

WRITTEN TESTIMONY OF MARY ANN COMSTOCK

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Before the Senate Finance Committee

“The Customs Facilitation and Trade Enforcement

Reauthorization Act of 2009” (S.1631)

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Chairman Baucus, Ranking Member Grassley, and Members of the Committee, on behalf of the more than 415,000 UPS employees worldwide, I appreciate the opportunity to appear before you today to discuss components of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009. My name is Mary Ann Comstock, and I am a native Montanan who has been involved in the Customs brokerage business on the northern border since 1971. I live and work in Sweet Grass, Montana which is by volume, the 8th busiest port of entry on the northern border. I've been a licensed Customs broker since 1978 and bring a unique perspective having owned my own small brokerage firm. I am currently a compliance manager for UPS. As you are probably well aware, UPS operates one of the world's largest, most sophisticated, intermodal transportation service networks and is one of the world's largest customs brokerage firms. On a daily

basis, UPS delivers more than 15.5 million packages and documents to 7.9 million customers in more than 200 countries and territories around the globe. UPS handles more than 6% of the U.S. GDP and 2% of the global GDP every day. In Montana, UPS employs 926 employees, has 14 operating facilities and 5 UPS Supply Chain Solutions locations.

UPS would like to thank the Committee for its work on this significant piece of legislation. We appreciate the services provided by U.S. Customs and Border Protection (CBP), and view this Bill as a way to enhance the relationship between the public and private sector through increased trade facilitation. The Committee's continued focus and support of the implementation of the International Trade Data System (ITDS) through the Automated Commercial Environment (ACE) will only help to make this relationship stronger.

I would like to focus on three topics today, the first of which is of utmost importance to UPS. UPS, along with express couriers and numerous supply chain partners, strongly support the increase in de minimis and informal entry values. We commend the Committee for recognizing the importance of this issue. In order to meet the demands of inflation and the global economy, we suggest the de minimis amount for Section 321 be raised from \$200 to \$800, and the informal entry limits from \$2000 to \$5000, both of which have not been changed since 1993 and 1998 respectively. We believe the Trade Act of 2002, which provided for an increase in

the personal exemption of goods from \$400 to \$800 for those travelers returning to the U.S., is an appropriate benchmark for increasing de minimis. In addition, we recommend that the Secretary of Treasury periodically consider adjusting these values to ensure the limits are consistent with the rate of inflation as measured by the Consumer Price Index. Increasing the value thresholds offers significant benefits to CBP, the Trade and the importing public. ACE has allowed CBP to focus their efforts on security and high risk targeting, and this value change offers all levels of business, particularly small and medium sized, the opportunity to reduce brokerage expenses and provide for simplified procedures for entry and release. By increasing de minimis and informal values, the U.S. will act as a role model to other countries, such as Canada, to increase their values, and thereby promote trade.

The second topic relates to Account Based Management, which is an existing CBP program. UPS strongly supports the concept of an integrated comprehensive account based processing program. The concept of Account Management was developed by CBP in 1994, with the idea of creating a platform for CBP to work with importers and brokers handling significant volume of imports into the U.S. The goal of the public-private partnership between CBP, importers and brokers was to achieve a high level of compliance and focus on trade issues. We believe the current program can be improved upon as suggested in a

May 7, 2009, “COAC Report on Account Based Processing” publication, produced by the Commercial Operations Advisory Committee (COAC). Revitalizing the existing program would be an immense step forward in trade facilitation without hindering security, and would bring cohesion between the Government and the Trade by establishing multiple components, including the enhanced role of National Account Managers. The program would include commercial, security, interagency and information technology account components.

The third topic regards the pilot program for establishing 24 hour land border ports of entry. Coming from the 4th largest state in the Union that has only 2 commercial ports of entry on our 550 mile long northern border, I believe this proposal will benefit the borders. State and local governments eligible for a new 24 hour land border port must be willing to commit resources and infrastructure improvements to support the commercial designation of a port. This is a trade facilitation opportunity that could benefit importers by cutting down on transit times, and provide local economies a boost from increased traffic. The proposal also fosters dialogue with Canada and Mexico, our closest trading partners.

Before closing, I would like to discuss a few additional areas of interest for UPS.

UPS would like to thank the Committee for your continued support and firm deadlines imposed for the ACE project. CBP is challenged to meet mission

responsibilities and a key component is information technology. The brokerage community has been waiting for a number of years to have the functionality to file entries in ACE. Due to legislative reporting requirements, CBP has been forced to make modifications to the legacy Automated Commercial System (ACS). ACS and ACE have numerous disconnects, therefore its imperative that CBP complete the core entry and post entry modules of ACE, so the Trade can take advantage of the benefits of the ACE portal. The next big step around the corner from ACE is the ITDS process. ACE is the conduit envisioned to provide trade data to Participating Government Agencies (PGA). The PGA's must have funding resources to update their internal systems to effectively communicate in the ACE environment. ITDS will provide paperless processing to streamline the admission of goods. It allows PGA's to work from centralized locations where they can receive, review and maintain data on imported goods, while providing trade facilitation and security oversight. ITDS through ACE provides a single platform to be utilized by multiple agencies, and sharing the cost of development and implementation makes sense from a business perspective. The implementation of ITDS will benefit the movement and release of goods exponentially. By having a system that provides for a multi-Government Agency single release, commerce will flow allowing goods to reach the marketplace at a faster pace.

