

STATEMENT OF
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Committee on Ways and Means
Subcommittee on Trade
Hearing on Customs Trade Modernization, Facilitation
And Enforcement
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Chairman Brady, Ranking Member McDermott and other distinguished Members of the Subcommittee on Trade of the Committee on Ways and Means, it is an honor and a privilege to appear before the Subcommittee on which I so proudly served as a staff member from 1984 until 1993 to discuss the commercial challenges facing U.S. Customs and Border Protection (CBP), the agency that has been very special to me throughout my long career.

I am appearing today in a personal capacity and the views that I express are mine alone and should not be attributed to my firm, Sandler and Travis Trade Advisory Services, where I currently serve as Executive Vice President, or any of its clients. In the spirit of full disclosure, our firm is actively involved in working with numerous commercial clients in carrying out their compliance responsibilities vis-à-vis U.S. Customs and Border Protection (CBP) and we also are engaged as a subcontractor on several Government contracts, including working at CBP on the development of ACE.

My hope in appearing before you today is to provide some historical perspective on the important issues the Subcommittee is addressing today with respect to CBP. My views have been shaped from 40 years of experience in the Customs and trade field, from my early days working as an Import Specialist for U.S. Customs in the port of Baltimore, my customs oversight work while serving this committee, including the development and enactment of the Customs Modernization Act in 1993, and my tenure as Commissioner of the U.S. Customs Service from 1993 until 1997. Since leaving Government, I have spent fifteen years working closely with private companies to meet their compliance challenges. I also currently serve on the Commercial Operations Advisory Committee (COAC), the official industry advisory board to

CBP. I request that my full statement be entered into the record and I will summarize my comments.

Times have changed but so much remains the same.

The focus of today's hearing is on CBP's efforts to enhance economic growth and job creation by facilitating legitimate trade, modernizing customs procedures and enforcing Customs and trade laws. Before addressing these issues, I must first acknowledge that much has changed since I left office as Commissioner of the U.S. Customs Service in 1997. Due to the Government restructuring in the aftermath of 9/11, the old Customs Service in the Treasury Department has become U.S. Customs and Border Protection (CBP). CBP is more than triple the size of the former Customs Service with a much broader mission and a focus on border security as a critical component of the Department of Homeland Security. Congressional oversight of the agency has also become more complex. Whereas, the Committee on Ways and Means and the Senate Finance Committee had exclusive jurisdiction over the former U.S. Customs Service, numerous committees now share oversight responsibility for CBP.

Today CBP is responsible for a myriad of challenging and complex missions to safeguard our nation. CBP must secure our borders against terrorism and criminals, reduce illegal immigration, enforce countless trade laws, interdict contraband and counterfeit goods, and prevent unsafe products from entering the marketplace while facilitating legitimate trade and travel that are essential for the nation's prosperity and global competitiveness. It is not an easy job and, for the most part, CBP has performed admirably. Although it is understandable that CBP has placed the highest priority on security and anti-terrorism, it is clear that CBP needs to play a critical role in our national economic security as well by effectively executing its trade enforcement and facilitation missions. We are here today to assess CBP's progress in this endeavor.

As much as things have changed since my days as Commissioner, I am also struck and distressed by how much they remain the same in terms of progress towards implementing the tools necessary to effectively address CBP's national economic security mission. Reflecting back to my days on this committee, it became clear to us that significant changes needed to be made to the old paper-based, transaction focused, inefficient means of clearing imported merchandise into the United States. With the leadership of this committee, after nearly five years of struggling to create comprehensive legislation to achieve these goals, the Congress enacted the Customs Modernization Act (the Mod Act) in the fall of 1993, soon after I became Commissioner. This legislation significantly changed our customs laws to enable modern techniques and procedures to be applied to the importing process.

As we moved to implement many of the provisions of the Mod Act, it became clear that the Customs' automation system, the Automated Commercial System (ACS), was not capable of handling many of the new streamlined procedures called for in the Mod Act. I was also told at that time that the decades old ACS system was nearing collapse due to the sheer volume of trade. It became very clear that a new automation system was critical to achieve the modernization objectives of the Mod Act.

It was also clear that, to reduce the burden on the trade community and to improve the targeting capabilities of CBP and other government agencies, we had to find a way to consolidate the data requirements placed on importers by the numerous government agencies involved in regulating imports. To address both issues, we began working with the Congress to seek funding for ACE, the new Automated Commercial Environment, to streamline the importing process and ITDS, the International Trade Data System, designed to provide a "single window" for government data requirements on imports. Needless to say, it is extremely disappointing that nearly 20 years later, after the expenditure of many millions of dollars, we are still far from completion of ACE or ITDS.

Where we are today?

CBP in recent years, under the leadership of former Commissioner Bersin and current Acting Commissioner Aguilar, have recognized the importance of the CBP's economic security mission and have made strides to address CBP's shortcomings in this area by making ACE and ITDS development priorities of the organization. CBP has also launched some outstanding trade facilitation initiatives, such as Centers of Excellence and Expertise (CEE), and has embarked on working with the trade to develop a "Simplified Entry" process, currently in pilot mode, and has made concerted efforts to open the dialogue with the trade community to simplify other processes to ease the administrative burden on importing into the United States.

