

# AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

1050 17<sup>th</sup> Street, N.W., Suite 810  
Washington, DC 20036

Statement of Marian Duntley  
Chair, American Association of Exporters and Importers;  
Corporate Customs Manager, Toyota Motor Sales USA

Testimony before the Senate Finance Committee

April 26, 2006

A. Introduction and Overview:

Chairman Grassley, Ranking Member Baucus and Members of the Committee, my name is Marian Duntley and I am Corporate Customs Manager for Toyota Motor Sales USA. I am here today representing the American Association of Exporters and Importers (AAEI) as Chair of its Board of Governors. AAEI appreciates the opportunity to offer its comments on budget authorizations for the U.S. Customs and Border Protection (CBP) and Trade Functions.

AAEI is a trade association comprised of U.S. and multinational manufacturers, distributors, retailers, and service providers engaged in the import and export of merchandise to and from the United States. It has represented the broad scope of America's trade community in regulatory, legislative, and public policy arenas since 1921. AAEI's primary focus is the promotion of fair and open trade policies and practices through education, outreach and advocacy. It has long been a strong supporter of supply chain integrity and security as well as the full-range of trade community issues affecting customs and international commerce.

It is a privilege to appear before you today at this hearing. We know that the Committee is keenly aware that when the Department of Homeland Security (DHS) was created almost four years ago, this Committee in particular thoroughly examined and considered the implications of

transferring all of those functions that were the domain of the U.S. Customs Service (Customs) to this new Department.

The long-held bipartisan view of Customs, strongly enunciated in the Customs Modernization Act of 1993, has been as an agency charged with the dual missions of facilitating trade and the national economy in addition to law enforcement and security responsibilities. With this knowledge in hand, the transfer of vital national economic matters to an agency whose primary mission was to be national security concerned a number of Members of Congress and multiple organizations within the private sector.

To be frank, during the transition of legacy agencies, like Customs to DHS, AAEI and the U.S. business community recognized that many important trade facilitation functions would be initially relegated to secondary status following the trade security imperatives of a post-September 11 environment. We believe, however, that the time has come to revisit this approach. AAEI recognizes and strongly supports the trade security efforts and initiatives of CBP. Nevertheless, AAEI believes that CBP must now re-establish balance between its trade security and trade facilitation functions and responsibilities.

AAEI's member companies appreciate that the Senate Finance Committee retained oversight over the revenue, commercial and trade facilitation functions of CBP. The Committee has consistently been responsive to the concerns of the U.S. trade community. Furthermore, we deeply appreciate that this Committee has consistently been advocating the leadership of CBP to recognize and fully appreciate the importance of balancing the interests between trade security and trade facilitation, which was evidenced most recently during the hearing to consider the nomination of Mr. Basham to be CBP's next Commissioner. Frankly, more needs to be done to achieve a productive balance. Achieving this productive balance between these roles is

a vital national interest and it is critically important for the United States to remain competitive in the global marketplace.

Although balancing the interests of trade security and trade facilitation is unquestionably a difficult task, we believe that CBP has worked very hard to do so thus far. AAEI greatly appreciates the Committee's invitation to provide our observations, comments, and suggestions about CBP's trade security related matters, as well as its trade facilitation and operational issues. We are confident that our testimony can assist the Committee in its endeavor to reauthorize CBP and re-establish a productive balance between trade security and trade facilitation.

## B. Trade Security Related Matters

AAEI's testimony on Trade Security Related Matters touches upon the following six topics: 1. C-TPAT Development and Evolution; 2. Importance of Progress in the World Customs Organization; 3. U.S. Business Data Confidentiality; 4. Consensus for Regulating U.S. Exports; 5. U.S. Security Preparedness and Trade Continuity Plans; and 6. CBP & DHS Communication with U.S. Trade Community Regarding Data Anomalies.

### 1. C-TPAT Development and Evolution

The Customs and Trade Partnership Against Terrorism (C-TPAT) is a voluntary government-business initiative to strengthen and improve overall international supply chain and U.S. border security. Businesses are not required to participate in C-TPAT. However, those businesses that choose to apply are making a commitment to work toward the goal of creating a more secure and efficient supply chain in partnership with CBP. However, for most U.S. companies with global supply chains, C-TPAT membership is a requirement in today's business environment.

