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Statement for the Record of the
Senate Finance Committee
Hearing on
"S. 662, the Trade Facilitation and Enforcement Act of 2013"

May 22, 2013

The National Customs Brokers and Forwarders Association (NCBFAA) appreciates this opportunity to comment on S. 662, "The Trade Facilitation and Trade Enforcement Reauthorization of 2013." We are encouraged by the committee's strong commitment to passage of a customs authorization bill.

As the association representing licensed customs brokers, NCBFAA has long worked with the committee to provide our unique perspective on customs-related issues. We again stand ready to help in this effort to streamline CBP processes, facilitate trade and improve enforcement.

Organizational Changes at CBP (Section 102): NCBFAA applauds efforts by the committee to ensure that, through structural refinements, CBP will be as responsive to commercial operations as it is to its other missions. This recognizes that it is important to perpetuate present efforts within CBP to acknowledge the importance of trade facilitation.

One example of how the committee has approached this is by creating a second deputy commissioner with responsibility for CBP's trade function. As we have said publicly, such a position would be best occupied by a member of the Senior Executive Service rather than by a political appointee. NCBFAA has valued its relationships with Deputy Commissioners because they bring the experience of career-long, diverse positions within the agency. As a partner to the Commissioner, who is a presidential appointee, a career CBP Deputy Commissioner provides a valuable balance to decision-making at the top of the agency. Thus, we support the way the Finance Committee has approached this issue.

Authorization of ACE (Section 206): The bill reauthorizes the Automated Commercial Environment computer system, providing a more realistic budget for completion of ACE. NCBFAA appreciates the Committee's continuing commitment to ACE and your rigorous and responsible oversight of the program.

The core functions of ACE – that is, "end to end electronic processing of customs entries" – must be completed. CBP has committed to doing this in a 3-year time frame. However, this is premised on the availability of sufficient budgetary resources. It is imperative that ACE funds not be diverted or sequestered and there be recognition that ACE is fundamental to CBP's cargo facilitation and security missions.

We ask the committee to stipulate – both formally and informally – to the Department and to CBP that it must meet its present timetable and provide the necessary resources for its completion.

The Centers for Excellence and Expertise (Section 203): Section 203 codifies the Centers for Excellence and Expertise (CEEs), broadly defining their objectives.

The CEEs show great promise as a resource for the trade community, expediting CBP's ability to process entries with greater uniformity and consistency. Yet, the CEEs are new and their capabilities are just emerging. We are therefore pleased that the committee has chosen to provide broad parameters rather than defining a detailed structure. This approach allows greater flexibility for the CEEs to evolve over time, as CBP and its trade partners work closely and innovatively to see what works best.

As the process continues, however, it will be especially important for the Centers to serve small and medium-sized businesses, not just large importers. This can be achieved, to a great extent, by involvement of customs brokers in the operation of the CEEs. Customs brokers are the pathway for the vast majority of importers to reap the benefits envisioned for the CEEs. We encourage the Committee to include this objective in the bill.

Although S. 662 does not specify where the CEEs should be placed within CBP's organizational structure, NCBFAA wishes to emphasize our position that the CEEs remain under the umbrella of the Office of Field Operations (OFO). We do not support a realignment of the CEEs to the Office of International Trade.

International Trade Data System (ITDS) (Section 207): Section 207 reinforces the ITDS by requiring the Secretary to work with the head of each agency participating in the ITDS to develop and maintain the necessary information technology infrastructure. $25 million per year from 2014 through 2018 is authorized for this purpose.

It is essential for ITDS to become the single-window interface to ACE for other government agencies with import or export data requirements. Not only will ITDS reduce costs by eliminating redundant data submission requirements, it will give agencies more accurate and complete trade data at an early point, increasing their ability to detect risky cargo and to expedite cargo processing. Great strides have been made in coordinating ITDS among the agencies, yet progress continues to be hampered by competing priorities and funding limitations. NCBFAA therefore appreciates the Committee's strong support for ITDS.

Importer of Record Numbers (Section 215): The legislation requires CBP to establish an importer of record program to assign and maintain importer of record numbers.

NCBFAA recognizes that the current numbering system for identifying importers of record, as well as other parties to the transaction, is fraught with problems. There are significant concerns about the uniqueness of each number. For example, CBP uses the IRS number as an identifier for an importer of record. However, that one importer of record may have 50 different locations. The importer of record or his broker distinguishes these 50 different

locations by adding a suffix at the end of the IRS number. Because anyone can assign the suffix, duplicate numbers for the same importer location are very common, as are multiple importers having the same number. Everyone agrees CBP must have better control over the numbers assigned to each importer of record.

