



**STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

ON

**SUPPORTING ECONOMIC GROWTH AND JOB
CREATION THROUGH CUSTOMS TRADE MODERNIZATION,
FACILITATION AND ENFORCEMENT**

BEFORE THE

**SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES**

MAY 17, 2012

Chairman Brady, Ranking Member McDermott, distinguished members of the Subcommittee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 24,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 331 land, sea and air ports of entry across the United States.

Customs and Border Protection Entry Specialists, Import Specialists, Paralegal Specialists that determine fines, penalties and forfeitures, Customs Auditors and Attorneys and other trade compliance personnel are the frontline of defense against illegal imports and contraband. These employees enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties. They also stem the flow of illegal imports, such as pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency—collecting \$38 billion in duties and fees on imports valued at more than \$2.3 trillion in 2011.

TRADE ENFORCEMENT AND COMPLIANCE STAFFING

When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import duties and ensuring importers fully comply with applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions. Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues. This revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and manpower, devoted to CBP's trade functions

Lack of sufficient focus and resources costs the U.S. Treasury in terms of customs duties and revenue loss and costs American companies in terms of lost business to unlawful imports. According to CBP, "the preliminary revenue gap (estimated uncollected duties due to noncompliance with trade laws) was measured as 0.9 percent of all collections, and totaled \$331 million, the highest since fiscal year 2008." (See CBP's Fiscal Year 2011 Import Trade Trends.)

Because of continuing staffing shortages, inequitable compensation, and lack of mission focus, experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving or have left the agency. Twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the Department of Homeland Security, the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that “the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service...on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.”

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347.) Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied.

CBP satisfied this statutory requirement by freezing the number of maintenance of revenue function positions at the level in effect on the date of creation of the agency. In March of 2003 when CBP stood up, there were 984 Import Specialists on-board. That number was 265 Import Specialist positions less than the total number of Import Specialists in 1998 because a significant reduction in the number of revenue maintenance function positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP stood up. Section 412(b) of the HSA reflected Congress’ concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fear that it would continue and be exacerbated by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the “March FY 2003 Staff On-Board” numbers of revenue maintenance function positions, including such vital trade facilitation and enforcement positions as Entry and Import Specialists, as a ceiling rather than a floor.

CBP’s Resource Optimization Model

In March 2012, CBP released its 2011 Resource Optimization Model (ROM) that proposes even greater reductions in the numbers of on-board CBP Entry and Import Specialists. A provision of the SAFE Port Act, Section 403, required CBP to complete a Resource Allocation Model (RAM), by June 2007, and every 2 years thereafter, to determine optimal staffing for commercial and revenue functions. It directed that the model must comply with the requirements of Section 412(b) of the HSA of 2002. The CBP positions covered by Section 412(b) include Entry Specialists, Import Specialists, Drawback Specialists, National Import Specialists, Fines and Penalty Specialists, Attorneys at the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists.

The rationale for this provision arose from a Government Accountability Office (GAO) report (GAO-05-663) that stated, “as of June 2003, CBP has not increased staffing levels [at the POEs]” and “CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide...” Further, GAO observed that “not identifying optimal staffing levels prevents CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests.”

The first Section 403 RAM, dated July 6, 2007, stated that “CBP has over 8,200 employees that are involved in commercial trade operations. The Model suggests that to carry out these commercial operations and to adequately staff the needs for priority trade functions, the optimal level of staff in FY 2008 would be over 10,000 employees” (page 12 of CBP Report to Congress on Trade Resource Allocation Model.) According to the 2007 RAM, 1,100 Import Specialists would be needed for optimal performance in FY 2010, an increase of 116 over the HSA Floor.

In 2009, CBP renamed the Section 403 SAFE Port Act mandated Report to Congress. Now called the Resource Optimization Model or ROM, the FY 2009 ROM reduced the FY 2010 optimal staffing levels for some revenue maintenance function positions, specifically the Entry and Import Specialist positions. For example, the FY 2009 ROM puts the number of Import Specialist positions needed in FY 2010 at the HSA floor number of 984, rather than 1,100 as stated in the FY 2007 RAM.