Upon satisfactory completion of the C-TPAT application and supply chain security profile, CBP assigns U.S. businesses a Supply Chain Security Specialist (SCSS), who initiates an intensive validation process. There are approximately 11,000 participants in C-TPAT and over 5,700 have been certified. Approximately, 1,545 validations have been completed as of March 2006 and another 2,262 are underway. CBP currently employs 88 Supply Chain Security Specialists, but expects to have 156 hired by summer 2006. AAEI has significant concerns regarding the use of third parties to validate supply chain security practices of C-TPAT participants because we believe that the validation of appropriate security protocols is a federal responsibility.

To ensure the success of C-TPAT, CBP has established no single security criteria or standards that members must meet or exceed. In today's evolving environment, CBP has concluded that security criteria or standards "must remain robust, dynamic and within a flexible security framework." AAEI agrees with this conclusion and we have submitted several letters to CBP commenting on C-TPAT security criteria and standards, as well as the C-TPAT validation process. We have been outspoken in our appreciation of the CBP's extraordinary sense of commitment in attempting to incorporate a multiplicity of commercial realities, retaining the program's voluntary nature, and avoiding the fundamental error of imposing a "one size fits all" mandate.

AAEI greatly appreciates the improvements that have been made to the C-TPAT program, such as the move to a three-tiered benefit structure. Furthermore, we want to acknowledge and express our appreciation to CBP's Office of Field Operations, which undertook a tremendous effort to prepare and produce the Supply Chain Security Best Practices Catalog. However, to encourage companies to join or continue their membership in C-TPAT, CBP must clarify and expand upon the benefits, especially for Tier 3 participants. C-TPAT membership must provide U.S. businesses with a measurable return on investment (ROI). Otherwise U.S. businesses will be reluctant to

undertake additional expenses to exceed CBP's minimum security criteria and standards.

It may also be useful for the Committee to further review the enormous investment in security made to date in regulatory and mandated programs by the trade community. The passage of the Trade Act and the Bioterrorism Act alone imposed significant capital costs on the trade which our members have largely assumed as part of their responsibilities as good corporate citizens in homeland security protections. These often substantive costs borne by individual corporations as well as entire industries appear likely to continue and expand if efforts to provide supply chain security and end-to-end transparency are not managed with extensive consultation and coordination among all the principles.

While C-TPAT is an important initiative, AAEI believes CBP must be actively engaged in a dialogue with other countries about ways to improve the global supply chain as well as to champion the goal of improving global trade facilitation.

## 2. Importance of Progress in the World Customs Organization

Although this matter may not be entirely within the context of today's hearing, we would be remiss not to focus attention on the vital efforts underway at the World Customs Organization regarding implementation of its Security and Facilitation Framework. We encourage you to monitor these efforts closely for promotion of the free flow of trade and internationalization of what we regard to be basic commercial and international trade concepts.

Multiple international and multinational efforts impacting trade flows continue in both the private sector, through the ISO among others, and public sector forums. These public sector efforts include the ratification of the Kyoto Convention, the Doha Round of WTO deliberations, and bilateral Free Trade

Agreement (FTA) negotiations as well as others involving maritime and transportation related matters of vital national trade policy import. We urge the Committee to continue monitoring progress and coordination of efforts devoted to achieving the central missions of trade and security policy.

### 3. U.S. Business Data Confidentiality

Among the emotionally charged issues that the U.S. trade community and AAEI's member companies have confronted in today's evolving environment are extensive and substantial concerns regarding the confidentiality of proprietary business data. These concerns are driven both by private sector competitiveness issues and international business ownership and management. We would ask that the Committee carefully examine the concerns we convey today and support further study of this area. As you would imagine, private sector data collection in this regard is "challenging".

One primary concern of AAEI's member companies regarding the expanded use of proprietary cost data, among others, is that it does not provide CBP with enhanced "situational awareness" for targeting shipments with certain anomalies and characteristics. In short, the collection and storage of increasingly detailed trade data may become alarming to the U.S. trade community when such data is exchanged without adequate protections with other federal agencies as well as foreign governments. The concern is that this may well occur in ways which are not designed to guarantee the confidentiality that U.S. businesses expect to be provided and have come to rely upon from federal agencies in this increasingly competitive global marketplace.

The immediate issues which we ask you to consider exploring are driven by several "real world" competitiveness concerns. Among business community concerns are: 1) the increasing range, depth and amount of data that is being requested by multiple DHS units; 2) the sharing of such information

with a wider range of domestic and international trade bodies and individuals within these organizations where a tradition/record of confidentiality and or advanced training programs are not apparent to the private sector; and 3) the federal government's increasing reliance on electronic systems to manage information.

