to ensure that there is a correlation between the actual cost of the service and the fee collected. This type of approach to assessing user fees is subject to challenge by members of the World Trade Organization (WTO). Under WTO guidelines, user fees assessed on international goods must be justified by the cost of the services provided for that fee. Since there is no cost accounting system in place, Customs is not only unable to justify any additional user fees, it cannot cost justify the fee that is currently being assessed on importers today.

Within the foreign-trade zone program, we have experienced the effects of this type of user fee assessment first hand. The implementation of a weekly entry procedure for non-manufacturing zones, although deemed an operational success by Customs following a 3-year pilot, has been delayed for two years because it would result in the processing of fewer entries, thus potentially reducing the collection of MPF. The NAFTAZ believes that reducing the frequency of entries processed for the same merchandise from one per shipment to one per week must provide Customs with opportunities to improve its operational efficiency thus decreasing its cost of operation. Because Customs has no cost accounting system in place for its commercial operations, it has not been able to assess the true financial impact of implementing a weekly entry procedure. Therefore, Customs has chosen to forego the potential operational efficiencies afforded by weekly entry simply because individual entries generate more MPF than a weekly entry. This basis for decision making appears to be contrary to the Customs environment envisioned when the Mod Act was passed in 1993. It also gives support to the argument that the MPF is not a user fee dictated by costs but rather a tax placed on imports which is contrary to WTO guidelines.

In summary, the National Association of Foreign-Trade Zones (NAFTZ) urges Congress to appropriate adequate funding to allow the U.S. Customs Service to correct the weaknesses identified in the proposed Automated Commercial Environment (ACE) and to move forward with the final development and implementation of this new system in conjunction with ITDS. We believe that because automation is an integral part of Customs' commercial operations, the merchandise processing fee currently being collected from importers should be used for this funding. The NAFTAZ also believes that the time has come for Congress to reexamine and restructure the basis for the assessment of the merchandise processing fee so that the MPF collected is not dependent upon the number of entries processed by Customs. Instead, it must be based on what Customs needs to effectively fulfill its dual missions of trade facilitation and enforcement within its commercial operations. Until this cost justification is in place, the user fees imposed on imports could be subject to challenge by our trading partners under WTO guidelines as a tax rather than a fee charged for a service provided.

Thank you for the opportunity to comment on these important issues.

**Statement of the Science Applications International Corporation, Vienna,
Virginia**

1. INTRODUCTION

Science Applications International Corporation (SAIC) was engaged by the United States Customs Service (USCS) to conduct a cost benefit/cost effective analysis of trade management system alternatives. The system alternatives under consideration will satisfy legislative requirements and serve the trade by better accommodating the steadily growing volume of entries that cross the nation's borders. For several years SAIC has provided technical support and more recently financial and capital budgeting analysis to the Department of the Treasury and USCS. SAIC is pleased to submit this written testimony which summarizes the preliminary findings of the Automated Commercial Environment (ACE) cost benefit/cost effectiveness analysis conducted for USCS.

SAIC is the nation's largest employee-owned research and engineering company, providing information technology and systems integration products and services to government and commercial customers. SAIC scientists and engineers work to solve complex technical problems in telecommunications, national security, health care, transportation, energy and the environment. With estimated annual revenues in excess of \$4 billion, SAIC and its subsidiaries, including Telcordia Technologies, have more than 35,000 employees at offices in more than 150 cities worldwide. More information about SAIC can be found on the Internet at SAIC (www.saic.com). Information about Telcordia Technologies is available at Telcordia Technologies (www.telcordia.com).

Questions and/or comments regarding this testimony may be directed to Mr. Peter W. Engel at 703-905-6205 or peter.w.engel@cpmx.saic.com.

1.1 Background

USCS modernization and automation initiatives began over fifteen years ago, and since then, the benefits of automation have been overwhelmingly demonstrated. While activity levels at ports of entry have increased threefold over that time period, automated systems have allowed the USCS to accommodate this growth while maintaining steady staffing levels. At the same time, USCS has maintained a high level of compliance and enforcement while providing quality service to the trade community. Over the course of the past decade, pressure on the USCS IT infrastructure has intensified. Increasing demands placed on the current Automated Commercial System (ACS) by USCS, other government agencies, and the trade community have necessitated improvements to system capacity and functionality. ACS is currently operating at over 90% capacity causing serious delays that ripple through Customs and the trade community. However, as the volume of entries expands with a fairly static USCS workforce and a straining IT system, there will likely be some impact on enforcement and regulatory compliance. As a result the USCS is engaged in a vigorous initiative to identify the tool, or tools, that will optimize the Custom Service's ability to ensure a high level of compliance and enforcement while providing quality service to the trade community. The cost benefit/cost effectiveness analysis summarized in this testimony is one part of that USCS initiative.