Yet, repairing or redesigning this system is a complex undertaking. How does CBP avoid creating a new system that leads to the very same problems? How do you require the reassignment of millions of numbers without disrupting trade? This is not a mechanical task that CBP can design and implement in six months.

There is no requirement in the bill to work with other agencies in coordinating the numbering system. So, even as we move to a "single window" to the government under ITDS, an importer could have a different number with each of the 47 agencies participating in ITDS. There is also no requirement to work with the private sector to ensure that the system works from a commercial perspective.

We strongly urge the committee to task CBP with the following: 1) Analyze the shortcomings of the current system; 2) Conduct a critical review not only of the Importer of Record numbering system, but also the Manufacturer's Identification (MID) numbering system (which is a source of great confusion); 3) Engage the trade in developing a solution through consensus; 4) Consult with other agencies to ensure that the import numbering systems of each agency will be compatible; 5) Inform Congress as a solution is developed; and 6) Employ the rulemaking process.

This section of S. 662 also requires CBP to develop "criteria that importers must meet in order to obtain an importer of record number." Although we understand the committee's concern with "sham" corporations formed to skirt the nation's trade laws, we also think it is a dangerous step to create restrictive hurdles before allowing companies to participate in global trade. New companies enter the market every day. This is a normal, welcome occurrence in a healthy economy. It would be very unfortunate if the "criteria" for importers unduly restricts these new entities from participating in international trade.

Drawback (Section 402): NCBFAA supports the reform concepts incorporated in S.662, including substitution at the 8-digit tariff level and other simplification provisions. Due to the complex nature of drawback, we think that numerous technical changes are required in order to ensure that these concepts are implemented correctly. We are committed to working with the Committee to put them in place.

Commercial Risk Assessment Targeting (Section 211): In 2002, when the requirements for providing advance trade data on the Importer Security Filing (ISF) were established, the advance trade data was to be used for the sole and express purpose of ensuring cargo safety and security. In effect, a firewall was erected to prevent CBP from using the data for commercial enforcement purposes and to shield ISF filers from commercial penalties for errors in the security data provided in advance. Now, Section 211 of the bill amends current law to allow CBP to use the advance trade data for "commercial enforcement purposes." We believe that advance data from the ISF should only be available for

targeting purposes designed to identify high risk shipments that may violate our laws relating to health, safety and security. Once targeted, goods would then be subject to inspection and appropriate customs processes. We do not believe that the data should be used for other customs enforcement purposes, most particularly those resulting in fines and penalties imposed upon the party filing the ISF (with the exception of instances of fraud).

Customs Operations Advisory Committee (Section 205): The Customs Operations Advisory Committee (COAC) is codified and its role expanded by this legislation. We note with concern that the scope of COAC is broadened to include matters relating to Immigration and Customs Enforcement (ICE) investigations. COAC has always been focused on commercial facilitation. To dilute its attention by widening its mandate to include the enforcement-driven ICE will only reduce its effectiveness as a strong voice for commercial operations.

At the same time, we also question the name change from "Commercial Operations" to "Customs Operations." Given the growing importance of other agencies in the import process and their participation in ITDS, use of the word "Customs" may draw a line that precludes effective solutions for customs commercial operations.

Consultation with the Private Sector (Section 101): NCBFAA appreciates that the committee directs CBP to consult with the private sector in carrying out its duties. We urge the committee, however, to make it clear that the COAC and Trade Support Network (TSN) should not be the exclusive path for discourse and resolution. Issues must be discussed openly and fully with trade community representatives in order to resolve specific issues and initiatives.

Customs Broker Offenses (Section 403): The legislation adds "has been convicted of committing or conspiring to commit an act of terrorism" as an offense subject to disciplinary proceedings, including removal of a customs broker license. Although there has been an absence of evidence to substantiate the need for this section, NCBFAA can nonetheless support this change. At a minimum, the requirement for a "conviction" assures due process.

Increase in Informal Entry and *De Minimis* Thresholds (Section 410): The legislation raises the informal entry threshold from $1,000 to $2,500 and the *de minimis* threshold from $200 to $800. While we will not stand in the way of advocates for reasonable increases of these limits, we must observe that increases beyond adjustments for inflation run counter to trade enforcement objectives provided elsewhere in this same bill. Already, unscrupulous importers squeeze themselves under the current limits to bypass CBP scrutiny. This is found particularly in airfreight and some truck freight, where the informal entry is used to bring in fake drugs or other products that violate intellectual property or anti-dumping laws. These proposed increases will only compound this all-too-frequent problem. Also, NCBFAA questions whether the revenue impact of this increase – which we believe is substantial – has been fully considered.