We would like to address Section 211(e) “Use of Trade Data for Commercial Targeting Purposes”. We believe risk based targeting can be a real asset to CBP in their work to prevent intellectual property and copyright violations, interdiction of illegal drugs or goods not meeting Consumer Product Safety Commission standards, and a host of initiatives designed to ensure the safety and security of the United States and its citizens. UPS works closely with CBP and other Government Agencies on risk based targeting and how it can be improved. However, the repeal of Section 343(a)(3) of the Trade Act of 2002 does not insulate or protect legitimate businesses (importers and brokers alike) from potential penalties based on the results of the advanced targeting and subsequent inspection of the imported goods on arrival. Allowing security related information to be used for commercial enforcement purposes undermines the role of the Customs broker and exposes importers to potential penalties because the information submitted was not prepared by the Importer or Record (IOR) or a party licensed to perform customs business.

With regard to Section 215 “Importer of Record Program”, UPS and the brokerage community are very familiar with the existing process to identify a unique number for the (IOR). We also know the drawbacks to the current process, therefore we recommend that CBP work with the brokerage and trade community to fix the existing system or agree upon a new solution. The problems that arise

with trying to obtain a Social Security number to use under the existing rules are well documented. This will be particularly difficult in the ACE environment, which requires an identifying number for not only the IOR, but also the “ship to” party for formal as well as informal entries. We are more than willing to work with CBP, importers and the brokerage community to help resolve the issue.

With respect to Section 303 “Penalties for Customs Brokers”, we believe the existing law under 19 USC 1641 already provides for fines, revocation or suspension of a customs brokers license if a broker has been convicted of committing or conspiring to commit an act of terrorism. Those acts would be considered at minimum a felony under the law. We would like to request clarification that the revocation of a broker’s license under this section is only for individual licensed brokers so convicted. Corporate licenses and brokers acting in a supervisory capacity of a brokerage employee who is convicted of an act of terrorism should not be affected.

Section 204 “Commercial Customs Operations Advisory Committee (CCOAC)”, addresses the terms to which an individual may be appointed to CCOAC. Currently, individuals are appointed for two (2) year terms and may be reappointed to a succeeding two (2) year term. In Section 204(b)(2) of S.1631, appointees would be appointed to a four (4) year term with the opportunity to be reappointed for a subsequent term, thereby totaling eight (8) years on CCOAC.

We oppose extending the term to four (4) years, with the opportunity for a second four (4) year term. This is a highly coveted appointment and the opportunity to serve should remain available to a wide range of people on a frequent basis. The Committee benefits from an infusion of new people, who bring with them original ideas and innovative viewpoints from a broad assortment of companies across the supply chain and other associations. Therefore, we request that the current limit of two (2) years, with the opportunity for a second term remain, and Section 204(b)(2) along with Section 204(f)(3) of the Bill be deleted.

Section 234 “Repeated Import – Related Infringement of Intellectual Property Rights”, outlines the creation of a “confidential” list of persons described as having a history of attempting to import goods that infringe on intellectual property rights. While we support the Committee’s focus on this important issue, we are not convinced that creating a list of potential violators without considering the total universe of data available is the best course of action. For example, UPS may handle 12% of all imported goods entering the U.S. The odds of UPS as a carrier or UPS Supply Chain Solutions as a Customs broker appearing on this confidential list are reasonably high. We stake our reputation on our ethical behavior and compliance record, however due to the volume of imports we handle, our services as a carrier, contract logistics provider, forwarder and Customs broker, we could be the victim of a scheme to import IPR violation goods without our

knowledge. Therefore, we request that CBP and/or other Government Agencies inform UPS of the potential IPR violators so that we may take appropriate action as a company.

The current wording under Section 201(a) “Trade Benefits Under the Customs-Trade Partnership Against Terrorism” denotes that C-TPAT benefits will be provided to Tier 1, Tier 2 and Tier 3 participants, which implies the C-TPAT tier structure applies only to importers. We would like to see the wording changed to read that all participants in the C-TPAT program are eligible to receive additional benefits. This change would insure that carriers, brokers, and the other categories of C-TPAT membership receive C-TPAT benefits.

In closing, UPS would like to applaud the Committee for their renewed focus on Trade. By providing CBP the tools to facilitate legitimate trade and reorganizing their structure to emphasize trade’s importance to the United States economy, you have taken a huge step to re-balancing the border. Security and Trade Facilitation should be of equal concern. Thank you again for allowing me the opportunity to testify in front of this Committee.