The FY 2011 ROM, released nearly one year after its congressionally mandated due date, states that to carry out commercial operations and to adequately staff the projected needs for priority trade functions, **the optimal level of Entry Specialist staff for FY 2013 through 2019 is in the range of 275-279, 134 positions less than the number established by the HSA of 409 positions and the optimal level of Import Specialist staff for FY 2013 through 2019 is in the range of 672-750, 234 positions less than the number established by the HSA of 984 positions.**

NTEU finds these proposed reductions in Entry and Import Specialists staffing numbers problematic because both these positions perform critical support work for 412(b) positions proposed to be significantly increased by CBP in the 2011 ROM.

For example, the 2011 ROM projects future need in the range of 268 to 301 for International Trade Specialists (ITS)--an increase of 194 positions above the HSA threshold of 74. It is the job of the ITS to target anomalies in trade patterns, but it is the job of the Entry Specialists to process targeted entries and Import Specialists act on ITS-identified targets, i.e., gather entries, review, and conduct importer interviews. It makes little sense to increase the number of employees who target trade anomalies while at the same time decreasing the number of those employees that process and investigate the targeted anomalies.

Another example is the proposal to increase Fines, Penalties & Forfeiture (FP&F) Specialists to 549 positions, 346 positions over the HSA threshold of 203, but Import Specialists write up the penalty cases that FP&F Specialists are responsible for resolving. How will the reduction of Import Specialists affect the referral of penalty cases to FP& F Specialists for adjudication?

Centers for Excellence and Expertise

In 2011, CBP established its first two Centers of Excellence and Expertise (CEEs) that ultimately will be responsible for all aspects of cargo processing, from assessment and segmentation of risk, through decisions on admissibility and release, to the liquidation of entries

and handling of protests. **Currently, there are 50 ports of entry staffed with commodity teams that process all types of entries and all types of commodities via the Harmonized Tariff Schedule.** In other words, each of these 50 trade ports has full tariff coverage (see Attachment 1 for list of 50 CBP trade ports and current allocation of Import Specialists per port.)

CBP proposes to establish a total of nine CEEs, commodity-specific offices where CBP “will begin processing entry summaries and subsequent activities (e.g., post-entry amendments, protests) for trusted traders... Within three years, the Centers will be responsible for handling all aspects of the import process for their industry sector... Eventually, all CBP cargo-related activities from manifest review through liquidation and protest, will be handled by the Center for all traders. The exception will be the conduct of non-intrusive inspections and physical cargo examinations, which will continue to take place in the Port where the shipment is physically located... With the initial focus on trusted trader transactions, only a limited number of Import Specialists and Entry Specialists will be required in the Centers. However, as the Centers are stood up, all of these positions will, over time, be removed from the Ports and transferred to the Centers as well.” (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.)

Last October, CBP established the New York CEE that handles pharmaceuticals and chemicals and the Long Beach CEE that is in charge of electronics imports and last week CBP announced the establishment of two new CEEs in Detroit and Houston. The Detroit CEE will be a center for the automobile and aerospace industries, and the Houston CEE will be a center for petroleum, natural gas and minerals. The final five CEEs will be located in Miami (Agriculture and Prepared Products), Chicago (Consumer Products), Atlanta (Textiles, Wearing Apparel and Footwear), Buffalo (Industrial and Manufacturing Materials), and Laredo (Base Metals and Machinery.)

In 2007, Section 402 of the SAFE Port Act established the Office of International Trade. The “assets, functions and personnel of the Office of Strategic Trade” were transferred to the Office of International Trade and the Office of Strategic Trade was abolished. Under the new CEE structure, CBP proposes to transfer National Import Specialists, International Trade Specialists, and National Account Managers from “organizations within” the Office of International Trade to the Office of Field Operations and have them “placed in the Centers as they are stood up. Their current organizations will, over time, be disbanded, with the totality of these employees eventually reporting to their assigned Center.” (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.) NTEU has expressed concern about the independence of National Import Specialists, the regulatory audit division and the Office of Regulations and Rulings and urge that they remain in the Office of International Trade.