Enforcement of Antidumping/Countervailing Duties (Section 302): NCBFAA believes a better approach is to design and implement a prospective system to assess antidumping and countervailing duties. This would better promote fair trade by informing the marketplace of fairly traded prices at the time purchasing decisions are made. A prospective system would also enable CBP to more effectively collect duties owed and be less resource intensive for both importers and the government, thereby freeing up CBP resources to better target bad actors who purposefully seek to evade proper duties owed.

Voluntary Reliquidation by CBP (No Section): We ask the committee to take this opportunity to correct an oversight to a provision in the Miscellaneous Trade and Technical Corrections Act of 2004. Language is needed to ensure that the triggering event starting the time for administrative review of liquidation by CBP is the date of liquidation, rather than the date *the notice* of liquidation is issued.

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Again, we thank you for this opportunity and look forward to working with you on this legislation in the coming months.

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May 15, 2013

The Honorable Max Baucus
Chairman
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United States Senate
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The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Hatch,

We respectfully submit the following comments regarding the proposed legislation to reauthorize the U.S. Customs and Border Protection (CBP). We appreciate the opportunity to provide our perspective and we ask you to consider our comments carefully as you begin to consider this legislation. These comments address the full range of issues that are under consideration in the House and Senate customs bills so that you have our views on all the various provisions.

BACKGROUND

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Retailers are among the largest U.S. importers of containerized freight and import a wide range of commodities. Indeed, RILA represents 4 of the top 5 U.S. importers, and 10 of the top 20 U.S. importers. As a result, we particularly appreciate the recognition by the Committee and CBP of the crucial role that international trade plays in U.S. economic growth, and the importance of balancing the dual priorities of trade facilitation and effective enforcement.

CUSTOMS CURRENT TRAJECTORY

RILA recognizes the positive efforts that CBP has made in recent years to balance trade facilitation and security, and to work with the importing industries through bi-directional communication and co-creation of new programs. CBP has worked to engage with the importing community and has been open to finding solutions that promote both security at our borders and facilitating legitimate trade. The concept of a balance between "informed compliance" and "reasonable care" has been articulated for decades and is embraced by both sides of the community. But, in the aftermath of 9/11, a shift to include more security and terrorism prevention has required an even closer relationship between CBP and the importing community. Both CBP and the trade community have stepped up to that plate, and while we have our differences from time to time, RILA recognizes those efforts and asks that legislation

support continued movement toward trade facilitation and not inhibit future progress or derail the progress that has already been made.

FACILITATION FOCUS

RILA encourages both the House and Senate to develop a clearer interpretation of trade facilitation, and to continue to balance facilitation and enforcement. There isn't a definition of facilitation in the House bills, and the definition of facilitation in the Senate bill does not mention anything about promoting U.S. economic interests; instead merely defines facilitation as "complying with Customs laws"- a very enforcement-oriented approach. See S. 662 § 2(7). RILA seeks a more balanced definition that reinforces the important role CBP has to clear legitimate cargo that makes up the bulk of imported goods, just as much as it interdicts non-legitimate cargo. For example, the objective of the ongoing negotiations for the WTO trade facilitation agreement describes trade facilitation in this way: "to expedite movement, release and clearance of goods and improve cooperation . . . on customs matters."

In Bond

Specific to the role as a facilitator of legitimate trade, RILA welcomes the plans for CBP to address the current "in bond" system for managing cargo from sea port to eventual port of destination or departure. RILA also welcomes the discussion of importer of record numbers and providing additional management to protect this numerical identity, as it is similar to a social security number for importers.

De Minimis

Section 410 of the Senate customs bill amends the Tariff Act of 1930 to increase the *de minimis* value from $200 to $800, and the informal entry value from $1,000 to $2,500. RILA supports raising the current ceilings for *de minimis* and informal entry shipments, and believes these limits should also be adjusted annually for inflation. Further, RILA believes that the informal entry exceptions for Sections VII, VIII, XI, XII, Chapter 94, and Chapter 99 Subchapters III and IV in the Senate bill be omitted, because the scope of this exclusion covers many consumer retail products that are important to our members, especially apparel and home furnishing retailers.

Non-Resident Importers

While the Senate bill does not mention non-resident importers, Section 224 of the House customs bills requires nonresident importers-of-record to designate a U.S. resident agent in the United States who shall be liable for payment of duties and penalties if CBP is unable to collect from the nonresident importer-of-record. The Secretary may require the resident agent to secure an additional bond in connection with the importation. RILA members question the need for special provisions for non-resident importers, some of which are large companies with a significant U.S. presence.

