

## **Industry Recommendations to Create a 21<sup>st</sup> Century Customs Regime in the Near and Long-Term**

On behalf of the participants of the April 7<sup>th</sup> industry roundtable (hereinafter “industry”), we would like to thank you for meeting with industry and for your willingness to work with us to increase and improve the dialogue between the government and the private sector. This is critical as we look to improve trade facilitation while maintaining the highest standards for national security initiatives. We look forward to creating an on-going dialogue through the quarterly meetings you proposed between Customs and Border Protection (CBP) and industry. Per your request, participants in the April 7<sup>th</sup> meeting have met to develop short-term recommendations that your agency can implement to show your commitment to working with industry to improve trade facilitation.

We understand and support CBP’s dual mission of securing the Nation’s borders while facilitating legitimate trade and travel. We were mindful of those goals as we developed our recommendations. We support CBP’s efforts to improve border security and consider ourselves a valuable partner in such endeavors. We are hopeful that with your leadership an appropriate balance between national security objectives and the need to facilitate legitimate trade and travel will be restored within the agency. A strong economy and vibrant industrial base are critical components to our overall national security. We look forward to working with you and your team to improve security, strengthen trade enforcement, and to promote trade facilitation.

In our discussions of priorities, we identified more than a few action items. Realizing that action on all items is not plausible in the short-term, we have divided our recommendations into four categories within the purview of CBP highlighting the short-term reforms, but also identifying industry’s broader priorities for the agency. We believe CBP should seek a modern border that enhances security and promotes the competitiveness of the American economy by facilitating the movement and trade of legitimate goods and people through:

- bilateral and multilateral cooperation;
- risk-management;
- balanced policies and transparent application of rules;
- tangible benefits for participation in trusted traveler/trader programs;
- effective allocation of human resources at the border;
- strategic investment in infrastructure; and
- the intelligent use of state-of-the-art technology.

To do so priority must be given to: 1) unresolved and unfinished initiatives at CBP; 2) customs modernization; 3) customs administration; and 4) creation of 21<sup>st</sup> century customs regime.

## I. Movement on Unresolved and Unfinished Initiatives

There are a number of actions CBP could undertake in the short-term. Many of these actions involve resolving outstanding issues before the agency. These action items cut across the three other areas discussed below, but meet the following criteria: they are completely within the jurisdiction of CBP; do not require legislation, increases in funding or new infrastructure (physical or technological) investments; and utilize risk-management principles. Based on those criteria, industry identified the following nine items that CBP can move forward on in the short-term.

1. **Automated Commercial Environment (ACE)/International Trade Data System (ITDS):** Set an implementation timetable for ACE and ITDS and provide the leadership within CBP to deliver the functionalities. One such functionality that would move ITDS forward would be to add Partner Government Agencies (PGA) requirements to the Automated Broker Interface (ABI) data message set.
2. **Evaluate Starting Free and Secure Trade (FAST) lanes further back at border crossing:** Trucking companies continue to face a lack of “true” FAST lanes. FAST lanes should extend further back from the port of entry. Currently, they begin only a few yards prior to arrival at the primary inspection booth. This results in low-risk Customs Trade Partnership Against Terrorism (C-TPAT) carriers being stuck in the same traffic as non-C-TPAT certified carriers. Thus, C-TPAT certified motor carriers with drivers who have undergone FAST background checks are not getting the benefits that were promised for investing in the program. FAST lanes should begin further back on existing roads leading to border crossings.
3. **Formal withdrawal of the proposed change to the First Sale Rule and Rules of Origin NPRM:** In 2008, CBP announced its intention to stop using the First Sale rule and published a Notice of Proposed Rule Making (NPRM) on country of origin determinations. Due to significant concerns raised by industry in opposition to both policies, CBP did not move forward on either for admittedly different reasons. However, the policy changes have not been officially withdrawn. This creates significant uncertainty and anxiety within the trade community. We encourage CBP to formally announce that the First Sale rule will remain in place and the withdrawal of the NPRM on country of origin.
4. **Confirm to the committees of jurisdictions that CBP officers do not have the authority to share identifying information with rights holders and request legislation to provide a fix:** Customs officers were informed in August 2008 that they could potentially be prosecuted for allegedly violating the Trade Secrets Act (18 U.S.C. §1905) and were specifically instructed not to share identifying information with trademark owners. CBP attorneys have stated that legislation is needed to share such information with rights holders. The information that is being withheld from trademark owners is information on the surface of the product (such as serial number, lot number, etc.) or digital information inside the product (such as memory readings)—all information that is available to the buyer in the United States. In the past, CBP officers shared identifying information with the trademark owners to assist in making the genuine/counterfeit determination. We encourage CBP to inform the committees of jurisdiction that rectification of this issue will require legislation.

