

# AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

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Comments of the American Association of Exporters and Importers on  
"Supporting Economic Growth and Job Creation through Customs Trade Modernization,  
Facilitation, and Enforcement"  
before the House Ways and Means Committee, Subcommittee on Trade

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## A. Introduction and Overview

AAEI appreciates the opportunity to offer these comments on today's hearing on "Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement", held by the House Ways and Means Committee, Subcommittee on Trade.

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

## B. Modernizing ACE and ITDS

For the past several years, AAEI has testified before this Subcommittee about the need for the successful implementation of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS). Since AAEI last testified before this Subcommittee on May 20, 2010, the international trade community's need for U.S. Customs and Border Protection (CBP) to complete these data systems has become urgent for the reasons cited below.

### a. ACE

AAEI has worked with CBP on a number of initiatives (e.g., Centers for Excellence and Expertise, Simplified Entry) to move "trusted traders" (i.e., companies with good internal controls and a history of compliance) into account-based management programs designed to regulate the company, rather than transactions. Regardless of the conceptual and operational progress that we make in developing these programs, the single most significant stumbling block to progress is the current state of the ACE. At the end of the day, all import operations are dependent on the quality of the data that CBP (and other government agencies) has available to make either admissibility decisions on a transaction or an account basis. Conversations between CBP and the international trade community about making fundamental changes on import operations that would truly modernize U.S. customs practices (within the constraints of the current statute) end up as an exercise in figuring out what is possible with the current data system or postponed as a future project under the banner "when ACE is complete."

AAEI urges Congress to exercise strict oversight over the ACE program in two ways: 1) the cost of "operation and maintenance" contracts for the current system; and 2) the procurement proposal for "cargo release" (which will be the foundation of the ACE system) and other programming required to provide needed ACE functionality. The sooner that cargo release and the other needed functionality is completed, the sooner the old system "ACS" may be turned off - we understand that maintaining the current "old" system (i.e., Automated Commercial System or ACS) costs \$140 million per year. We expect those costs to continue unless Congress quickly addresses the funds appropriated for new functionality in ACE. The sooner we can make the transition, the lower costs should be as a result of retiring the old ACS system. It is our understanding that no information technology company will bid on any proposal for less than \$30 million. Due to the high costs of current operation and maintenance, the Appropriations Committee has not allocated enough funds to enable CBP to move forward with procurement for "cargo release."

AAEI's highest legislative priority is enactment of Drawback Simplification. The drawback program was intended to increase U.S. jobs and manufacturing by increasing exports. That intent is even more important today with a sluggish economy and the Administration's goal to increase exports. Further development of ACE is absolutely essential for CBP to do the necessary programming for ACE to handle drawback claims that fulfill the goals of streamlining and simplifying drawback: 1) expanding the pool of U.S. companies filing drawback claims on finished exported goods; and 2) providing CBP with the internal controls necessary for the drawback program to pass muster with the General Accountability Office. We are keenly aware that CBP and the international trade community has lost precious time over the last 5 years without having the statutory framework in place for Drawback Simplification, and we fear further delays will erode the political support necessary for this important customs modernization effort. In short, there is no substitute for Congressional leadership in this matter.

Finally, we remind the Subcommittee that AAEL importer members pay the Merchandise Processing Fee (MPF), a user fee of 0.3463% (raised from 0.21%) assessed on the value of imported merchandise. While the fee is used for "customs modernization" which includes (and is not exclusively for) ACE, we believe that the MPF generates an enormous amount of revenue which is simply funneled into the general revenue fund of taxes collected and subject to authorization and appropriations. This process has proven to be cumbersome and defeats the original purpose of the MPF, which in part, was to provide a continuous revenue stream that would enable CBP to procure, deliver and manage such a large and complex information technology project. Unfortunately, the MPF has become hostage to the political issue of the day - offsetting budget deficits in the 1990's, providing homeland security infrastructure after 9/11, and now, being used as a source of cash in the absence of a federal budget. We would be remiss if we did not advise Congress that our members are weary of paying additional user fees for services (and systems) that the federal government does not deliver to the international trade community.

b. ITDS

In our testimony in 2010 to this Subcommittee, we stated the follows:

The choice for Congress is stark - either fund completion of ACE and ITDS or prepare to spend multiple times that sum on information technology for each federal agency which has responsibility for regulating imported or exported goods. Multiple information technology systems which are not interoperable and require independent data submissions create gaps in intelligence, targeting, and risk profiles for agencies who are now working together at operations centers. Clearly, Congress, CBP and the international trade

community must work together over the next year to get ACE and ITDS back on track.

CBP has developed the ITDS data set and reached out to various government agencies. Although some progress has been made, we are concerned that the United States, once a leader in customs modernization and trade data systems, has fallen behind many developing countries which have state-of-the-art systems making them more competitive in the cost of doing business and lower transaction costs for international trade.

