

**Written Testimony
of
President Darrell J. Sekin, Jr.
National Customs Brokers And
Forwarders Association of America, Inc.
Before the
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
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Good morning, Mr. Chairman. I am Darrell Sekin, Jr., President of the National Customs Brokers and Forwarders Association of America (NCBFAA) and also the President of DJS International Services, Inc., a small, family-owned customs brokerage and freight-forwarding firm, located in Colleyville, Texas. I have worked in the industry for over forty years and have been a licensed customs broker since 1975.

Since that time, the industry has undergone enormous change, particularly in the area of automation. Gone is the world of typewriters and paper documents, giving way to the Automated Broker Interface (ABI), our avenue into the Automated Commercial System (ACS). This system, which my fellow customs brokers and I helped develop in the late 70s and early 80s is, still the primary system for filing entries in 2012, although it has evolved into much more: interfacing with other federal agencies, collecting the revenue, assisting with matters of national and homeland security, providing statistical information for measuring the economy, and supplying the enforcement tools needed to ensure the safety and well-being of the American public.

Customs automation is a powerful tool, facilitating smooth trade flows and sharpening enforcement of trade laws. Customs automation is the communications channel between importers and U.S. Customs and Border Protection (CBP). Customs brokers are instrumental to this process, gathering the data and transmitting the information necessary for the agency to function. As the volume of international trade reaches the point where CBP cannot hope to examine each individual shipment crossing our borders, the agency relies on automation and, in turn, on customs brokers as a reliable mechanism to meet its responsibilities.

At one point during my career, Customs regulated each and every aspect of a customs broker's business. We were in essence a private sector adjunct to the Customs Service. Recognizing that there were commercial aspects to the business where regulation was unnecessary and unwarranted, in the mid-80s our industry and Customs agreed to separate the commercial and proprietary aspects of customs brokerage from what has come to be known as "customs business." The latter signified recognition that we are an extension of Customs and that there must be intensive oversight and supervision of customs-related activities. It is understood that care must be exercised in permitting an enterprise to engage in this business. At stake are the government's revenues and consumer health and safety.

Thus, becoming a customs broker requires us to pass a very difficult, technical examination. Generally, only ten per cent of aspiring brokers pass that exam. We are licensed by CBP and subject to costly penalties for errors and omissions in conducting customs business. In short, in exchange for the privilege of engaging in customs brokerage and to assure the government of the integrity of the entry process, we are committed to meeting CBP's exacting standards and rigorous regulation. Conducting "customs business" is a privilege that is not easily accomplished nor maintained. It is CBP's and the customs broker's "grand bargain" – Customs can rely on the accuracy and integrity of the information they receive; a customs broker assumes a special, unique place in accomplishing the agency's mission.

Recognizing this, CBP is seeking to expand the *role of the broker*. A customs broker is thought of as a "force multiplier" because one customs broker reaches, educates and acts for a multitude of importers, most notably small and medium-sized businesses. A single professional broker can provide reliable information from hundreds of American companies who otherwise would have limited ability to process an entry to the satisfaction of Customs. CBP has thus sought to leverage the reach of customs brokers in order to further facilitate trade and promote the vitality of the American economy.

But, at this point, it is important to know the limits of what a customs broker can provide to CBP. First, a customs broker is retained to work in the interests of his client, the importer. His expertise is acquired by the importer to expedite the entry of imported merchandise into American commerce, paying the correct duties and fees and demonstrating to government agencies that the requirements of U.S. law are being met. His client is the importer, to whom he must direct his primary loyalty.

A customs broker's understanding of the transaction and knowledge of its specifics is based entirely on the representations of his client – unless he has good reason to believe otherwise. Importantly, the customs broker does not see the goods during their passage into the United States; he must reasonably believe what he is told by a client whose integrity is unchallenged. As thousands upon thousands of customs entries are processed daily, the customs broker cannot and does not physically examine the merchandise being imported. Thus, he works on behalf of the importer who is the party liable for the correctness of the information provided to CBP.

That being said, however, there are many ways that customs brokers can collaborate with U.S. Customs and Border Protection, to their mutual advantage and, in the end, furthering the well-being of the importer and the importing process. Since 2011, the National Customs Brokers and Forwarders Association of America (NCBFAA) and CBP have worked intensively together to explore ways to achieve this and to meet the challenges of commerce in the 21st Century. Although this dialogue has not been concluded, following are some ideas that we have discussed that seem to have merit:

Education and Certification

1. **Professionalism of Customs Brokers:** We recognize the professionalism of the customs broker must be enhanced so that he/she can address the ever-evolving requirements of international commerce. The national association has developed a certification program for customs brokers that requires a rigorous course of study and examination. We are considering an additional requirement that brokers acquire practical experience in the industry before they are fully licensed. NCBFAA is also considering a regimen of continuing education in order to keep their credentials in good standing.

2. **Customs Broker Exam:** We have discussed the possibility of the Association administering the customs broker examination, in lieu of the present exams administered by CBP. This would be akin to the way that the bar assumes responsibility for testing new lawyers.

3. **Educating CBP:** We have begun, in partnership with CBP, a series of educational seminars for senior customs officials. This would educate officials on the functions and capabilities of a customs broker so that this expertise can be better leveraged by CBP. We believe that great advantage can be achieved by also participating in the curriculum established for educating new customs officers at their academy and in the ports.