NTEU supports the goals of standing up CEEs for known trusted traders such as national unity in decisions, nationwide enforcement efforts and reduction of the number of import transactions currently scattered across various ports of entry. NTEU, however, is not convinced that it is reasonable to assume that there will be adequate efficiencies in operations to justify a reduction in work force. Rather, there may be a need for an increase in the work force as the CEEs free up trade enforcement personnel to focus on higher-risk small and mid-sized traders

and undiscovered violations for which enforcement action should be taken. CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties. These are not the type of transactions expected from low-risk trusted traders whose transactions will be consolidated at the CEEs.

No definitive metrics have yet been developed to ensure that the establishment of CEEs will significantly enhance current levels of trade enforcement, as it will trade facilitation, so it may be premature to use the CEE as an argument to justify reductions in certain trade operations personnel.

NTEU also has concerns about trade compliance personnel having to conduct “virtual” inspections of imported goods for several reasons. It is difficult to recognize details of suspect goods (such as the warp and weave in textiles), hidden trademarks and other counterfeit clues without literally tearing apart the sample. Comments noted by CBP Offices after cargo exam are not viewable in the new Automated Commercial Environment (ACE) system by the Import Specialist reviewing the exam. And, in that the CEE structure is dependent on “virtual” cargo examination and clearance, local CBP port management’s ongoing resistance to granting non-uniformed trade employees’ telework requests to work “virtually”, does not bode well for the CEE virtual inspection model.

Finally, there has been no study of the localized economic impact of transferring all non-uniformed trade employees, including all Import and Entry Specialists, currently assigned to 50 trade ports to nine CEE locations. 41 Ports of Entry will lose trade operations jobs and associated private sector businesses that may leave their current locations to increase proximity to one of the nine commodity-specific CEE locations. Also, it is unclear how much additional travel costs will be incurred by commodity-specific employees needing to potentially cross the country to visit showrooms to examine lines of merchandise or conduct importer interviews and compliance reviews. For example, Los Angeles and New York ports are the largest volume ports for imported textiles, wearing apparel and footwear, but the CEE will be located in Atlanta. (See CBP Centers of Excellence and Expertise; Initial Concept of Operations, Version 1, dated August 29, 2011.)

CBP Career Ladder Pay Increase

NTEU commends the Department for increasing the journeyman pay for CBP Officers and Agriculture Specialists. Many deserving CBP trade and security positions, however, were left out of this pay increase, which has significantly damaged morale.

NTEU strongly supports extending this same career ladder increase to additional CBP positions, including CBP trade operations specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administration duties should also be increased from GS-7 to GS-9. These upgrades are long overdue and would show CBP trade personnel that Congress recognizes the high level of expertise that these employees possess.

Study of Dedicated Funding

In 2011, the total value of all imports into the U.S. was more than \$2.3 trillion. Processing these imports meant handling 23 million entry summaries by CBP Entry Specialists, Import Specialists and support staff. In addition to its security and trade missions, CBP works with over 40 federal agencies to help enforce a wide range of laws from consumer product and food safety, to environmental protection. It is clear that additional CBP commercial operations staffing and training funds are needed. Multiple proposals to increase customs fees are currently being promoted to support a great variety of proposed programs. Security needs, along with important national trade policy goals, require additional financial resources. NTEU encourages the Committee to request a study of the setting, collection and utilization of these customs and user fees. This study should determine the relationship between current fees and monies allocated for CBP services and assess the need for additional fees.

Conclusion

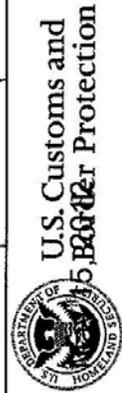
Customs revenues are the second largest source of federal revenues that are collected by the U.S. Government. Congress depends on this revenue source to fund priority programs. NTEU commends the Committee for conducting this hearing to review trade compliance and enforcement operations at CBP.

The more than 24,000 CBP employees represented by the NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade.

Thank you for the opportunity to submit this testimony on their behalf.