We are equally concerned with development of policies within international bodies where multiple data streams could merge and commingle. Sharing of data regarding "risk analysis" must be done in such a fashion so as to avoid commercial implication as far as is humanly possible. We particularly encourage the Committee to explore development of policies to address the sharing of sensitive information with other governments, in particular foreign Customs agencies.

Notably, it is the practice of some foreign governments that are U.S. trade partners to subsidize certain industries which compete directly with U.S. counterparts. As the Committee is well aware, many foreign governments have substantially invested finances and "perception" in business enterprises that compete directly with the U.S. private sector. However, the apparent lack of controls or restrictions upon these foreign governments, which may have a financial interest in such a competitor to a U.S. company or which lack important legal safeguards restricting the use and dissemination of trade data belonging to U.S. companies necessitate AAIE's concern. To be candid, U.S. businesses must have better assurances that information supplied to foreign governments for security purposes would not be used against them in a competitive business context. At present, AAIE member companies are not sufficiently convinced that their proprietary trade data is secure.

#### 4. Consensus for Regulating U.S. Exports

AAIE represents many global companies that both import and export goods. CBP enforces the laws of over 40 other federal agencies that affect the

importation of merchandise. We believe that CBP continues to streamline the import process by working with other federal agencies and the U.S. trade community to realize greater efficiencies in this process.

As a result of the Trade Act of 2002, CBP is now more involved in the regulation of export shipments through implementation of the advance cargo manifest rules requiring submission of trade data before shipments are loaded and cleared for export. Unlike the imports cleared primarily through CBP, exports are regulated by several different federal departments and agencies: the Department of Commerce's Bureau of Industry and Security, the Treasury Department's Office of Foreign Assets Control, the Department of State, and the Department of Defense.

AAEI is concerned that the current export process is a patchwork of regulatory regimes, which are not coordinated by one single federal department or agency. Moreover, as the U.S. trade community is asked to provide more detailed trade data to multiple federal agencies to fulfill various regulatory requirements, we are distressed that the lack of coordination results in U.S. companies supplying ever increasing amounts of trade data multiple times, which affects the competitiveness of U.S. exporters who must satisfy all compulsory federal export regulations and requirements, while getting goods to market quickly in an increasingly competitive global marketplace. AAEI recommends that the Committee study how it can make the export process as efficient as the import process.

##### 5. U.S. Security Preparedness and Trade Continuity Plans

As the Committee knows, significant amounts of resources have been allocated for security prevention purposes, which are intended to keep terrorists and terrorist action from ever reaching U.S. soil again. AAEI strongly supports these efforts to prevent terrorists from using a U.S. maritime port or land border crossing for a terrorist incident. Nevertheless,

we believe that the Committee would be remiss in its oversight responsibility if it did not also study the Nation's security preparedness and trade continuity plans. Is the U.S. adequately prepared to quickly respond to the challenges to our Nation's security and are we sufficiently able to ensure our Nation's trade continuity so as not to inflict far greater damage to the economic vitality of the U.S. in the aftermath of either a terrorist incident or a catastrophic natural disaster? Furthermore, AAEI recommends that the Committee allocate an appropriate amount of resources for the dual purposes of national security preparedness and national trade continuity.

Last year 11 million containers came into the United States and this year that figure is expected to grow by ten percent. It took nearly 100 days to clear the backlog of containers caused by an eleven day strike at the Port of Long Beach a few years ago. Since trade now accounts for one quarter of our economic growth, the Committee must be satisfied with CBP's security preparedness and trade continuity plans.

Finally, AAEI was pleased to have recently been appointed as importer/exporter representative to develop a roster for the National Maritime Security Advisory Committee for incident communication. AAEI believes centralized national coordination of this initiative is essential. Regional or localized control would greatly diminish CPB's effectiveness to maintain trade continuity and ensure the economic resilience of the U.S.

#### 6. CBP & DHS Communication with U.S. Trade Community Regarding Data Anomalies

AAEI supports ongoing dialogue and partnership with CBP and DHS to achieve a productive balance between trade security and trade facilitation. However, many AAEI members are concerned that in some areas, such as data anomalies, we do not have a dialogue with the agency. The U.S. trade community provides CBP with large amounts of trade data, either required through the advance cargo manifest regulations or on a voluntary basis

through C-TPAT. Although C-TPAT membership reduces the number of examinations, it does not eliminate them. As a result, when a C-TPAT member's shipment is subject to an examination, the company does not know whether it is the result of a random sample or whether an anomaly in the company's trade data was captured in the Automated Targeting System (ATS) because CBP generally does not communicate with companies if it is the latter. Data anomalies can take on a variety of forms, such as substitute shipments from a different supplier, using a different mode of transportation to ship a particular product more quickly, etc.