Customs Broker Responsibilities

NCBFAA is presently engaging with CBP in an effort to update customs regulations that apply to customs brokers ("Section 111"). Among the issues under discussion:

1. Clarifying the broker's responsibility to validate new clients;

2. Modernizing the regulations to align with current electronic capabilities and business practices;

3. Participating in the Importer Self-Assessment (ISA) pre-certification program, potentially performing the comprehensive review of the ISA applicant's package and evaluating the applicant's readiness to participate in the program; and

4. Promote the interests of the broker's small and medium-sized clients who would otherwise qualify as "trusted partners."

Generate Support for New Customs Programs

1. **ACE:** NCBFAA has assumed responsibility for educating its members on the value of the new CBP Automated Commercial Environment (ACE), with the goal of rapidly improving participation by the broker community. The Association has appointed an "ACE Champion," communicated broadly on the importance of the new system, and witnessed an increase from 1% to almost 10% participation in a matter of months.

The Association and its members have also worked for several years as key members of the Trade Support Network (TSN) in the design of ACE. NCBFAA is currently partnering with CBP in the development of "cargo release," as well as insisting on completion of auxiliary features such as document imaging and edits.

2. **Centers for Excellence and Expertise:** The Association has agreed to assist with incorporating customs brokers into the development of the new Centers for Excellence and Expertise. Designed to focus on commodity lines, these Centers will greatly enhance the resources available to importers and customs brokers, while providing CBP with uniformity and consistency, as well as expediting the processing of customs entries. The Centers are new and their capabilities are just emerging. It will be important for them to serve small and medium-sized businesses whom we represent, not just the large importers who already have substantial capabilities whom we also represent.

3. **Air Cargo Advanced Screening:** NCBFAA and its COAC members are working with CBP in the roll-out of the Air Cargo Advanced Screening (ACAS) pilot, which will rely on freight forwarders' participation in order to reach small and medium-sized shippers. ACAS will provide security-required data earlier in order to protect the U.S. against terrorist attacks against our international air cargo system.

Advocate For A Series of High-Priority Customs Issues

The National Customs Brokers and Forwarder Association recognizes that there are many challenges for CBP to accomplish its mission. We understand, then, that the Association must be involved in addressing public policy issues designed to improve the performance of the agency.

1. **ACE funding:** Construction of the Automated Commercial Environment is vital to Customs meeting its core responsibilities. The present system – ACS – is close to 30 years old and must be replaced. The Administration’s FY2013 budget request is patently inadequate: \$138M provides no capacity for continued program development; instead CBP is relying on carry-over funds from past years that are being used now but will be depleted by mid-FY2013. The Ways and Means Committee has long championed completion of ACE, but the time is at hand when the Committee must make a strong statement within the House that completion of “cargo release” and other core functionalities must continue even in these austere times.

2. **Drawback:** Drawback is the customs process of crediting *exporters* of products with the *import* duties that they have paid for those products or their components. As drawback customs brokers know, the process for obtaining drawback is hopelessly complex, time-consuming and resource-intensive for both the practitioner and for CBP. For several years, members of the Association have worked with CBP, their partners in the trade community and the Committee to simplify and modernize these processes. As ACE further eliminates paperwork, it is time to enact legislation that will accomplish these objectives. We strongly urge inclusion of drawback simplification in upcoming customs authorization legislation.

3. **Anti-dumping/countervailing duties:** As you consider ways to promote more effective enforcement of the trade remedy laws, we encourage the Committee to codify the recommendations of the Commercial Operations Advisory Committee (COAC) to design and implement a **prospective** system to assess anti-dumping and countervailing duties. We believe a prospective system 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.

4. **Role of the Broker:** As previously mentioned, the Association is working with CBP to evolve this concept. We believe that this can best be accomplished within the rulemaking process, including modernization of Section 111 of the Customs Regulations. We respectfully ask the Committee to encourage this process.

5. **Court of International Trade (CIT):** NCBFAA requests the Committee to examine ways that the Court of International Trade can be empowered to more expeditiously resolve international trade disputes. We support efforts by the CIT Bar Association to recommend changes in the jurisdiction and authority of the CIT to the Committee.

6. **Other Government Agencies:** Increasingly, customs brokers must interact with the laws regulating imports that bestow enforcement responsibilities on agencies other than CBP (e.g., the Food and Drug Administration, the Consumer Product Safety Commission and over 40 other agencies). We have strong working relationships with those agencies, both through our national and regional associations and through the individual brokers at the ports. We encourage efforts to expedite and facilitate these enforcement activities. One such means to that end is the International Trade Data System (ITDS), which is a component of ACE and provides each participating agency a window on the importation process. We support the Committee’s efforts to gain continued and adequate funding for ITDS. At the same time, we express our appreciation to the Committee for its support for the continued exclusive regulation of customs brokers by **CBP**, not creating duplicate regulatory schemes at other agencies.

7. **CBP Field Operations:** NCBFAA supports CBP efforts to re-focus its attention on the partnership of commercial facilitation with homeland security. We well understand the

importance of commerce to our nation's economic well being. In a word, our international economy translates into jobs here at home. CBP's organization must reflect that renewed focus. Additionally, efforts within the Office of Trade to develop policy that is facilitation-oriented must translate into action at the ports, where trade policy is implemented. Lines of communication between policy-makers at headquarters and operators in the field must be wide open. We also believe that the new Centers for Excellence and Expertise will be one path to this result, but only if their efforts are fully enforced by field operations personnel. NCBFAA urges the Committee to ensure that these Centers are adequately staffed, as well as making sure the professional CBP import specialists continue to be made available in the ports, but in greater numbers. NCBFAA recommends that the Committee closely monitor the development of these Centers while they can be influenced to meet your goals for commercial operations.

Mr. Chairman, NCBFAA greatly appreciates this opportunity to outline our views on customs oversight and new policy development. We stand willing to support the Committee in all of its work to accomplish these objectives.