



## U.S. Customs and Border Protection

Commissioner

Ms. Catherine Robinson  
President of the National Association  
of Manufacturers  
1331 Pennsylvania Avenue, NW, Suite 600  
Washington, DC 20004

Dear Ms. Robinson:

Thank you for your May 28, 2010 correspondence on the behalf of many of the participants of the April 7, 2010 industry roundtable meeting. U.S. Customs and Border Protection (CBP) appreciates all of your efforts to identify recommendations on ways to improve trade facilitation. While I look forward to meeting again soon to further discuss the ideas raised by the group, I want, without further delay, to address our current position on each of the items that you characterized as "short term," as well as a few of the long-term topics you identified.

- 1. Automated Commercial Environment/International Trade Data System:** *Set an implementation timetable for Automated Commercial Environment (ACE) and International Trade Data System (ITDS) and provide the CBP leadership 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.*

Our commitment to making ITDS work for the trade, participating government agencies, and CBP is paramount. We are working with the trade and other government agencies in a collaborative partnership that will ensure that ITDS is developing in a manner consistent with our mutual expectations.

With remaining no-year and Fiscal Year (FY) 2010 funds, CBP will focus on developing and deploying functionality that stakeholders have identified as priorities, including post summary corrections, document imaging, and rail and sea manifest. In addition, CBP will lay the groundwork for the future deployment of cargo release functionality, air manifest, and the remaining entry summary types. In FY 2011, further development will be deferred while business and technical requirements for future development are clearly defined. We will want to accomplish this, as far as practicable, in concert with the trade and PGA communities. Additional funding will be requested as business cases are completed.

Furthermore, we are developing a plan to provide the addition of PGA Data Elements to the data currently received in Automated Commercial System (ACS) using the ABI message layout. The data received by CBP in ACS will be transferred to ACE and stored and made available to the PGA via the ACE Portal. ACE will need to store the PGA data with the Manifest/Entry/Entry Summary data that CBP already collects for access and use by the PGA. This will allow PGA

access to collected data for PGA and CBP in one data base and available for PGA use as needed. Among the considerations for the implementation of this plan will be the initial cost, the timeline for implementation, the commitment of PGA to utilize the system, and the willingness of the trade to use the system for their PGA requirements.

- 2. Evaluate Starting Free and Secure Trade lanes further back at border crossing:**  
*Trucking companies continue to face a lack of “true” Free and Secure Trade (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.*

It is important to bear in mind that CBP does not own or control the infrastructure (roads, bridges, etc.) leading into the ports of entry; therefore, it does not have the authority to regulate the flow or queuing of traffic awaiting entry into the United States. However, CBP would be favorably disposed to approaching the relevant authorities with the trade community to seek solutions in specific locations and to help facilitate dialogue with the pertinent parties within the federal government. Please contact Dan Tanciar ([daniel.tanciar@dhs.gov](mailto:daniel.tanciar@dhs.gov); 202-344-2818) in my office if you have a specific location and proposal you wish to pursue where CBP could play a role in bringing the proposal to fruition.

- 3. Formal withdrawal of the proposed change to the First Sale Rule and Rules of Origin Notice of Proposed Rule Making:** *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 the 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.*

A Federal Register Notice to withdraw the first sale rule proposal has been drafted. We expect to have it published within the next 30 days. Furthermore, CBP and the Department of the Treasury have carefully reviewed the comments submitted in response to the rules of origin proposal. In particular, we have heard concerns expressed about the impact that extension of the rules of origin to other than North American Free Trade Agreement (NAFTA) trade may have on the trade community. These matters are still under consideration within our agencies as part of the official rulemaking process; however, we expect to soon be publishing a notice on this matter in the Federal Register.

- 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 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.*

CBP Counsel and the Department of Homeland Security (DHS) Office of General Counsel personnel are working to determine whether CBP could disclose – before seizure – information that could be used to identify intellectual property infringement. CBP and DHS are exploring what legislative or regulatory changes (if any) would be needed to accomplish this task. We expect this position to be clarified during September 2010.

- 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 not only greatly improve 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.*

CBP and DHS have extensively looked into this and determined that the existing statutes, regulations, and precedents are clear. Based on these and CBP's long history of enforcing the law in this area, it does not strike us as appropriate for any change to be made in this area. The relevant provision is from the NAFTA, appendix 1603.A (as codified at 8 Code of Federal Register § 214(b)(4)) and is consistent with the general entry requirements for temporary visitor for business classification (B-1) set forth in section 101(a)(15)(B) of the Immigration and Nationality Act. The intent of these provisions is to allow the free movement of goods across the border, an activity that is international in scope. This provision is not to facilitate access to the domestic labor market. Drivers may not engage in any activity that qualifies as local labor for hire. The movement of empty trailers from point-to-point within the United States is considered cabotage and not permissible B-1 activity.