To be clear, AAEI supports CBP's screening of all high-risk cargo through ATS. However, CBP's limited resources for examinations should be devoted to those companies which truly pose a high risk to the Nation. We propose that CBP develop a protocol to communicate with U.S. companies that are C-TPAT members with strong records of compliance in order to discern between those shipments that actually pose a high risk versus those which exhibit a data anomaly, so that the company can provide CBP with a satisfactory explanation concerning the anomaly instead of CBP devoting resources to an examination. AAEI is confident that such a protocol would increase dialogue between CBP and the U.S. trade community, as well as foster awareness that U.S. trade data is truly being used appropriately to ensure the security of the Nation.

### C. Trade Facilitation and Operations Issues

AAEI's testimony on Trade Facilitation and Operations Issues touches upon the following eight topics: 1. Automated Commercial Environment (ACE)/Trade Support Network (TSN)/International Trade Data System (ITDS); 2. Improving Coordination between Federal Agencies and a recommendation to Study 24/7 Operation of U.S. Ports; 3. Additional Allocation for CBP's Trade Facilitation and Operations; 4. Revision of the Drawback Statue; 5. Paying for Trade Security and Trade Facilitation - A

Study of Customs Fees, as well as AAEI's Tax Policy Initiative; 6. Implementation of Bilateral Free Trade Agreements; 7. Importer Self-Assessment (ISA) Program and Quick Response Audits (QRA); and 8. Commercial Operations Advisory Committee (COAC): A Key Forum for Public and Private Sector Interaction.

1. Automated Commercial Environment (ACE)/Trade Support Network (TSN)/International Trade Data System (ITDS)

A high priority for AAEI members is the design and staged implementation of the Automated Commercial Environment (ACE) as CBP enters into the critical stage of its operational design and implementation. The new system will be the cornerstone of secure, efficient and effective operations of government and business at our Nation's borders and points of entry.

In keeping with the spirit of the Customs Modernization Act of 1993, AAEI and industry leadership have been extremely supportive of ACE and overall modernization. Since adoption of the Modernization Act in 1994, Customs and CBP have engaged in a constructive and productive dialogue with the trade community on the design and implementation of that Act and its automated system (ACE). AAEI members have been invited to participate in a variety of public and private sector initiatives, including Modernization Act workshops, the Entry Revision Project ("ERP"), the Trade Support Network ("TSN") and the Trade Ambassador process. In many regards, these outreach efforts have succeeded. The trade communities' needs and requirements have surfaced, been made compatible with government processes and priorities and published as specific User Requirements; the timing of the actual programming and implementation of those requirements has been established, reviewed, modified and monitored as CBP and its contractors begin the actual programming, testing and implementation of ACE. The year 2004 was the first in which ACE designs were implemented;

2005 was the first full year of making certain the lessons learned in early implementation are timely, recognized and addressed.

We desire to continue to work with CBP to ensure that the necessities of the implementation process do not create a gap in the timely and effective communication of importer and exporter concerns to CBP. Changes are likely to come faster and have more concrete programming consequences at this stage.

To date, the Trade Ambassadors Program and the TSN have been the primary methods for offering input into ACE development. Participants are required to balance the demands of their company obligations and TSN work. Moreover, since September 2001, a large number of importers/exporters have been more focused on the high-priority CBP supply chain security initiatives rather than the TSN process.

AAEI strongly supports the creation of the International Trade Data System (ITDS). The goal of this initiative is to implement an integrated government-wide system for the electronic collection, use, and dissemination of international trade data. Unfortunately, while many federal agencies have indicated their intent to participate in the ITDS project, too many have not. Participation is necessary by all of the approximately 79 federal agencies that depend on electronic data for international commerce.

Within the ITDS concept, traders will submit standard electronic data for imports or exports only once via the ACE. ACE/ITDS will distribute this standard data to the pertinent federal agencies that have an interest in the transaction for their review, analysis and risk assessment. ACE/ITDS will provide each federal agency only that information which is directly relevant to that federal agency's mission. Thus, the ACE/ITDS system will serve as the federal government data collection and distribution portal; a "single

window" system through which information necessary for trade transactions can flow efficiently from traders to federal agencies and back to traders.