While we appreciate the effort to try to address concerns regarding fraudulent or unscrupulous importers we believe that the non-resident importers provision in the House bills would be ineffective in stopping bad actors and harmful to legitimate importers who happen to be non-resident importers. Non-resident importers are already required to have a place of due process identified that is located in the United States – this can be a local office or an agent. Why does the law need to be enhanced to provide a location in "each" state, which will in effect create a non-competitive environment for

legitimate companies operating in and contributing to the US economy and American jobs? Additionally, non-resident importers are required just like every other importer to have a bond on file with a surety company. So all duties/fees/penalties assessed by CBP would be covered by the surety if the non-resident importer disappears. This is the same process for resident importers who may go bankrupt or disappear. What is the objective of the additional requirements/burdens placed on non-resident importers? RILA asks that you avoid impacting legitimate trade with policies that may hurt businesses making significant investment in the United States, and potentially creating a World Trade Organization (WTO) national treatment violation.

Drawback

Retailers support drawback reform that permits expanded use and allows for easier processing of claims. We strongly support the "treatment of returned merchandise" section and the definition of "not used" applying to products sold at retail and returned. See § 402

Chapter 98 Claims

We support changes to the HTS trade preference programs for articles exported and reimported, or imported, exported, and reimported, as they assist retailers in managing regional distribution mechanisms. See § 404 Further, RILA requests that the legislation permit a broader interpretation of improvement to include packaging changes or transformational processes that would create a new identity for goods, but would permit the manufacturer to claim a duty exemption on the value of the U.S. raw materials or subcomponents used in the assembly/manufacture of the re-imported good- for example U.S. yarn used to produce garments or U.S. semiconductors used to produce electronics.

Honey Transshipment

We encourage consultation with private sector entities involved in the importation of honey to ensure that processes to identify illegal transshipment are accurate and allow the trade community to support Customs mission to eliminate illegal transshipment without impacting legitimate trade flows. See § 408. Moreover, RILA strongly believes that a prospective collections system for antidumping and countervailing duties would be far more effective in preventing the non-payment of AD/CVD duties on honey than exists under the current retrospective system.

ANTIDUMPING AND COUNTERVAILING DUTY ENFORCEMENT

RILA has significant concerns with Title III of the Senate customs bill. First, it would be untenable for Congress to seek to address AD/CVD evasion without also addressing the elephant in the room when it comes to AD/CVD enforcement—the U.S. retrospective assessment system for AD/CVDs. The retrospective system is plagued by collection problems and is more complex, resource intensive and less predictable than the "prospective" systems used by all other countries. Under the U.S. retrospective system, it takes an average of 3.3 years *after* the date of import for the U.S. Commerce Department to determine what the "fair" price for the goods was and tell CBP and the importer the final amount of AD/CVD duties owed. Thus, the retrospective assessment system hinders CBP's enforcement efforts and creates substantial unpredictability in global supply chains. It's a lose/lose approach that undermines enforcement, incentivizes evasion, harms U.S. competitiveness and chills fair trade, and at the same time fails to provide timely relief to those U.S. industries harmed by unfair trade.

The retrospective system often requires CBP to dedicate significant resources to attempt to collect duties from importers years after they made an entry. By that time, the importer may no longer be in business or may have disappeared. According to the U.S. Government Accountability Office (GAO) the retrospective nature of the U.S. retrospective system is the primary cause of over $600 million in uncollected antidumping duties since 2001. The Committee should incorporate the repeated recommendations made by both the GAO and the COAC to switch to a prospective assessment system, or at a minimum begin to address the failings of the retrospective system by prohibiting the U.S. Department of Commerce from applying changes in policy or methodology that are not based on actual changes in an exporter or producer's prices, costs, operations or subsidies in calculating assessment rates for imports that predate the change in policy or methodology. Exporters and importers who want to eliminate dumping have no means of predicting changes in policy or methodology, which are totally outside their control, and U.S. importers should not be unfairly penalized for such changes.

A prospective assessment system would not impact the process by which petitioning industries seek relief from unfair trade with the U.S. Department of Commerce, and it would improve AD/CVD enforcement by enabling CBP to shift resources from collection problems to preventing and prosecuting evasion and fraud and provide more effective relief for injured industries by preventing imports from entering the U.S. market at "dumped" or subsidized prices. A prospective system would also provide certainty for U.S. petitioners and importers (including manufacturers), enabling them to make rational pricing and sourcing decisions based on fair competition.