Notwithstanding these positive efforts, we are not where we need to be. In my judgment, the commercial operations of CBP are lagging vis-à-vis the security mission of CBP. Despite significant efforts and millions of invested dollars, we are a long way from bringing ACE and ITDS to successful conclusion. The business community is frustrated because they have invested millions of dollars in security programs to support CBP, but they don't feel they have gotten an adequate return on their investment because CBP has not reciprocated in meaningful actions to facilitate trade. They believe that the entry and clearance process is still too cumbersome and costly, and that, without ITDS, government data requirements are duplicative and overly burdensome.

All of these issues are exacerbated by the current environment of shrinking budgets and the fact that congressional oversight is now diffused in the many committees having jurisdiction over CBP resulting in mixed signals on setting the organization's priorities.

Where do we go from here?

ACE and ITDS implementation are crucial!

While it is always easier to describe a problem than to find a solution, it is clear the top priority to address these issues is to find a way to bring ACE and ITDS to successful conclusion and retire ACS as soon as possible. I understand that the current budget appropriation for CBP only provides for operation and maintenance of ACS and nothing for ACE development. This is a short-sighted approach that will not only foster the continuation of costly and burdensome systems but will further delay the goal of creating a single modern system to facilitate trade and enhance CBP's enforcement mission.

It is easily understood in this tight budgetary environment, why additional funding for ACE development was not appropriated, particularly in light of the many millions of dollars already expended on this program over the years with few tangible results. Again, an historical perspective might help here. During my term as Commissioner, I worked very hard but unsuccessfully to convince the Congress to fund ACE development. At that time we were convinced, having built ACS on our own, that we were capable of building the next generation of automation (ACE) as well. The clear message I received, however, was that in light of a recent (at that time) debacle with IRS attempting to build its own automation system which failed miserably, the only way Congress would ultimately approve ACE funding would be if Customs brought in outside experts to do the job.

Several years after my departure that is exactly what happened and the IBM team was awarded the contract to build ACE. Unfortunately, the program was then viewed as a contracted IT effort rather than a CBP initiative, resulting in CBP's key operational leaders not being engaged as actively as they should have been. Consequently, operational requirements were not well defined and the process bogged down with a lot of wasted effort and well deserved criticism from many sources. Another factor leading to scheduling delays and higher costs for the program was that in the aftermath of 9/11, CBP redirected much of its programming efforts from facilitation to border security.

This problem has now been addressed by CBP with the creation of the ACE Business Office, which actively and effectively involves key stakeholders at every level. As a result, we have seen some real progress in recent months with the successful development of the so-called M1 task for rail and sea manifests. The irony is now that CBP is making tangible progress, the investment dollars are drying up, with still so much more to be done, particularly to address the needs and challenges of importers. It is critical that a mechanism be found to re-open the flow of ACE (and ITDS) development funds, while holding CBP accountable in meeting established goals and objectives. To deliver a successful ITDS program, it is also critical to find a mechanism to ensure that all relevant participating government agencies are working diligently to achieve the broader goals of "single entry" by allowing importers to input all necessary import data once to be shared between agencies as appropriate.

Improved communication

In addition to moving as swiftly as possible to complete ACE and ITDS implementation, it would be useful to seek an improved mechanism to facilitate a constructive dialogue involving CBP, the trade community and congressional leaders to explore mechanisms to assist CBP in more effectively carrying out its trade facilitation/enforcement mission without undermining its security efforts. To CBP's credit, the Trade Support Network, with over 300 members from the trade community, was established early on and has coordinated successfully with CBP throughout the ACE effort. CBP has done a better job in reaching out to the trade community in recent years via the TSN and other mechanisms.

However, there does not appear to be an effective mechanism in place to ensure that the business community's voice is really being heard by either CBP or the various congressional committees that have jurisdiction over CBP. Some would also question whether COAC has achieved its originally stated purpose of ensuring that meaningful private sector input is being provided to CBP in advance of critical policy decisions being made in the commercial arena. For example, some have suggested that COAC should be more proactive, rather than reactive, in setting the COAC agenda and others have suggested that COAC was more relevant when it reported directly to the Department, rather than to CBP. It also has been suggested that a mechanism be found for COAC to meet periodically with key congressional committees from time to time to discuss trade priorities.

Reorganization

I am aware that, largely out of frustration with the status quo, some trade community advocates have pushed legislation mandating a reorganization of CBP. As a former Commissioner and someone who led a major reorganization during my term of office, I understand the good intentions of this legislation, but I would argue for preserving maximum flexibility to the Commissioner in restructuring the organization. CBP should, however, be open to a dialogue with interested parties on all issues affecting its ability to carry out its trade mission, including reorganization. Some have questioned, for example, whether the Office of International Trade, created in 2006 largely to better serve CBP's trade mission, has been effective in achieving this goal, particularly in light of the fact that virtually all field trade officers are part of the Office of Field Operations. Others have suggested that the Office of Trade Relations needs to be expanded and enhanced to better serve the trade community.

Conclusion

Thank you, Mr. Chairman for the opportunity to share my views with you today. I realize I have not offered any bold new solutions. But hopefully the perspectives that I have provided can assist the Committee in formulating a strategy moving forward. This concludes my statement and I am prepared to answer any questions at this time.