Results

Service/Area Port	Current Allocation	New Allocation	Change
Anchorage	7	7	0
Atlanta	13	15	2
Baltimore	7	9	2
Blaine	14	14	0
Boston	15	18	3
Buffalo	50	40	-10
Champlain	28	39	11
Charleston	11	19	8
Charlotte	5	9	4
Chicago	50	37	-13
Cleveland	39	37	-2
Dallas	13	16	3
Denver	2	2	0
Detroit	59	58	-1
Dulles	2	1	-1
El Paso	21	23	2
Great Falls	2	3	1
Hartford	1	0	-1
Honolulu	2	2	0
Houston	15	22	7
Jacksonville	1	4	3
JFK	89	34	-55
Laredo	59	62	3
Long Beach	95	109	14
Los Angeles	37	20	-17



Service/Area Port	Current Allocation	New Allocation	Change
Memphis	18	23	5
Miami	35	56	21
Milwaukee	1	1	0
Minneapolis	2	7	5
Mobile	2	5	3
New Orleans	7	12	5
New York-Newark	90	93	3
Nogales	9	12	3
Norfolk	8	18	10
Otay Mesa	20	19	-1
Pembina	15	18	3
Philadelphia	16	14	-2
Phoenix	2	1	-1
Port Huron	7	12	5
Portland, ME	4	4	0
Portland, OR	5	7	2
Providence	1	1	0
San Francisco	39	27	-12
San Juan	9	4	-5
Savannah	6	19	13
Seattle	15	18	3
St. Albans	8	8	0
St. Louis	2	4	2
Tampa	4	4	0
Virgin Islands	3	0	-3
Total	965	987	+22

Attachment 2

Examples of Virtual vs. Physical Examination of Merchandise Challenges

Assigning a tariff number: Certain handbags that are coated/covered with plastic carry duty rates from 16.7 to 20%. Determining whether a handbag is coated/covered with plastic can be done only by examining and touching the bag. Many importers try to enter the bags at a lower rate of duty by claiming the bags are not coated/covered with plastic. Recently Congress passed special legislation making certain textile shopping bags free of duty. Import Specialists are finding a significant number of importers claiming that their textile bags are eligible for this free duty rate. However, upon physical examination of the bags, Import Specialists find that they are coated/covered with plastic and are not eligible for the free duty rate.

Exclusion Orders: There is currently an exclusion order on plastic containers from China that is based on the construction of the container and how the lid interlocks with the bottom bowl of the container. An examiner has to view the actual sample to see this. In most cases, the container has to be cut in half so one can see if there is any space between the lid and the bowl where it interlocks to see if it is subject to the exclusion order.

Intellectual Property Rights Violations:

Below are some examples of physical examination of goods resulting in the seizing of items that were deemed to be counterfeit:

Tory Burch: Import Specialists examined an unmarked bag and by removing some textile material found a counterfeit Tory Burch trademark.

Timberland: Import Specialists examined a pair of boots. Normally, the Timberland mark is on the sole. By cutting out a piece of plastic, a counterfeit Timberland mark was found underneath.

Chanel: the Chanel mark is interlocking Cs. Importers bring in bags with interlocking Os. By carefully examining the bag, we see where they will be able to remove part of the O and it then becomes a bag with interlocking Cs -- a violation of the Chanel mark.

Nike sneakers: Import Specialists through training from the mark holders and experience are able to determine an item to be counterfeit by examining the retail box and the packaging material for the sneakers. Import Specialists have discovered counterfeits for Air Jordan's this way. Import Specialists also discovered other counterfeit Jordan sneakers by knowing where to cut the sneaker and find the offending mark. Many times you can find counterfeits by smelling the item because they use cheap glue and substandard packaging materials. This must be done by physically examining the item and cannot be determined by viewing photographs.

Otter cell phone cases: Import Specialists have been able to determine counterfeits by examining the packaging. Normally the quality is poor and that can't be determined by a picture.

Other clues that an item is counterfeit that require physical examination: The product feels heavy. This is the case with counterfeit handbags. The cheaper materials often result in the bag feeling heavy. Sometimes bags are heavy because the material that reinforces the outside of the bag is not leather or textiles, but cardboard. Also, zipper quality can really only be determined by physically examining the bag. Following the stitching on an entire bag also helps to determine if a bag is a knock off. You have to follow the stitching throughout the entire bag. No one is going to be able to do this with a photo.

Physically examining the sample also helps Import Specialists to properly appraise a counterfeit item and assign a manufacturer's suggested retail price (MSRP) which is a useful tool for a U.S. Attorney when considering whether to bring criminal charges.