Second, while RILA supports strong enforcement of the law, it has a number of significant substantive concerns with Title III of S. 662. Briefly, for example:

- Although the term "evasion" generally refers to escaping liability through a deliberate scheme, section 517 (a)(5) would define "evasion" broadly to encompass any statement, act or omission that is material and false, and results in an underpayment of AD/CVD duties, without regard to the importer's intent, or whether the importer had knowledge or reason to know of the falsehood or omission. While there is an exception in (a)(5)(B) for "clerical errors" there is no definition of a "clerical error". We therefore continue to have concerns that failure to exclude innocent errors from procedures directed at "evasion" raises a potential for interference and/or conflict with CBP's normal procedures for importers to address inadvertent entry errors, including prior disclosure.
- Similarly, the scope of AD/CVD orders is often ambiguous in various respects. As a result an importer may in good faith believe a product is not covered and therefore not declare it as subject to AD/CVD duties on the entry documents. However, "evasion" is defined so broadly that it could be interpreted to cover any instance in which an importer has failed to declare products subject to AD/CVD duties, for whatever reason, including a good faith belief that the products were not within the scope of an order. Commerce already has procedures for resolving scope issues. To avoid a conflict with Commerce's jurisdiction over scope issues, Section (a)(5)(B) should include an explicit exception for errors or omissions that result from an interpretation of the scope of an order, which is properly the subject of a ruling under 19 CFR 351.225.

- As in the case of Commerce's AD/CVD determinations, Section (c) of the bill requires that evasion determinations be based on "substantial evidence". However, Section (g)(2) subjects evasions determinations to judicial review under the "arbitrary and capricious" standard, which is more deferential than the "substantial evidence" standard of review. Evasion determinations, like Commerce's AD/CVD determinations, may have serious business and financial consequences for interested parties and, like other AD/CVD determinations, evasion determinations should be subject to review under the "substantial evidence" standard.
- S. 662 could also potentially give rise to unreasonable retroactive rate advances for importers who may have no part in or knowledge of an evasion scheme. Specifically, in the event of a preliminary finding of evasion, CBP would suspend liquidation of unliquidated entries of the subject merchandise entered *on or after the date of initiation of the investigation* [517(d)(1)(A)(i)]. This is similar to Commerce's rule for scope determinations, which represents a balance between proper enforcement of an order and the interests of innocent importers. However, once there is a final determination of evasion, section 517(d)(1)(B) would extend suspension of liquidation to each entry of the subject merchandise *that entered prior to the date of the final determination*, without regard to whether the entry pre-dates initiation of the investigation.

It is also well known that some U.S. domestic producers extract payments from foreign exporters in exchange for the domestic producer's agreement not to request Commerce to conduct an administrative review of the exporter or to withdraw a request already filed. Such payments to domestic producers, which are not based on a finding by Commerce what level of dumping, if any, occurred during the review period, are not sanction by or consistent with the intended remedial effect of the law, which is to offset only the amount of dumping found to exist through the imposition of duties. RILA has serious concerns that by creating this new evasion complaint process within CBP, Congress will unintentionally create another mechanism for parties to abuse the system for financial gain and possibly divert funds from the General Treasury. To avoid such a result, there should be an explicit prohibition against a domestic complainant seeking or receiving remuneration in exchange for withdrawing or refraining from filing an evasion allegation, together with significant penalties for violating that provision.

The above examples illustrate the need to carefully review *any* AD/CVD evasion provisions to ensure they enhance rather than hinder CBP's enforcement efforts, do not create unnecessary and confusing overlap between the jurisdictions of Commerce and CBP, and do not unfairly penalize innocent U.S. importers.

INCREASE PRIVATE SECTOR PARTNERSHIP

The level of CBP's engagement with the private sector has increased substantially in recent years. This increased outreach is welcomed, and RILA suggests that customs legislation reinforce the participation of the private sector in the development of training for Customs import processing functions. As more seasoned Customs professionals retire and new Customs officers join, there is a need for the importing community to provide their perspective as part of the training experience, both to understand the regulated community, and also to foster communications between new Customs agents and the industry.

The Senate bill also provides for Partnership Programs, and while RILA supports the development of public private partnership programs to increase trade facilitation, we ask that the legislation consider the programs in operation and in development already. The trade community is concerned that the direction given to Customs not result in unintended consequences, where the partnership programs are weakened and not strengthened by Congressional input.

Registered Lobbyists and COAC

The Customs Operations Advisory Committee (COAC) is a positive forum for industry to provide industry guidance to CBP. However, the COAC is limited to only 20 members, which severely limits the opportunity for the private sector to participate. RILA recommends the creation of other industry working groups to promote and broaden the communications between the agency and the trade community. For example, there are 16 Industry Trade Advisory Committees that are divided by industry. RILA also encourages more association participation in COAC and other industry working groups to facilitate broader representation and permit industry feedback to be shared on an aggregated basis.