5. **Empty Trailer Repositioning:** Industry is seeking a minor change in the interpretation of immigration rules to allow foreign drivers to reposition a foreign-based trailer in the United States that did not enter and/or will not leave with the same driver. Such flexibility would greatly improve not only driver and equipment efficiency but also improve fuel consumption and reduce emissions due to unnecessary extra tractor movements. CBP should provide such added flexibility to low-risk motor carriers that are members of the C-TPAT program as an added benefit to those carriers that have invested to participate in C-TPAT and/or PIP. Such treatment would be reciprocal in the United States, Mexico, and Canada.
6. **Increase the values for *de minimis* and informal entry shipments:** CBP should exercise its authority to increase the current values for *de minimis* and informal entry shipments and make additional changes to simplify the entry process. Raising these limits, which have not been changed in over 10 years, would particularly facilitate trade for small and medium enterprises and allow CBP to focus resources on higher value shipments where the risk of a commercial violation is more significant. Security is not affected by this proposal, as manifest information on all shipments, regardless of value, is analyzed for security threats and subject to CBP risk assessment processes prior to arrival. It is our understanding that the Office of International Trade currently is drafting a NPRM to effect the required changes. We request that CBP accelerate the drafting and intra-governmental approval process for the NPRM, its publication in the Federal Register, and implementation of the changes.
7. **Modernize the In-Bond Process:** CBP has been contemplating changes to the in-bond system to streamline and modernize this critical process, but has not implemented changes within the Automated Manifest System. The Commercial Operations Advisory Committee (COAC) has provided inputs, and CBP has held discussions with several trade groups, as well as consultations with OMB and other agencies, to develop the desired changes to make the in-bond process more efficient for both the private sector and the government. The revisions will include enhancements to CBP systems that will allow for electronic in-bonds, approvals for diversion of freight to new destinations when required, and other changes that will reduce the quantity of paper and bring the process into the 21st century. We are requesting acceleration of the publication of the NPRM on the in-bond revisions, rapid consideration of the comments received, and timely implementation of the new automation and procedures.
8. **Inspections at the Port of Entry:** For some time industry and CBP have been discussing the issue of conducting non-security inspections at the port of entry, usually an inland hub, as opposed to the first port of arrival. Aircraft often touchdown briefly at airports like Miami and Newark, where a small number of shipments may be offloaded, before proceeding to an inland port where the majority of the shipments are entered and cleared. In the CBP targeting process, the first port of arrival sometimes designates shipments for inspection which are not offloaded until the plane reaches the inland port. This can result in both ports designating the shipment for an inspection, or a requirement to return the shipment from the inland port to the first port, which causes long delays in delivery. The shipments in question do not present a security risk and are being inspected for other reasons. The shipments move inland in-bond, remain on the aircraft, and are always under the control of the carrier. We understand a directive has been drafted and is under review that would issue guidance to the ports to ensure non-security inspections are conducted at the port where the shipment will normally be offloaded from the aircraft. We are requesting that CBP accelerate final approval of this directive.

9. **Carefully consider the comments and suggestions submitted last June on the Importer Security Filing (ISF):** Before finalizing ISF, or as it is better known 10+2, CBP should carefully consider the comments filed by industry during the structured review and consider any adjustments to the program that could reduce the burden on industry.