- 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 to 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 is currently drafting an 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.*

CBP agrees, from a policy perspective, that these limits should be increased. CBP has drafted an NPRM providing for increases of both the de minimis value and the value for informal entries consistent with language in S. 1631. CBP is in the process of conducting an economic analysis and evaluating other factors required to evaluate the range of discretion available under 19 U.S.C. 1321. In addition, CBP's proposal will need to be reviewed and agreed to by the Department of the Treasury. We expect our economic analysis to be completed within the next 60 days and we intend to proceed with all due speed based on the findings of the analysis.

- 7. Modernize the In-Bond Process:** *CBP has been contemplating changes to the in-bond system to streamline and to modernize this critical process; however CBP 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.*

As noted, for some time now, CBP has been engaging with industry, including COAC, about our efforts to draft regulations that would encompass a complete revision and modernization of Part 18 to enable the in-bond process to go from a paper-dependent entry process to an automated-paperless process. In addition to modernizing the regulations to meet the realities of today's real-time shipping environment, the proposed amendments to the regulations are being designed to provide CBP with the necessary tools to better track in-bond merchandise. This is important for purposes of security and to ensure that proper duties are paid. Furthermore, problems regarding the tracking of in-bond merchandise and the flexibility of the current in-bond regulations were concerns raised by the Government Accountability Office in a 2007 report.. The proposed changes are intended to address these concerns. Work is ongoing to draft these substantial regulatory change proposals. CBP intends to have an NPRM published by the end of this year where CBP will officially be seeking public comments on our proposals.

- 8. Inspections at the Port of Entry:** *For some time, industry and CBP have been discussing the issue of conducting nonsecurity inspections at the port of entry, usually an inland hub, as opposed to the first port of arrival. Aircraft often briefly touchdown 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 that 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 that nonsecurity 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.*

CBP agrees with industry that many nonsecurity inspections should be conducted at the port of entry/unlading. On June 9, 2010, CBP's Office of Field Operations reissued internal policy guidance directing that the performance of nonsecurity and trade compliance inspections be done at ports of entry/unlading, versus at ports of arrival. Bear in mind though that in some cases, inspections for security, agricultural concerns, and some requirements imposed by other government agencies will still be conducted at ports of arrival.

- 9. Carefully consider the comments and suggestions submitted last June on the Importer Security Filing:** *Before finalizing Importer Security Filing (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.*

CBP has in fact carefully considered the comments submitted by the trade during the public comment period prior to the rule's effective date for implementation. CBP will also consider comments received during the structured review process before publishing a final rule. Note further that as part of the rule's initial development, CBP closely worked with the trade community, including COAC, to refine the rule's requirements.

To date, CBP is very satisfied with the compliance levels of the trade community. C-TPAT Tier 3 partners have led the way being among the most compliant filers of the security data. While the largest importers have submitted the largest total volume of security filings, small and medium-sized companies represent the vast majority of the filers of security data. CBP will continue to meet with the trade community and to closely work with the members to ensure their success in meeting the rule requirements.

- 10. Eliminating the customs seal requirement in favor of the comparable vetting process required by the Transportation Security Administration (TSA) Security Identification Display Area program.**

CBP has been closely working with COAC's Air Cargo Security Subcommittee to identify ways to simplify credentialing and identification required in the air cargo environment. COAC adopted recommendations on this topic at its last meeting in May. CBP and TSA are evaluating these recommendations and are working on several changes that will reduce the burden to the industry while still meeting the distinct security requirements of each agency. We intend to provide updates on progress in this area at upcoming COAC meetings.

- 11. Evaluate offering the C-TPAT conference three times per year - once 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 to 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.*

CBP recognizes the tremendous interest in the C-TPAT annual conference and will begin to offer two seminars a year—one on the West Coast and one on the East Coast/Midwest. Each seminar will accommodate approximately 1,200 attendees (2,400 total for both events). In addition to these larger annual seminars, CBP will continue to offer an annual seminar directed specifically to Northern Border highway carriers. This seminar will continue to be held in Buffalo and will accommodate 500 attendees. This year's C-TPAT Northern Border highway carrier conference is scheduled for August 30-September 1, 2010. CBP will also continue to offer smaller trade outreach sessions along the Southwest Border throughout the year. CBP is also exploring the possibility of webcasting these events.

**12. Reduce the backlog of rulings pending at the Office of Rulings and Regulations:**

*Our understanding is that the Assistant Commissioner of International Trade is reviewing every ruling before it is issued and published by CBP. We believe that this level of scrutiny is unnecessary for all rulings and regulations.*

As CBP has clarified in numerous trade meetings, the Assistant Commissioner, Office of International Trade (OT) does not review every ruling that is issued. However, based on complaints from the trade and Congress that CBP is making policy changes without proper consultation with the Hill and the trade, the Assistant Commissioner does review the “1,625” rulings (less than 100 per year) that result in a change of position and, where appropriate, reviews the potential impact with the affected committees. In addition, CBP is developing an internal process to highlight to CBP management any substantive regulatory initiatives, major proposed rulings, and modifications of existing rulings prior to their publication. This will enable CBP to, consistent with legal requirements, conduct outreach and consultation with the Hill, the trade community, and other government agencies earlier. We believe that such a process will enable CBP to have a better appreciation of the impact that such proposed changes may have on the trade and on other stakeholders.