Since ITDS affords AAEI's member companies with appropriate protections and confidentiality of business data which it needs, it will enable and encourage interagency information sharing, thus providing for more effective enforcement, security targeting, and risk analysis of trade flows. The ACE/ITDS window promotes information sharing within a single system between all levels of government. This streamlined sharing of information will accelerate border clearance times, reduce costs, and cut down on inefficient paper-based systems. By eliminating redundancies and increasing efficiency, ACE/ITDS is taxpayer friendly, to be sure. However, it also helps all the federal agencies involved to perform risk assessment and thereby to advance national security, as each participating federal agency will develop its own internal risk management plan. Federal agencies will have a much easier time spotting anomalies and trends in the electronic context than is ever possible in a paper-based approach. Similarly, it will allow federal agencies to spend money more wisely and improved targeting of high-risk shipments as well as travelers, thereby facilitating the flow of legitimate cargo and people.

ACE/ITDS will also ensure that the U.S. remains a leader in the increasingly competitive world of global trade. As our trade partners make the move to developing all-electronic trade data systems, it is important that the U.S. does the same.

## 2. Improving Coordination Between Federal Agencies

The Committee should be aware of the enormous complexities, as well as the difficulties that AAEI members have encountered in dealing with other federal agencies whose regulatory jurisdiction and oversight for certain imported goods overlap with other federal agencies. Our member companies have

been at the forefront of cooperating with CBP by joining its trade security and trade facilitation partnership initiatives, such as C-TPAT and the Importer Self-Assessment (ISA) Program. We believe that these programs hold the promise of realizing a productive balance between trade security and trade facilitation, which AAEI believes will be achieved on regulatory issues only when federal agencies work in close partnership with one another and the U.S. trade community.

Yet many AAEI member companies tell us that they do not receive the full benefit of these partnership programs because they are regulated by federal agencies that neither recognize nor accept the risk-based methodologies of CBP's partnership programs. Such reluctance affects nearly 36% of the entries for imported goods that are subject to the "release and hold" authority of the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the U.S. Fish and Wildlife Service (FWS), which are the primary federal agencies that impact most of our members.

As a result, AAEI has spearheaded efforts to initiate and develop a dialogue and working relationship with these other federal agencies. AAEI is particularly pleased that our dialogue with FDA has resulted in some recent successes. Most notably, AAEI has provided comments to FDA on its Secure Distribution Chain Pilot Program which builds upon the investment U.S. companies have made in C-TPAT since FDA's program requires applicants to be C-TPAT certified at Tier 2 or higher.

We are also working with FDA concerning possible adoption of a risk-based methodology, such as ISA. The foundation of ISA program is CBP's finding that U.S. companies which have good internal controls are highly compliant with U.S. customs laws. AAEI believes that ISA member companies are proactive in meeting their compliance responsibilities for all federal regulatory agencies, not just customs. AAEI believes that its work with FDA and CBP is

the first step toward encouraging coordination and integration of other federal regulatory agencies in an efficient import process that enhances compliance while focusing limited agency resources on those companies that present the greatest risk to the health, safety, and commerce of the United States.

a. Study on 24/7 Operation of U.S. Ports

In today's global economy spanning every continent and time zone, companies that import and export goods are truly "24/7" operations. With the increased volume and velocity of goods crossing borders, AAEI recommends that the Senate Finance Committee study the impact of U.S. ports operating 7 days a week instead of the current 5 days per week. In addition to studying how many days a week the ports should operate, AAEI believes that the study should examine the feasibility of ports operating 24 hours per day. Our country's ability to process and clear both imports and exports quickly on a continuous basis is a vital issue that cuts to the very core of the United States' competitiveness in comparison to our trading partners.

AAEI has been concerned about the increased congestion at our Nation's ports and many local communities have sought to reduce the impact of port operations on the environment and their community. Ports are national assets benefiting the entire country. Therefore, we believe this issue requires a coordinated and well-considered national response starting with a study on extending port operations and very carefully taking into account both the positive and negative impact to local communities.

3. Additional Allocation for CBP's Trade Facilitation and Operations

We frequently hear a mantra of "guns, gates, and guards" when the focus needs to be equally attuned to overall national interest, risk management, and operations facilitation. AAEI is concerned with the lack of resources,

both dollars and manpower, devoted to the facilitation and operations aspects of CPB's functions. Here we acknowledge the huge "brain drain" that is occurring throughout federal agencies as senior government employees retire in record numbers, but the situation that the U.S. trade community confronts goes well beyond that. The experienced customs professionals at all levels who long have made the system work are leaving or have left or, as we so often hear, are so discouraged that they are resigned to frustration. The solution to these and related problems will require long-term dedication on the part of DHS and clear oversight by this Committee. AAEI believes that additional training funds and private sector coordination funding would be helpful and we strongly encourage the Committee to further explore both.