## **II. Customs Modernization**

Inefficient, unpredictable, and unclear customs procedures and practices contribute to unnecessary financial costs and delays for exports and imports. CBP should continue to implement protocols and programs aimed at modernizing customs procedures. Customs modernization facilitates trade by speeding up the clearance process through the use of information technology and the reduction and simplification of customs documentation and procedures. Specifically, CBP needs to accelerate the implementation of ACE and ITDS, which provide real-time trade data to both the government (enhancing compliance and enforcement) and the trade (enhancing clearance). With the expected deployment of sea and rail manifest in ACE during the next year, the air cargo environment will be the only mode without ACE manifest, and we encourage you to accelerate development of this much needed capability. Modernizing CBPs automation systems will also benefit commercial enforcement effort by CBP in monitoring and preventing the importation of counterfeit, unsafe, or other products subject to certain conditions for admissibility.

## **III. Customs Administration**

Improving efficiencies and reducing redundancies within CBP are critical for improving operations, focusing limited resources on high-risk areas, lowering transaction costs, and better facilitating trade. Within this area, we believe it is important for CBP to work with industry to improve transparency, predictability, and outreach. Industry has identified several actions CBP could take to reduce systemic inefficiencies and improve overall operations. Some of the recommendations are simple while others represent larger shifts in policies and practices.

CBP should:

1. Put in place goals and metrics to drive border agency behavior and priorities that demonstrate tangible commercial benefits to program participants in trusted shipper programs.
2. Eliminate the customs seal requirement in favor of the comparable vetting process required by the Transportation Security Administration (TSA) Security Identification Display Area program (SIDA).
3. Elevate the internal status of the low level interagency team evaluating ways to utilize trusted importer programs across multiple agencies.
4. Evaluate offering the C-TPAT seminar three times a year - once each on the West Coast, in the Midwest, and on the East Coast. Holding the seminar once a year only allows about 1,200 of the over 9,000 C-TPAT participants to attend and benefit from the seminar. A larger segment of the C-TPAT population should be afforded the opportunity to attend the seminar. If it is not feasible to hold multiple conferences, utilize other technologies such as webinars to reach a larger number of C-TPAT members.

5. Improve the Post Incident Analysis program so that a company is not automatically suspended from C-TPAT for a single security incident unless an investigation demonstrates a “systemic security” problem and a lack of proper security measures by the company.
6. Reduce the backlog of rulings pending at the Office of Rulings and Regulations (ORR). Our understanding is that the Assistant Commissioner of International Trade is reviewing every ruling before being issued and published by CBP. We believe this level of scrutiny is not necessary for all rulings and regulations.
7. Establish uniform practices for account-based management and account managers so that they can better understand our businesses and our commodities and have some control over the import specialists and the ports.
8. Increase training and education of CBP officers and specialists on foreign trade zone regulations and free trade agreements.
9. Improve mitigation guidelines for highly compliant imports (i.e., C-TPAT tier 3 and Importer Self Assessment (ISA)) for all penalty and enforcement actions.
10. Remove the requirement for a carrier that is a member of the C-TPAT or Partners in Protection (PIP) programs to submit full commercial information for domestic shipments that are part of an in transit movement and require only a limited data set for goods moving in transit.
11. Expand C-TPAT membership eligibility to include other members involved in global supply chains.

#### **IV. Long-Term Strategy for Trade Facilitation**

Lastly, we believe overarching policy changes are needed to create a 21<sup>st</sup> century customs regime. A 21<sup>st</sup> century regime must be based on risk-management principles to better assess threats, differentiate between low and high-risk importers, utilize technology, partner with industry, modernize entry processes, enhance multilateral cooperation and engagement, and lower transactions cost. To improve facilitation and create a modern customs administration that is in-sync with the realities of globalization and supply chains, industry believes CBP should expand account-based management, create new trusted importer programs and benefits for existing programs, harmonize global security initiatives and expand mutual recognition, improve coordination with industry and other agencies, and create new programs for small and medium-sized enterprises (SMEs) and less than truck load shippers (LTL).