To facilitate the inclusion of association participants and other industry experts on COAC and other cleared advisor committees, RILA also recommends that the committee include language in the Senate customs bill (§ 205) to clarify that an individual's status as a registered lobbyist should not be grounds for disqualification on COAC. RILA believes it is critical that membership in COAC not create incentives for individuals to choose not to comply with lobbying disclosure laws, and that the Congress and Administration not deny itself access to experts on Customs matters, simply because that expertise may have also triggered lobbying disclosure.

CUSTOMS STAFFING AND OPERATIONS

The House and Senate customs bills establish key executive roles within CBP. The objectives of these roles should be clearer to reflect the intent of Congress, but yet the definitions of these roles also need to be flexible enough to permit these leaders to lead. Currently, it is unclear from the text of the bills what problem is being solved. We ask that the direction given to CBP describe the objectives the agency must meet, and use restraint in describing specific methodologies for accomplishing the objectives- given that the nature of trade is so dynamic, and the approaches that CBP and the trade community use in partnership to be successful this year may need to change for the coming years.

Specific to the Trade Advocate role, RILA encourages this role to have an appropriate level of seniority so as to have the ability to make and implement decisions. For example, there should be a direct line of communication between the Trade Advocate and the Commissioner. CBP also needs to maintain flexibility to respond, especially in unexpected situations such as Superstorm Sandy. RILA welcomed Customs' ability to shift gears and help the importing community respond to that natural disaster to maintain import flows with minimal disruption, particularly as it occurred in the busy weeks before the start of the holiday shopping season. We encourage the Committees to continue to allow Customs the flexibility to make these decisions which have a direct impact on the U.S. economy, rather than set up a bureaucracy that isn't defined or worse fails to maintain the facilitation / enforcement balance that is so key for retailers who make up some of the largest importers.

Regarding staffing within the whole of Customs, we understand that their current budget request includes additional officers. We support Customs plans to create a "trade professional of the future,"

and to that end, support the plans that Customs has to effectuate that creation. However, RILA is concerned about raising user fees again, especially on the heels of prior user fee increases associated with the implementation of the FTAs. Further, there is also concern about some of the additional services that CBP would like to offer on a fee basis. We understand that overtime clearance of cargo costs Customs additional money in salaries for inspectors, and that in a pre-1985 world, CBP used to offer importers the ability to send an officer to clear Customs outside of business hours, which facilitated trade. The caution we offer is to avoid in times of budget austerity taking more and more essential services and making them fee based as a way to make up budgetary shortfalls. There is a point where Customs services for a fee could impact trade flows, and affect the integrity of the importer-CBP relationship. There is also a point where Customs services for a fee impact businesses to effectively establish costs and pricing structures that are aligned with their consumer base. An additional fee on a per service basis introduces uncertainty into the business model. We ask you to caution CBP in pursuing these new revenue generating initiatives. The same caution holds true for some of the public-private investment projects that CBP is also considering to address other capital investments, such as port infrastructure needs.

Centers of Excellence and Expertise

Section 203 of both Senate bill establishes the Centers of Excellence and Expertise (CEEs) as a program used by CBP to improve facilitation and enforcement, and to migrate toward management by account. RILA believes that CBP's development of the Centers of Excellence and Expertise is a positive game-changing transformation and we welcome their inclusion in the legislation.

RILA members import a wide variety of goods, and the CEEs that oversee their shipments will have to rely on their counterparts in other CEEs and will have to reach out to the Participating Government Agencies (PGAs) that have primary responsibility for regulating the specific good in question. RILA suggests that legislation should reinforce the need for facilitation and communications across the government. The legislation should promote the development of cross-functional and multi-jurisdictional communications between and among the CEEs and with the relevant PGAs.

Interagency Inclusiveness

RILA is pleased that CBP has taken a leadership role in developing the One Government at the Border program through the Border Interagency Executive Council (BIEC). Congress should also make sure that all agencies that deal with imports and exports are represented at the table, and encourage any interagency group formation to include not only Customs and Border Protection, Food and Drug Administration, Department of Agriculture, and Consumer Product Safety Commission, but also Fish and Wildlife Service, Bureau of Census, Department of Transportation, Environmental Protection Agency, Federal Communications Commission, as well as other agencies with regulatory oversight of imported products. Even though some agencies are responsible for a small subset of imported goods, their participation in interagency groups is all the more important to ensure that their import policies are in alignment with overall approach of Customs and the trade community. RILA recommends that the committees work with other authorizing committees in Congress to include language that strongly encourages all relevant agencies to work with CBP to create a single window in the importing process and promote more transparency when delays or holds occur.