#### 4. Revision of the Drawback Statute

This Committee is aware that AAEI is helping to lead efforts to revise the Drawback Statute, which was originally established by the Continental Congress in 1789. As the Committee knows, drawback is the refund of certain customs duties, taxes and fees, which are collected during importation after the exportation or destruction of imported product or article. Drawback was initiated for the purpose of creating jobs, encouraging manufacturing, and encouraging exports. Drawback is recognized as the most complex commercial program administered by Customs and now CBP.

AAEI's members have worked in partnership with CBP to draft new statutory language that would simplify the process of applying for drawback, which in turn could expand U.S. businesses use of drawback. CBP has three goals that are paramount to its drawback simplification efforts:

- 1) Must be easy to administer;
- 2) Must protect the revenue of the United States; and
- 3) Must support complete automation.

AAEI recognizes that CBP cannot maintain the drawback program as it is today. Furthermore, AAEI knows that drawback without revision and simplification will not be the status quo. Without simplification, CBP will be required to change their drawback processing procedures. CBP will complete more drawback claim reviews and these reviews will be more comprehensive. As a result, drawback claim processing will become more stringent. And as deemed liquidation compresses the time for CBP to complete such reviews, CBP will be forced to issue more 1593a penalties after liquidation.

The revised drawback statute seeks to alleviate this pressure on CBP while preserving an important benefit for the U.S. trade community. Recognizing our members' cooperative efforts with CBP in this endeavor, AAEI strongly endorses this much needed revision of the Drawback Statute. If enacted, we know it will benefit U.S. exports, as well as U.S. competitiveness in the global marketplace. We are fully prepared to assist this Committee's legislative efforts to revise the Drawback Statute.

#### 5. Paying for Trade Security and Trade Facilitation – A Study of Customs Fees

As the owners and operators of roughly 85% of the Nation's trade infrastructure and employing an even higher percentage of the people and trade services therein: the private sector has made enormous security process and program investments since 9/11. We know that each of the distinguished Committee members have heard from your constituencies of the type and value of security related expenditures made voluntarily through C-TPAT participation or the multiple other cooperative efforts underway. You have heard of the exemplary work many of our fellow trade associations have done within their industries to support member company efforts and successful program development. In short, much has been done by both the federal government and private sector industry to benefit the Nation's economic and security interests.

We would suggest to the Committee that fair and equitable collection of revenues for that which has been and will be done is an area of great concern to us and, as you have long demonstrated, to this Committee. We believe that a lot of smoke has been generated in regard to two primary questions and some visibility would be helpful. These questions focus on the collection and distribution of customs user fees and methods of incentivizing important private sector security and related process expenditures.

We, like you, are very aware of the multiple proposals for utilization of some form of additional customs fees which are currently promoted to support a great variety of proposed programs. We do not reject the possibility that a well-conceived and designed plan, developed with a thorough understanding of commercial and diplomatic realities in our global economy, could provide a valuable new source of revenue to accomplish important national trade and security policy goals. In fact, as we have testified previously, we would and do support and encourage you to launch a high priority study of this matter. Such a study should include multiple aspects of collection and utilization, while specifically including the issues generated by the collection and use of Merchandise Processing Fees imposed under the Consolidated Omnibus Resolution Act of 1985.

In formulating such a study, we encourage you to help future Congress' better understand and avoid the multiple problems generated by earlier efforts to levy such fees upon the U.S. trade community. Prominent among these have been both the nature of the assessment (tax on value) and constitutional limitations (tax on exports). However, from our preliminary review, it appears that each of the methods commonly discussed does appear to require extensive review so as to avoid unanticipated economic and trade repercussions.

We would also encourage exploring ways to ensure that the proposed solution, i.e. method of revenue collection, is directly related to the problems or opportunities which required such a solution. Frankly, determining the relationship, for example, between current Merchandise Processing Fees and monies allocated for CBP services is currently very difficult. However one thing is safe to say, these fees have clearly generated substantial surpluses utilized in general revenue expenditures. Allocation of the revenue actually collected to general revenue expenditures simply rolls along without relation to the use of such funds for the Agency's commercial operations. We suggest that current evidence seems to demonstrate that such general revenue allocation has not and perhaps cannot provide equitable return either between sectors of the trade community nor to U.S. trade interests overall.