While we recognize that Participating Government Agencies (PGAs) fall into the jurisdiction of other Congressional Committees, AAEI implores the Congress to demand that the U.S. Treasury Department make quick progress in the roll out of ITDS to PGAs. Since the passage of Section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, P.L. 109-347, 120 Stat. 1929 (October 13, 2006), codified at 19 U.S.C. § 1411, requiring federal agencies to participate in ITDS and the OMB Memorandum on "Requiring Agency Use of the International Trade System" (M-07-23) dated September 10, 2007, there are no longer any acceptable excuses as to why further progress on ITDS has not been made.

#### C. Streamlining the Flow of Legitimate Trade through a Risk-Based Approach

AAEI has long advocated for CBP to deploy account-based programs to distinguish between low-risk and high-risk importers. We believe that CBP has made significant progress in "thinking out of the box" in this regard by developing two new pilot programs.

First, CBP has developed Centers for Excellence and Expertise (CEE) to create virtual teams to process the entries of imports in nine industry categories: agriculture and prepared products; automotive and aerospace; base metals and machinery; consumer products; industrial and manufactured materials; information technology and consumer electronics; petroleum, natural gas and minerals; pharmaceuticals, health and chemicals; textile, wearing apparel and footwear. We believe these industry categories make sense by redeploying CBP assets (i.e., its industry knowledge base) to better manage risk while providing more uniformity in the treatment of imported goods. AAEI is proud to have worked on the initial CEE pilot for pharmaceuticals with CBP.

Second, CBP has launched a pilot for Simplified Entry whereby a "trusted trader" could obtain release of the cargo from CBP earlier in the supply chain and filing a single monthly entry summary for all the shipments during the month. AAEI believes that this approach holds great promise to reduce transactional data and paperwork on repeat shipments by importers who are designated as low risk. CBP is to be commended for commencing a pilot to test this idea quickly from which we hope to learn whether it is a viable program later this year.

Additionally, we applaud CBP for moving forward with a Mutual Recognition Decision with the European Union (EU) to facilitate trade among "trusted traders" who are members of the Customs-Trade partnership Against Terrorism (C-TPAT) and Authorized Economic Operator (AEO) programs. We hope that CBP shares with the Subcommittee and the international trade community progress on its pilot for exporters to be covered by C-TPAT to ensure that U.S. exporters receive the benefits of mutual recognition from the EU.

It is our sincere hope that the Subcommittee will be supportive of CBP's efforts in this area and provide any necessary statutory authority required to allow CBP further experimentation with these programs and to roll them out to wider segments of the international trade community.

#### D. Trade Enforcement

AAEI supports CBP's recent enforcement efforts regarding intellectual property rights (IPR). CBP has worked with rights holders with respect to seizures of suspected counterfeit goods, and we believe this is a good development toward reducing the flow of violative goods while protecting American brands.

Additionally, we hope that the Subcommittee understands that progress on ACE and ITDS not only facilitates legitimate, but will reap benefits for trade enforcement as well. Without timely and accurate data about importers' internal controls and the merchandise imported into the United States, CBP will be unable to segment importers into different risk categories and redeploy its resources to high-risk shipments.

Finally, AAEI believes that it is important that the Subcommittee not ignore the important trade enforcement and oversight provided by the U.S. Court of International Trade (CIT) for both the government and importers. We suggest that the Subcommittee incorporate the "United States Court of International Trade Modernization and Trade Facilitation Act" (not introduced) into any Customs Reauthorization legislation that the House Ways and Means Committee plans to release in the 112<sup>th</sup> Congress. Since the CIT has exclusive jurisdiction over trade-related cases, including the provisions of this Act into a Customs Reauthorization bill would fulfill the Subcommittee's goal of enhancing trade facilitation and trade enforcement by:

- fixing a number of anomalies which exists in the current jurisdiction and powers of the CIT that have come to light in case law since the Customs Courts Act of 1980, P.L. 96-417, 94 Stat. 1727 (October 10, 1980);
- aligning the Court's jurisdiction more closely with current agency procedures, notably including the CBP's widespread use of post-entry customs audits; and
- expanding the Court's jurisdiction to include more U.S. customs and international trade statutes.

It is important for the CIT's jurisdiction to reflect modern customs practices and changes in the law enacted by Congress. Therefore, we hope the Subcommittee will consider the important judicial role of the CIT in trade modernization, facilitation, and enforcement.

#### E. Conclusion

In conclusion, we appreciate the opportunity to submit these comments and hope that the House Ways and Means Committee, Subcommittee on Trade carefully considers enacting a new customs law providing a legal framework with expected outcomes that the Congress expects from CBP to achieve these goals. We hope these comments help to reaffirm the importance and impact that customs modernization can have on U.S. companies to generate economic growth for the benefit of American workers in creating and protecting U.S. jobs. AAEI looks forward to working with the Subcommittee on this important issue.