1.2 Purpose

There is little question that legislative requirements and growing trade volume necessitate a long-term IT solution supported by advanced business processes. This analysis evaluates the question of whether the ACE, or an enhanced ACS, is the most cost-effective long-term solution to meet those legislative and business process requirements.

The financial analysis provides:

- A structured, analytical methodology with a solid framework for future financial analyses;
- A preliminary life-cycle cost estimate for developing the ACE System;
- A preliminary life-cycle cost estimate for developing a Base Case ACS;
- Information regarding the benefits and weaknesses of each I/T alternative; and
- Information regarding the effect of differing deployment schedules on cost and benefits.

2. APPROACH

2.1 General Assumptions

The option of enhancing ACS to meet legislative requirements versus replacing it with a new system presents unique challenges. First, to comply with General Accounting Office (GAO) and U.S. Treasury system development guidelines, the full functionality of the ACS system must be documented and this may require 2 years to accomplish. This documentation period creates costs and delays and, for a period of time, may inhibit USCS's ability to reap benefits from further automation. Second, a reconfigured ACS would be expected to have some cost advantages over ACE to the extent that it could leverage off of an existing infrastructure (i.e., data center). Thus, the principal risk drivers in the analysis are when ACS would achieve legislative conformity and, ACS and ACE software programming costs.

The ACS and ACE alternatives were assumed to have an operational system life cycle of no less than 15 years. For purposes of this analysis, a common number of years no less than 15 plus the development period are required to evaluate each alternative against the enhanced ACS base case. Therefore the period of analysis encompasses 22 years spanning fiscal years 2000 through 2021. It was further assumed that the reconfigured ACS and either of the ACE alternatives will encompass the functionality identified in legislative requirements and intent.

Given these characteristics, a preliminary timing profile has been established for a reconfigured ACS that would process 100% of the transactions with full functionality 9 years following the reconfiguration initiation date. ACS must be reconfigured in order to meet legislative requirements and intent, as well as the reliability and functionality desired by both USCS and the trade community. By comparison, two alternative ACE deployment strategies were considered. The first ACE alternative deploys the technology in 4 years and provides a further 18 years of operational capability (4 Year ACE). The second ACE alternative extends the deployment schedule to 7 years and provides a further 15 years of operational capability (7 Year ACE).

Based on these general assumptions, a reconfigured ACS would functionally operate similar to the ACE alternatives. The exception would be that ACS would retain some elements of a legacy system and, as such, may lack compatibility with advances being made in the trade community and with information technology advances in general.

It is further assumed that software development estimates will contain relatively large risk levels given the magnitude of the project's scope, lifecycle and stage of requirements definition.

This analysis and methodology relies upon Office of Management and Budget (OMB) Circular A-94 guidelines pertaining to the application of cost-effectiveness and cost-benefit analysis.

2.2 Methodology

Two ACE alternatives were compared to an ACS system that has been enhanced to meet legislative requirements and intent. In doing so, alternative systems with identical functionality that comply with statute and regulation are assessed.

In selecting the superior financial investment, a cost effectiveness analysis (CEA) rather than a cost-benefit analysis (CBA) is applied. A cost-effectiveness analysis asks, "What is the least costly approach to attaining a given objective?" Here the stated objective is full conformance with all legislative requirements and program goals. The cost-effectiveness analysis is typically employed when benefits are difficult to quantify and objectives are clearly defined by policy or legislative initiatives. It is also more likely to be employed when there are budget limitations in a public sector environment.

A cost-benefit analysis asks a more broadly defined question: "Which project maximizes the difference between discounted benefits and costs?" The cost-benefit analysis focuses more on broader resource allocation questions when benefits are clearly defined and measurable.