INFORMATION MANAGEMENT

There are various issues about information sharing and management that have arisen in legislation and recent rulemakings that deserve mention. RILA encourages any type of communications strategy that permits more transparency and more communications between CBP and the trade community. Whether it is building websites, encouraging meetings face to face or via technology, or even participation at industry events, more opportunities for CBP to discuss its work with the trade community is important and valuable.

However, there are key pieces of business information that the trade shares with CBP that are confidential and should be protected as such. CBP's recent proposed System of Records Notice for Customs and Trade Partnership Against Terrorism (C-TPAT) application and vetting information that the Department of Homeland Security Office of Privacy recently published in the Federal Register has raised some concerns among our membership as it contemplates a much broader sharing of confidential business information than anticipated, and frankly broader than the statutory mandate CBP has to share that information under the C-TPAT law. We encourage clarification and retention of the confidential nature of this critical business information as sharing with foreign entities could jeopardize U.S. economic interests especially in a fragile economic recovery.

Regarding import document management overall, there has been an alarming trend among agencies to require more import documentation to be submitted on a per shipment basis rather than requiring these records to be held and available upon demand. The Lacey Act declaration is illustrative in how a requirement to submit documentation with each entry can easily overwhelm an agency charged with reviewing those documents. Further, we understand that the U.S. Department of Agriculture's Animal and Plant Health Inspection Service is planning to expand the scope of products subject to Lacey declaration requirements. This expansion will affect more retail products that are likely to be further removed from the harvesting of trees, and it isn't clear that APHIS has addressed some of the prior concerns about document and information management. Further, the Consumer Product Safety Commission is also contemplating a similar approach which may prove to be disastrous in part because they may not be currently set up to sift through the data that they will receive from the trade community and we expect that they, like the Department of Agriculture, will be inundated with shipping documents and be unable to sift through the data to analyze the overall flow for risks and violations. RILA encourages the Committee to incorporate language that effects all import documentation required to be an "on demand" based system, to ensure that the right information is made available only when it will be useful or necessary.

Finally, regarding the development and release of the new Automated Commercial Environment (ACE) that CBP has been pursuing, it appears that real progress is being made in the application of the "agile" software development approach. RILA encourages the Committee to support this progress, or at the least, avoid inhibiting the progress that is already underway with the new system. RILA is concerned that legislation that imposes too stringent a requirement on the software platform's development may endanger CBP's ability to complete the project, causing a waste of time and money. While we recognize that the ACE development of the past was indeed over budget and long-delayed, there has been a refreshing change in the approach to ACE and CBP is seeking to finish ACE in approximately three years. RILA encourages legislation that helps CBP to meet that goal, and discourages any provisions that might detract them from that progress.

TEXTILE RECONSIDERATION

RILA has concerns about the lingering priority given to textiles as a priority trade enforcement issue. Yes, textiles are a frequently imported category of goods, and are subject to some of the highest duty rates in the Harmonized Tariff Schedule of the United States, but revenue collection is a separate priority trade issue and the overstated importance placed on ensuring these products are imported legitimately seems out of step with modern realities. RILA suggests that this misplaced focus on textiles be redirected to better uses that will promote economic security overall, rather than earmark resources to benefit a limited number of companies that are politically active but offer no real benefit to the country as a whole.

CONCLUSION

In conclusion, RILA thanks the Committee for the opportunity to provide comments on the proposed customs legislation. We encourage the Committee to promote legitimate trade, strike the right balance between facilitation and enforcement, support CBP in its planning and continued transformation, and help the agency to steward business information that our members provide. RILA respectfully requests the Committee to ensure that CBP maintains a leadership role among its government agency import regulation partners to help facilitate legitimate trade as one government at the border, to revisit outdated trade policies involving textiles and antidumping and countervailing duties, and to embrace the wisdom and perspective that the private sector can offer to CBP and the other PGAs in shaping the import policies of the 21st century. If you have any questions, please don't hesitate to contact me at 703-600-2046 or stephanie.lester@rila.org.

Respectfully Submitted,

Stephanie Lester

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Vice President, International Trade

TRADE REMEDY REFORM ACTION COALITION
"Get on TRRAC"

THE FREE & FAIR TRADE ACT OF 2013
A BETTER APPROACH TO AD/CVD ENFORCEMENT

The U.S. has "retrospective" antidumping and countervailing duty (AD/CVD) assessment system that is plagued by collection problems and is more complex, resource intensive and less predictable than the "prospective" systems used by all other countries. Under the U.S. retrospective system, it takes an average of 3.3 years *after* the date of import for the U.S. Commerce Department to determine what the "fair" price for the goods was and tell the importer and CBP the final amount of AD/CVD duties owed. Thus, the system hinders CBP's enforcement efforts and creates substantial unpredictability in global supply chains. It's a lose/lose approach that harms U.S. competitiveness and chills fair trade, and at the same time fails to provide timely relief to those U.S. industries harmed by unfair trade.