We would welcome the opportunity to assist the Committee's efforts and among other items, would encourage careful review of tying user fee collections directly to customs and related operations expenditures.

a) AAEI's Tax Policy Initiative

We have long observed the efforts of this Committee to assist in the achievement of important societal goals through a variety of the methods available to you. A traditional federal method of encouraging business/economic behavior beneficial to the society has been the provision of financial rewards for that behavior. As you are well aware, the scope of such ongoing efforts ranges from environmental and energy conservation to achievement of "social policy" like compliance with the Americans with Disabilities Act. We would like to suggest that the time has come for a serious examination and study of such initiatives in this vital sector of the economy.

Since 9/11 and the advent of the Department of Homeland Security, expenditures made by the private sector to enhance homeland security have

escalated dramatically and show no sign of lessening. These expenditures have been undertaken by U.S. companies engaged in all aspects of the global supply chain. Substantial expenditures have been documented from manufacturing to retail to the ports and well beyond. Many of these expenditures, while potentially beneficial to the conduct of business, have had little direct or demonstrable ROI and would not otherwise have been prudent in the normal course of business. Many of these expenditures while valuable in pursuing societal interests have been, perhaps unfairly, classified as a particularly unacknowledged and unfunded federal mandate.

We would encourage the Committee to examine the variety of methods of providing such encouragement for the private sector to improve its own properties, processes and training. Among those principal methods we would include tax credits, deductions and exemptions with potential focus upon accelerated cost recovery and depreciation schedules. Each of these deserves thorough exploration. However, in light of the urgency of the task and particular complexions of the industries investing, two particularly interesting approaches might be: 1) development of an offset for certifiable C-TPAT and related program expenditures by U.S. corporations voluntarily participating in this important effort; and 2) exploration of Chapter 99 "Temporary" amendments to the Harmonized Tariff Schedules, which could have a wider impact. However, AAEI would welcome the opportunity to support the Committee's efforts in framing this effort and we are agreeable to multiple approaches.

## 6. Implementation of Bilateral Free Trade Agreements

As a matter of philosophy, AAEI believes in the promotion of fair and open trade policies, and supports the negotiation and adoption of free trade agreements. Over the past five years, we have witnessed a proliferation of free trade agreements with dozens of other nations, who are now our special trading partners. We are concerned, however, that as these free trade agreements come into force, CBP may have neither the time nor the

resources to fully implement them administratively and as part of its regulatory regime. Among the difficulties encountered by the trade community is the slow pace of CBP issuing regulations implementing free trade agreements. Additionally, CBP has not done the necessary programming for its online systems to accept entries with claims for preferential duty treatment made under recent free trade agreements. We would suggest that the Committee mentor CBP and USTR and monitor the progress, which is needed to resolve this situation.

#### 7. Importer Self-Assessment (ISAs) Program and Quick Response Audits (QRAs)

AAEI is pleased to note that it is continuing to work with CBP and other trade associations on developing industry coalitions to negotiate enhanced benefits for the ISA program. Currently, AAEI has two industry ISA coalitions – the chemicals industry, and the pharmaceutical/biotechnology industry. AAEI commends CBP’s willingness to work with the trade to use the ISA program to enhance trade compliance and provide benefits to importers reducing regulatory burdens imposed by current requirements.

Many AAEI members are concerned about CBP’s use of Quick Response Audits (QRAs), which are single-issue audits with a narrow focus. We understand that CBP intends to use QRAs on specific risk areas, such as transshipments or intellectual property rights. However, CBP has stated that companies who have applied for or are current members of the ISA program are not exempt from QRAs.

As noted previously, CBP has found a correlation between companies with good internal controls as being highly compliant with U.S. customs laws. It is this correlation which forms the foundation of ISA. Companies join ISA in order to be removed from the annual Focused Assessment audit pool so that they can devote the resources necessary (e.g., compliance personnel) to

conduct the periodic self-audits required by ISA. ISA requires companies to document these periodic audits. As a result, many AAEI members are now asking “Why did our company spend the time and resources to join ISA if we are still subject to audits?” AAEI supports ISA’s risk-based analysis of companies’ business processes, and is concerned that CBP’s use of QRAs will undermine the risk management principles that are the foundation of the ISA partnership forged between the agency and trade in continuing to develop the program.