With respect to the issuance of rulings during this fiscal year, the National Commodity Specialist Division has issued 3,495 prospective rulings in an average processing time of 19 days. At CBP Headquarters, OT, Office of Regulations and Rulings (ORR) has issued 625 prospective rulings with an average processing time within 90 days.

We do have a backlog of protests and internal advice requests at Headquarters. I have made reducing this backlog a priority. ORR put together a “rulings blitz” in which personnel normally assigned to other duties are assigned rulings. Since the beginning of the fiscal year, we have issued 152 protest review decisions and 45 internal advice decisions. We intend to add additional personnel to the branches responsible for these cases. In addition, we are piloting a project to make increased use of our National Commodity Specialist Division in the analysis of these cases.

13. **Account-based management:** *Establish uniform processes 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. In May 2009, COAC presented a report to CBP on expanding account-based processing. At the time, CBP committed to reviewing the document and reporting back to COAC on the next steps. However, since last May a 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. 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.*

CBP is undertaking a task force to develop initiatives to allow CBP to manage by account. This task force, under directions from my office, is reviewing the role of the account managers, CBP's account-based risk management efforts, simplified entry and financial processing, and ACE's role in managing by account. To inform our efforts, CBP has been conducting weekly conference calls with COAC's Trade Facilitation Subcommittee to consult on ideas presented in COAC's proposal, potential design of new initiatives, and impact of these efforts on the trade and CBP and will expand this consultation with the trade through the course of the summer.

14. **Increase training and education of CBP officers and specialists on foreign trade zone regulations and free trade agreements.**

OT has piloted a 2-week advance training session on free trade agreements, other preference programs, and textiles that will be rolled out in the summer of 2010 for import specialists and others charged with enforcing such provisions. This effort builds on recent upgrades of basic entry specialist training (completed), basic drawback specialist training (in progress), advance IPR training (in progress), and broker management training (piloting in June 2010).

15. **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; therefore, 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, to corporate resources, and to money applying for AEO status in every country they operate. CBP agrees that mutual recognition arrangements offer security and trade facilitation benefits throughout the international supply chain. CBP currently has mutual recognition arrangements with New Zealand (June 2007), Canada and Jordan (June 2008), and Japan (June 2009). CBP just signed its fifth mutual recognition arrangement with Korea on June 25<sup>th</sup> at the recent Session of the World Customs Organization Council*

*meeting in Brussels, Belgium. CBP is currently working with the Customs Administrations of the European Union, Mexico, and Singapore towards achieving mutual recognition.*

It should also be noted that on May 25, 2010, CBP and the General Administration of China Customs signed a Memorandum of Understanding Concerning Bilateral Cooperation on Supply Chain Security and Facilitation. Though this document is not a mutual recognition arrangement, it is a formal bilateral arrangement to cooperatively work together on various supply chain security efforts, one of which is the long-term goal of achieving mutual recognition of China's supply chains security program—the "Classified Management of Enterprises" program, which became operational in April 2008. This is a constructive first step on a long, difficult road with our country's most active trade partner.

Thank you again for your leadership role to develop a comprehensive effort regarding initiatives CBP can undertake to improve trade facilitation. I hope that this provides you with some welcome information on the status of our thinking and actions concerning most of the identified issues. Regarding other matters raised in the group's letter, such as performance metrics, trusted partner programs, the post-incident analysis program, mitigation guidelines, and mutual recognition of AEO programs, I have asked for additional internal consideration and comment and will communicate with you further regarding them.

I look forward to our continued dialogue.

Sincerely,



Alan Bersin  
Commissioner

cc: James May, Air Transport Association of America, Inc.  
Marianne Rowden, American Association of Exporters and Importers  
Bill Graves, American Trucking Association  
Dick Belanger, U.S. Business Alliance for Customs Modernization  
Nelson Balido, Border Trade Alliance  
Jim Phillips, Canadian/American Border Trade Alliance  
Perrin Beatty, Canadian Chamber of Commerce  
Jayson Myers, Canadian Manufacturers & Exporters  
David Bradley, Canadian Trucking Alliance  
Michael Mullen, Express Association of America  
Will Berry, National Association of Foreign Trade Zones  
John Engler, National Association of Manufacturers  
Jeffrey Coppersmith, National Customs Brokers and Freight Forwarders of America  
Jon Gold, National Retail Federation  
Stephanie Lester, Retail Industry Leaders Association  
Ann Beauchesne, U.S. Chamber of Commerce