There is a better way. The Free & Fair Trade Act of 2013 ("FFTA") will create a "prospective" AD/CVD duty assessment system in the United States, which will improve duty collections and enforcement, decrease supply chain uncertainty, enhance U.S. manufacturing competitiveness, and more effectively prevent unfair trade.

What the FFTA "prospective system" *will* do:

- Provide more effective relief for injured industries by preventing imports from entering the U.S. market at "dumped" or subsidized prices.
- Result in 100% collection of AD & CVD duties. If the subject merchandise is unfairly traded, the duty is paid at the border at the time of entry.
- Prevent unfair trade *before* it occurs, by setting the "fair" price before goods are imported.
- Provide certainty for U.S. petitioners and importers (including manufacturers), enabling them to make rational pricing and sourcing decisions based on fair competition.
- Improve enforcement of the unfair trade laws by enabling CBP to shift resources from collection problems to preventing and prosecuting evasion and fraud.

What the FFTA will *not* do:

- The FFTA will *not* weaken the AD/CVD laws.
- The FFTA will *only* change how the U.S. administers AD/CVD duty orders. It will *not* make any changes in how U.S. industries request relief from unfairly traded imports, how dumping and subsidies are calculated, or in how the ITC determines injury, or in the process in which the agencies conduct their investigations.

Enhancing Enforcement. The current system allows foreign exporters to dump for months or years without penalty, often causing significant harm to U.S. producers. A prospective system responds *immediately* to reductions in U.S. import prices—the primary concern of petitioning companies. Under a "prospective normal value" system, Commerce would determine what the non-dumped price (*i.e.*, "normal value") is and CBP would apply those results prospectively on a transaction-by-transaction

basis when goods are imported. Thus, if subject merchandise were imported at a price below the normal value (*i.e.*, at a "dumped price"), CBP would, at the time of import, immediately collect final AD duties equal to the amount of the price difference (the dumping margin). This will enable CBP to shift resources from duty collection to the prevention and prosecution of evasion and fraud.

Preventing Unfair Trade Before it Occurs. The current system of determining the "fair" price for an import three or more years after the fact does nothing to help a U.S. producer that lost the sale to what turns out to be dumped or subsidized prices from a foreign competitor. In contrast, in a prospective system "fair" import prices are known in advance, enabling U.S. producers to compete with imports on a level playing field.

Enhancing Competitiveness of U.S. Manufacturers and Certainty for Importers. Manufacturers increasingly rely on imports of critical inputs into the production process to create manufacturing jobs in the United States. The current AD/CVD system creates substantial financial uncertainty for manufacturers and other importers by delaying the calculation and imposition of AD/CVD duties for years after an import is actually made. That uncertainty hinders U.S. companies' ability to make rational, competitive pricing and buying decisions. Because the U.S. is the only country employing a retrospective system, this government-created uncertain liability harms U.S. competitiveness.

Improving Duty Collection. A prospective system also solves the problem of collecting duties years after an import has entered the market. The current system often requires CBP to dedicate significant resources to attempt to collect duties from importers or foreign exporters years after they made the entry. By that time, the importer may no longer be in business or may have disappeared. According to the U.S. Government Accountability Office (GAO) the retrospective nature of our current system is the primary cause of over $600 million in uncollected antidumping duties since 2001. The failure to collect these duties erodes the effectiveness of the remedy granted to injured U.S. companies.

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Target Corporation
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CUSTOMS REAUTHORIZATION LANGUAGE

Consistent with the recommendation of the Advisory Committee on Commercial Operations of U.S. Customs and Border Protection, in order to facilitate the collection of antidumping and countervailing duties and the enforcement of orders, and to reduce the unpredictability in the current retrospective duty assessment system, U.S. Customs and Border Protection and the U.S. Department of Commerce ("Commerce") shall jointly design a prospective duty assessment system, which complies with U.S international obligations, for submission to Congress within 6 months of the date of enactment of this legislation, with a goal of full implementation of that system within 6 months of passage of any necessary implementing legislation.

In the interim, to facilitate transition to a prospective assessment system, in determining duty assessment rates in administrative reviews initiated after the date of enactment of this legislation, Commerce shall no longer retroactively apply changes in policy or methodology unrelated to actual changes in an exporter or producer's prices, costs, operations or subsidies in calculating assessment rates for entries during a period that predates the change in policy or methodology. Commerce shall only apply such changes in policy or methodology prospectively, to be taken into account, where appropriate, in establishing the cash deposit rate for future imports of the subject merchandise and assessment rates for entries during future review periods.