



THE JOINT INDUSTRY GROUP INITIAL COMMENTS REGARDING CUSTOMS REAUTHORIZATION BILL

The Joint Industry Group (JIG) is pleased to offer comments on S. 1631, the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009. JIG is a coalition of firms actively involved in international trade. Members include manufacturers, customs brokers, importers, exporters, trade associations, law firms, and accounting firms. JIG engages federal agencies and the Obama Administration on a variety of international trade-related issues. We work closely with U.S. Customs and Border Protection and Congress to promote trade policy that supports both border enforcement and trade facilitation.

JIG would first like to thank the Senate Finance Committee for moving this proposed legislation forward. U.S. Customs and Border Protection (CBP) is absolutely critical to the economic health and physical security of our country, and S. 1631 includes several important elements that will provide essential assistance to the U.S. trade community. Furthermore, the bill contains additional components that will serve to further strengthen the security of our nation at its borders and beyond. Nonetheless, JIG harbors a number of questions and concerns about different sections or concepts within the legislation as it is currently crafted. Our specific questions, comments, and concerns are listed below.

The Use of Security Data for Commercial Purposes: Section 211(e) of the bill repeals section 343(a)(3) of the Trade Act of 2002, which had prohibited the use of advance information collected by CBP for commercial purposes. When the Trade Act was initially passed, the trade community raised this exact issue as a point of clear concern. We were assured and reassured that none of the data provided for security purposes would be used for commercial purposes. JIG strongly opposes this idea.

From the outset, CBP has stated that data collected through the Importer Security Filing (ISF) would only be used for security purposes. It is important to note that the information required for the ISF is required to be “best available” because CBP understands the difficulties that industry faces in getting the required information earlier in the process than is required for the entry.

We encourage the Committee to explore in depth what information is required to enhance commercial targeting. We have spent close to 7 years to get to where we are with the ISF. Instead of just making this information readily available, we encourage CBP to work with industry, as it did with the 24-Hour Rule and ISF, to determine what data elements are needed to enhance targeting. It is also important to note that the ISF information is only available from one mode of transportation.

Importer of Record Program: Section 215 of the bill requires the implementation of an importer of record program. If any significant changes are going to be made to the existing program, JIG stresses the need to work in close collaboration with the private sector before making adjustments.



Reorganization of Customs Offices and Organizational Structure: The bill includes a number of organizational changes. Some of these changes are intended to reemphasize commercial operations within CBP, while the goal of other adjustments is less clear. JIG requests clarification on the motivation for some of these changes. Additionally, virtually all transitions create certain levels of inconsistency; any disruptions caused by a CBP reorganization will impact the trade community negatively. We urge Congress and CBP to ensure a seamless and transparent reorganization in order to minimize potential disruptions to the trade community.

Customs Facilitation Partnership Program: Section 202 of the bill introduces a Customs Facilitation Partnership Program. JIG asks for clarification on the intent of this program and the manner in which it will be administered. Additionally, JIG remains concerned about the introduction of yet another program to the already extensive list of these partnerships. At some point, the benefits created are outnumbered by the administrative burden they impose on the trade community.

Commercial Operations Advisory Committee: The bill includes several changes to COAC. JIG lauds the Finance Committee for emphasizing the importance of this advisory committee. We do, however, question whether the four-year terms with an opportunity for one renewal amount to overly long times for service. We would encourage the Committee to leave the current two-year terms with one reappointment in place. We also question the involvement of ICE in the COAC. While they can be involved in some of the issues, they should not be part of the government leadership of COAC. Finally, in Section 204(b), JIG believes the final sentence should be modified to read, “The Secretaries of Treasury and Homeland Security shall transfer members...” rather than the existing language, “The Secretaries of Treasury and Homeland Security may transfer members...” (emphasis added).