Because all alternatives share a common legislative and business process objective, the comparative basis is one of cost effectiveness. However, differential benefits will accrue to that alternative which first achieves the objective. As a result, this study expands the scope of the cost-effectiveness analysis to identify benefit categories and calculate the marginal benefits of each ACE alternative relative to the reconfigured ACS Base Case. Therefore, for an ACE alternative to be financially attractive either of the ACE alternatives must demonstrate net benefits which exceed the net benefits of a reconfigured ACS. Because ACS is the Base Case, ACE costs

and benefits are stated as negative or positive marginal values, relative to ACS Base Case.

The CEA evaluates three costs categories: Infrastructure; Data Center; and Software Development. Infrastructure costs reflect equipment upgrades and telecommunication charges used at port and Customs Service Center locations throughout the nation. Data Center costs include mainframe upgrades, network management, UNIX upgrades, voice communications, database, server operations and system security expenditures made at the Newington Data Center located in Virginia.

Software development costs typically carry greater estimation risk because code reuse rates and other variables are difficult to gauge, especially for a system in the functional requirements definition stage. As a result, for both ACE alternatives, three separate software estimation techniques are applied: A business complexity analysis; a parametric analysis; and a function point analysis. In the absence of an ACS software reconfiguration estimate the ACE 7-Year software estimate was applied as a proxy to the ACS system. Future analysis will refine the ACS software estimate.

As part of the CEA, the sources of uncertainty surrounding input assumptions were evaluated. In particular, the study provided probability ranges for key input assumptions and probabilistic representations for key outputs, including life-cycle costs. These formed the basis for a risk analysis in which the underlying uncertainty in key inputs was assessed.

3. PRELIMINARY FINDINGS

Preliminary results show common Data Center and infrastructure costs with both ACE alternatives (4-Year ACE and 7-Year ACE) and the ACS Base Case. This is true of most infrastructure costs associated with deploying hardware to ports of entry. The ACS Base Case is less costly in terms of data center applications but also requires some level of documentation and incurs downtime costs that are not present in ACE. Overall, preliminary estimates show ACS Base Case infrastructure costs to be somewhat less than either ACE alternative.

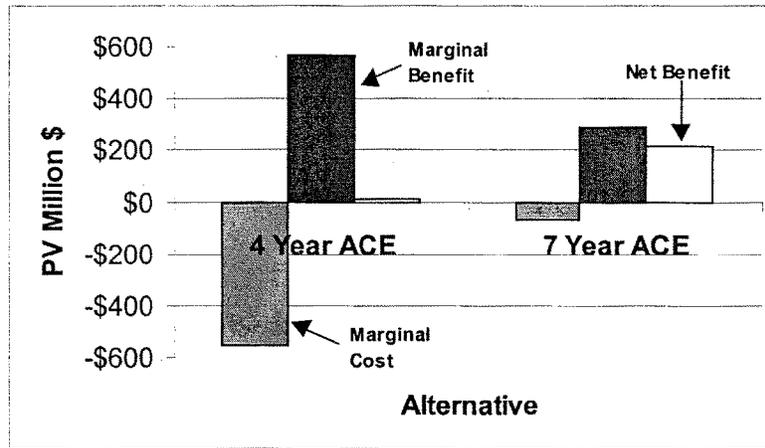
Software development costs are more expensive with the 4-Year ACE alternative than the 7-Year option. This is, in part, attributable to the compressed schedule in which the effort must be accomplished. The 7-Year software estimate was applied to the ACS Base Case as a proxy measure for the effort necessary to make the legacy system conform with legislation and achieve the same functionality inherent in the ACE alternatives.

The preliminary analysis shows very strongly that results are sensitive to the timing of the investment and development decisions. If selected, an ACS redesign solution could delay achieving full functionality by as much as 2 years. This 2-year delay would result in significantly less revenue collection by USCS. Even though the ACS Base Case lifecycle costs are less, the revenue loss would diminish the cost advantage.

The primary sources of uncertainty in this analysis are timing and software programming costs. If ACS documentation results in a two year implementation delay, full functionality would not be achieved for approximately 9 years. In contrast, ACE alternatives would achieve functionality within 4 or 7 years depending upon the alternative.

It is important to note that the CEA is a financial decision tool, not a budget tool. As such, a common time horizon of 22 years is necessary to evaluate both ACE alternatives against the ACS Base Case. Once an alternative is selected, a budget can be formulated for the chosen alternative's development period and 15 year operational life.