#### 8. Commercial Operations Advisory Committee (COAC): A Key Mechanism to Foster and Encourage Public and Private Sector Interaction

During our 85 year history, AAEI has a long record of working together with those federal departments and agencies, which have had jurisdiction over customs, trade policy, ports, transportation, tax, security, and immigration regarding the variety of other issues that impact the import and export of goods and services to and from the United States. We actively participate in multiple forums and functions in support of excellence in this arena. We believe and hope that AAEI has been a good partner and unfailingly objective in our evaluations of federal policies and programs.

During the past two decades, a key mechanism to foster and encourage public and private sector interaction on matters affecting importing and exporting has been the Commercial Operations Advisory Committee (COAC). Although significant aspects have evolved, COAC remains useful and its mission is vital.

As the Committee will recall, your legislative efforts resulted in Public Law 100-203 of 12/22/87 which established the Advisory Committee on Commercial Operations of the U.S. Customs Service. COAC had two principal duties: 1) to provide advice to the Secretary [Treasury] on matters relating to the commercial operations of Customs; and 2) to submit an annual report

to the Senate Committee on Finance and the House Committee on Ways and Means concerning Advisory Committee operations and recommendations regarding Customs commercial operations. Thus, Congress created the means for those who deal directly with Customs, now CBP, to provide direct input both to the Congress and to the Secretary having oversight and direct responsibility for the commercial operations.

The COAC's operations began in 1988 and have continued at a rate of a minimum of four meetings a year. Twenty members, representing a broad cross section of the U.S. trade industry, rotate in two year terms. With a clear initial focus on the free flow of trade, important contributions have been made in both Customs management and Congressional participation in the processes.

Following 9/11 COAC embraced the dual role of trade facilitation and security issues. It was very active in the development of many of the post 9/11 programs including C-TPAT, the 24-hour rule and MTSA requirements. As you would imagine, when DHS was formed, COAC focused on multiple issues to help ensure that the issues and perspectives of the U.S. trade community were taken into consideration and, very importantly, that the expertise residing in the U.S. trade community was appropriately utilized when new trade security and trade facilitation programs and initiatives were being considered and developed. Furthermore, COAC continued its work reporting to both the Department of Treasury, and to DHS.

Over the last several years, many have believed that COAC's focus has been diluted and its effectiveness diminished. There are multiple theories as to what has taken place and how it might be repaired. We do not have the final answer. However, most recently DHS delegated the full responsibility for management of COAC and its mission to CBP. Frankly, as a surprise move, this did not appear to us to have been well thought out. Among several other concerns, one stands out and it is that that this vital authority and

responsibility should not have been delegated in clear conflict with the primary reporting purposes envisioned at the time that it was legislated: Reporting to the managing agencies (now DHS and Treasury) to ensure that trade input continued to flow to the highest levels of government and providing input to Congress regarding activities and concerns generated there.

AAEI is a long time supporter of the customs function and has a strong working relationship with both CBP and DHS yet, in terms of the transfer of responsibility, we would suggest to you that 1) while working with CBP is critical to the roll of COAC, it is much different than reporting to them and 2) the proper Congressional access and role has not been given priority. In sum many describe this as one more loss of the fabric of checks and balances so fundamental to our way of government.

We do not claim to have all the answers and are sympathetic with those who suggest that, at minimum, COAC needs resources and direction. Yet we can assure you that, to our knowledge, the entire trade community is unified behind the call to both: 1) reinstate the reporting role of COAC to both the Secretary of Treasury for the economic impact of CBP's commercial operations as well as DHS's security needs that are so apparent lately; and 2) significantly enhance communications with Congress.

AAEI suggests that, among the multiple channels of communications between the public and private sector regarding vital trade security and trade facilitation issues for both U.S. importer and exporters, COAC is unique in its scope and badly needed. We would ask the Committee to examine options and act to reinforce utilization of all available resources, including COAC, in the development of vital import export and security policies and programs.

#### D. Conclusion

In conclusion, we wish to thank the Senate Finance Committee for its invitation to provide our observations, comments, and suggestions about CBP's trade security related matters, as well as its trade facilitation and operational issues. We greatly appreciate the Committee's efforts to ensure that trade facilitation is a balanced partner to trade security. We strongly believe that the Committee's continued oversight and active promotion of conjoined trade security and trade facilitation programs and initiatives can make an enormous difference. We hope that our testimony will prove useful as the Committee endeavors to reauthorize CBP and re-establish a productive balance between trade security and trade facilitation. AAEI looks forward to both supporting this Committee's active involvement and to continuing our partnership with CBP in pursuit of these goals.