ACE Funding: The bill includes \$300 million in annual funds through 2012 for ACE and \$25 million for ITDS. These funds are critical to the successful implementation of ACE and ITDS, and JIG commends the Finance Committee for its recognition of this fact and for including an ACE completion date in the legislation. In addition to the numerous advantages created for the government and trade community by proper ACE implementation – including heightened security and efficiency – the full implementation of ACE will alleviate the current cost burdens imposed by maintaining the existing ACS system. Those cost savings will directly benefit the U.S. government. Additionally, it is essential to the modernization of CBP that the fundamental operations would be automated before the project is completed. The export manifest should therefore be automated as part of ACE development. Since there has been concern for ACE funding over the years, we would just like to confirm that the \$300 million annually included in the bill is enough for CBP to finally complete ACE.

Intellectual Property Rights: The bill includes a number of IPR program changes, and JIG is pleased to lend its general support to these adjustments. Nonetheless, remaining concerns include:



- Section 233 should be clear on what methodology is used when CBP determines the top ten ports where CBP seized IPR infringing goods. JIG believes that the metrics used to determine the top ten ports where CBP seized IPR infringing goods should be based on total “value” of goods seized and not “volume” or number of seizures at specific ports.
- The confidential list outlined in Section 234 is worrisome. It does not explain what a person would do to merit inclusion on the list, nor does it outline a method by which an included party could be removed. This section requires a significant amount of additional detail, and JIG urges Congress and CBP to work closely with the trade community before finalizing any list or program.
- 19 U.S.C. 1526(f) currently provides a civil penalty for “any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) of this section...” (emphasis added). The inclusion of the word “seized” instead of the word “forfeited” or the phrase “seized and forfeited” permits CBP to assess penalties on goods it has seized and then on which the seizure was remitted or cancelled. If the goods are not forfeited (i.e., they are determined not to be counterfeit, infringing, etc.) then CBP should not be permitted to assess a penalty merely because it seized them at some point. JIG suggests changing “seized” to either “forfeited” or “seized and forfeited”.
- The IPR Branch at CBP should be instructed that, in any case in which an importer claims a valid license or permission to import seized goods, the matter is to be processed within 30 days from the date of an importer’s submission that contests the validity of a seizure. There have been innumerable instances in which CBP takes months to consider these claims, determines they are valid and then returns the goods at a time they can no longer be sold (e.g. after Christmas, etc.).
- If CBP returns goods after a lengthy period either because they were legally imported or CBP fails to forfeit them, then the Federal Torts Claims Act and /or the Civil Asset Forfeiture Reform Act (CAFRA) should be amended to allow the importer to make a claim for depreciation or diminution in value. In virtually all instances in which CBP remits and/or cancels seizures, they nevertheless refuse to cancel exorbitant storage charges on the grounds that CBP “had reasonable cause to seize the goods.” JIG seeks a provision mandating that no storage charges will be assessed in any case in which the seizure is remitted or cancelled.
- JIG believes the IPR training currently provided to CBP personnel is insufficient.

Drawback: JIG supports the work done on drawback and urges its continued inclusion in the legislation.

Technical Correction Regarding Voluntary Reliquidation: Title II of the Miscellaneous Trade and Technical Corrections Act of 2004 revised section 514 of the Tariff Act (19 USC 1514), concerning protests, by providing that the period within which an importer may protest a Customs decision begins to run from the "date of liquidation", rather than from the "date of notice of liquidation." However, section 501 of the Tariff Act (19 USC 1501), which allows CBP to voluntarily reliquidate any liquidation, still provides that CBP's period within which to do so begins to run from the date of notice of the liquidation. The misalignment between section 514



and section 501 as to the event that commences the administrative review period has the potential to frustrate the statutory scheme for the finality of liquidations. That is, if CBP were to generate a notice of liquidation long after the actual date of liquidation, it arguably would then have the authority to reliquidate under current section 501. JIG supports amending section 501 to bring it into alignment with section 514 in this regard.