The figure below demonstrates that while ACE lifecycle costs exceed those of the ACS Base Case, the ACS documentation delay results in benefits accruing to both ACE alternatives. Preliminary results indicate that over the 22 year analytical timeframe, the 4-Year ACE alternative will cost \$555 million more than the reconfigured ACS Base Case, and the 7-Year ACE alternative will cost \$72 million more. During the same time period, the 4-Year ACE alternative will yield \$567 million more in benefits than the ACS Base Case, while the 7-Year ACE alternative will capture \$286 million more in marginal benefits. When marginal costs are subtracted from marginal benefits, both ACE alternatives show a positive net present value relative to the reconfigured ACS Base Case. The 4-Year ACE alternative has a relative net benefit of \$12 million and the 7-Year ACE alternative a comparative \$214 million net benefit. Note these estimates are preliminary.



Comparative ACE Costs and Benefits Relative to Reconfigured ACS

In addition to the internal financial analysis, SAIC interviewed or reviewed written responses from approximately 35 members of the trade community and identified three principal themes:

1. Customs is part of a larger logistics chain that is being modernized at each stage;
2. The current ACS system should be replaced as soon as possible; and
3. Trade community savings from a new system are difficult to quantify, but are expected to be significant.

The first theme is that importers, brokers, manufacturers, carriers, and insurers view USCS as one part of the overall logistics chain and they want to modernize their systems to ensure that USCS is not an impediment to their business. Many companies are waiting for a new Customs system so they can complete this modernization, while other companies are in the midst of modernizing and need to know how they will link to Customs. The community believes that the way of conducting international trade has changed forever and Customs must become part of the modernized trade process.

The second theme is that the current system must be replaced as soon as possible. The slowdowns and occasional system downtime have been enough to make system users aware of how bad things will be if the system fails completely. Therefore, the trade favors a system that achieves functionality sooner than later.

Finally, the third theme is that the trade community is not able to provide specific estimates of savings because ACE has not been fully defined to allow them to make those estimates. Some functionality that has been articulated, such as remote location filing and periodic entry summary payment, has been enthusiastically endorsed. Those changes are enough for the trade to conclude that there will be significant savings when an alternate system is implemented.

Thus on a preliminary basis, the analysis supports both ACE alternatives and recognizes that the growing ACS system capacity constraints will likely impede the trade community's ability to achieve logistic efficiencies and Customs ability to fully accomplish its mission.

4. GENERAL ACCOUNTING OFFICE COMMENTS

The GAO recently provided feedback pertaining to a financial analysis conducted for USCS prior to SAIC involvement. SAIC, in conjunction with USCS, has and is responding to those suggestions. Namely, sources of risk and uncertainty along with range estimates are included in the financial analysis; a repeatable, sound methodology is established and executed; multiple alternatives are accessed; and more than one software estimation technique is applied. SAIC and Customs are currently conducting an incremental analysis to establish the financial feasibility of the first phase of functional design and development.

CONCLUSION

Increasing trade volumes continue to place pressure on Customs staff and information technology (IT) resources. Over the past 14 years, import trade activity has increased at an average annual rate of 8.28%. ACS is currently operating at over 90% capacity causing serious delays that ripple through Customs and the trade community. Understandably, capacity problems and projections of continued growth in activity levels have caused serious concerns. In response to these concerns, Customs has been intensively investigating the feasibility of the ACE system through ongoing requirements analysis, cost estimation efforts, and system benefits assessments.

Preliminary results indicate that both the 4-Year and 7-Year ACE alternatives show a positive net present value. The principal risk drivers in the analysis are when ACS would achieve legislative conformity and ACS and ACE software programming costs.

Based upon interviews and survey responses, the trade community views Customs as a link in the overall logistics chain that must be modernized. While many companies are waiting for a new Customs system so they can complete their efforts, others are in the process of modernizing but need to know how they will link to a new Customs system. The interviews and responses also indicate that the current ACS system must be replaced as soon as possible given the effects downtimes and system slowdowns have upon commercial activities. The trade community also noted that while savings from a new system are difficult to quantify, they are expected to be significant.

In conclusion, SAIC endorses applied, systematic decision making processes when evaluating information technology investments—especially for mission critical systems of the magnitude and scope considered in the ACE cost benefit/cost effectiveness analysis. SAIC believes the U.S. Customs Service is applying a reasonable approach to evaluating system alternatives. SAIC is proud to support U.S. Customs in its information technology endeavors, and is grateful for the opportunity to submit this independent testimony.