1. **Account-based management:** In May 2009, the COAC presented a report to CBP on expanding account-based processing. At the time, CBP committed to reviewing the document and reporting back to the COAC on the next steps. However since last May, few steps have been taken on the COAC report. Account-based processing was conceived and implemented on a smaller scale by CBP in the 1990s to improve commercial compliance, government efficiencies, and trade facilitation. The COAC paper lays a foundation for expanding the current account-based management system to all commercial, product safety, and security operations. Expanding the program would result in significant benefits for both CBP and industry by creating robust government-business partnerships, increasing risk-based management, facilitating trade, and improving compliance. We encourage CBP to move forward on the COAC proposal.
2. **Expand trusted importer programs and create new tangible and measurable benefits for existing and new programs:** Importers, brokers, and carriers have signed up for numerous programs over the last eight years with the promise of benefits and recognition that they are low-risk and trusted only to find that the benefits are elusive and that in many cases the trustworthy companies are treated in the same way as unknown companies. If CBP and industry are to be partners against terrorism, CBP needs to recognize the lengths participants go to secure their supply chains in tangible means. For existing programs (e.g, C-TPAT, FAST, ISA), CBP should work with industry to develop tangible and measurable benefits for participants. In addition to developing “real” benefits for existing programs, CBP should also develop new programs to facilitate trade across the multiple agencies with hold and release authority and implement new programs that move away from a transaction by transaction and program by program approach to security, safety, and enforcement.
3. **Mutual recognition and greater global collaboration and harmonization:** CBP should promote and adopt a more global approach to supply chain security by seeking greater harmonization of trusted trader programs among major trading partners and minimizing unilateral programs. U.S. companies operate in multiple countries and it is important that their investment in the United States’ programs be recognized by other governments. Thus, the U.S. government should establish full mutual recognition between the Canadian PIP program, the European Authorized Economic Operator (AEO) and C-TPAT, and work to do the same with other major trading partners. Otherwise, U.S. companies will be forced to waste time, corporate resources, and money applying for AEO status in every country they operate.
4. **Revise programs to facilitate participation by small and medium-sized companies and to recognize LTL shipments:** CBP should work with SMEs to develop new programs to recognize the steps they have taken to secure their supply chains. The facilitation programs currently operated by CBP are primarily available to or utilized by large companies. More emphasis should be placed on creating trusted trader programs for SMEs and the carriers they use to move their goods. Specifically, we believe CBP should establish a pilot for a trusted shipper program for less-than-truck load and non-asset third party logistics providers, a trusted shipper program to provide LTL carriers access to the FAST lanes by using the one hour pre arrival notice to determine risk levels associated with the shipment before it arrives at the border and a trusted shipper program for small and medium-size businesses that cannot justify the expense of the current trusted shipper programs.

Thank you for the opportunity to share our priorities with you. We recognize that we have laid out a long list of initiatives or changes we would like to see made/implemented at CBP. We made sure to provide a short list of “low-hanging” fruit that CBP can address in the near-term, but also felt it was necessary to identify other key policies that are critical for creating a 21<sup>st</sup> century customs regime. We believe, if implemented, our recommendations will enhance border security, improve enforcement, and protect the economic security of the United States. We look forward to quarterly meetings as you proposed in the April 7<sup>th</sup> meeting. At the next meeting, we are more than willing to discuss in detail any of the proposals included in this document.

Air Transport Association of America, Inc.  
American Association of Exporter and Importers  
American Trucking Association  
Business Alliance for Customs Modernization  
Border Trade Alliance  
Canadian/American Border Trade Alliance  
Canadian Chamber of Commerce  
Canadian Manufacturers & Exporters  
Canadian Trucking Alliance  
Express Association of America  
National Association of Foreign Trade Zones  
National Association of Manufacturers  
National Customs Brokers and Forwarders Association of American  
National Retail Federation  
Retail Industry Leaders Association  
U.S. Chamber of Commerce