



U.S. Customs and
Border Protection

CBP Trade Newsletter

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CBP DELIVERS SIMPLIFIED ENTRY

U.S. Customs and Border Protection (CBP) is proud to announce the delivery of the first phase of Cargo Release, known as Simplified Entry, in the Automated Commercial Environment (ACE). CBP has received the first Simplified Entry filings at each of the three pilot ports of Indianapolis, Chicago, and Atlanta, as part of the pilot test that began May 29, 2012.



Simplified Entry pilot is currently underway in the air cargo environment
Photographer: James Tourtellotte

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ACE IS THE CORNERSTONE OF
CBP'S TRADE
MODERNIZATION

To date, six of the nine pilot participants selected in December of 2011 have begun filing Simplified Entries. The six initial pilot filers are: Expeditors, FedEx Trade Networks, Janel Group of New York, Kuehne & Nagel, Inc, Page & Jones, Inc, and UPS. The additional pilot filers, A.N. Deringer, Inc., FH Kaysing, and Livingston International, have and continue to play an integral role in the development of the pilot and will begin filing Simplified Entries as capabilities allow.

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Two major supporters from the importer community are Nike and GE Energy. Four software developers, Descartes, Four Soft, Kewill and Questaweb, have been active in providing software to the pilot participants.

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CBP AND HOMELAND
SECURITY
INVESTIGATIONS PARTNER TO
COMBAT

The ACE delivery of Simplified Entry was accomplished within a year from the initial discussions of this functionality and is the result of a successful government/industry partnership. The Simplified Process Joint Industry-CBP Workgroup met for the first time in June 2011 with the goal of formulating viable solutions that are mutually beneficial and diminish the administrative burden related to importing into the United States. An outgrowth of that work was Simplified Entry.

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CBP BEGINS PUBLIC
OUTREACH TO UPDATE
BROKER REGULATIONS

Simplified Entry streamlines the release of goods and enhances cargo security. It segregates the filing of the transportation information from the filing of the entry information. This allows for the earlier filing of entry information which will in turn allow CBP personnel to apply more time and resources as part of its risk-segmented approach in identifying high-risk shipments while potentially reducing transaction costs for the trade community. Filers can update the entry information until the point that the conveyance arrives.

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TRADE TRANSFORMATION

In today's global economy, it has become even more critical for CBP to expedite the flow of legitimate cargo while at the same time securing the global supply chain. To meet this challenge, CBP developed what are coined as "Trade Transformation" initiatives representing the agency's approach to 21st Century trade. CBP is highlighting the following set of initiatives that fall under this Trade Transformation umbrella in this newsletter: Automated Commercial Environment (ACE), the Centers of Excellence and Expertise, Simplified Entry, Role of the Broker and One U.S. Government at the Border.

The capability for filers to update information will result in more accurate data for CBP and Participating Government Agencies.

The Simplified Entry Pilot is an outstanding example of what can happen when the government partners with the private sector in the development of an import process that increases the effectiveness and efficiency of CBP while providing excellent benefits to the importing community. Simplified Entry is expected to enhance cargo security, reduce cycle times, improve productivity, potentially reduce costs, and help eliminate redundant data transmissions.

Simplified Entry is good for the government and good for U.S. business.

For information on further developments, please continue to check the CBP website at:

<http://1.usa.gov/LOpzey>

ACE IS THE CORNERSTONE OF CBP'S TRADE MODERNIZATION



CBP's Automated Commercial Environment (ACE) plays a critical role in our nation's border and economic security. The goal of the multi-year project is to modernize the business processes essential to securing U.S. borders-to speed the flow of legitimate shipments and target illicit goods.

ACE is the technology driver of the International Trade Data System (ITDS) interagency effort to create one system for the collection and distribution of standard electronic import and export data from the international business community for U.S. government agencies. The "single window" concept will streamline redundant reporting requirements and improve efficiency and security. Currently, forty-seven agencies, including CBP, are working together to implement ITDS.

While ACE is still under development, CBP, along with government and trade partners, is experiencing significant benefits from functionality already deployed.

- **The ACE Secure Data Portal** provides trade users with near real-time access to data and more than 125 standard and customizable management reports.
- The Electronic Manifest (e-Manifest) truck capability enables carriers to submit electronic truck manifests to CBP prior to a truck's arrival at the land border crossing. Truck-processing times are now reduced by 33 percent nationwide compared to paper-based manifests.

- Trade members can file and electronically amend entry summaries in ACE for Consumption, Informal and Antidumping/Countervailing Duty entries (entry types 01, 11, and 03.) These three entry types account for nearly 99 percent of all entry summaries.

Effective September 29, 2012, ACE will be the only approved mechanism for transmitting rail and sea manifest information to CBP.

CBP published a Federal Register Notice on March 29, 2012 alerting rail and sea carriers and ABI filers of the transition to ACE for rail and sea manifests. As of May 2012, 88 percent of impacted carriers and 47 percent of ABI software developers were using or preparing to use ACE. Since it can take up to **12 weeks** to complete the programming and certification testing required to begin transmitting rail and sea cargo information via ACE, members of the impacted trade community not yet participating need to take action **immediately** to prepare for the transition.

CBP is committed to modernizing its tools and technologies, as well as procedures and requirements, to fulfill its promise to strengthening the nation's economic prosperity and national security.

CBP's key stakeholders – internal users, government agencies, and the trade community – are now involved as never before in the process to further the development and delivery of ACE, truly the cornerstone of CBP's trade modernization.



CENTERS OF EXCELLENCE AND EXPERTISE

In May 2012, at the West Coast Trade Symposium in Long Beach, CA, Acting Commissioner David V. Aguilar of CBP announced the expansion of the Centers of Excellence and Expertise (CEEs).

CBP will create two additional CEEs in Fiscal Year (FY) 2012: the Automotive & Aerospace CEE coordinated from Detroit, and the Petroleum, Natural Gas & Minerals CEE coordinated from Houston. CBP expects these two CEEs to be open and operational by September 2012.

The decision to expand is based on the success of the two current CEEs – the Electronics CEE coordinated from Long Beach, CA and the Pharmaceuticals, Health & Chemicals CEE coordinated from New York City. In FY 2013, CBP expects to establish five more CEEs, bringing the total number to nine.

The CEEs bring all of CBP's trade expertise to support a single industry in a strategic virtual location. They are staffed with numerous trade positions using account management principles to authoritatively facilitate trade. CEEs represent CBP's expanded focus on "Trade in the 21st Century," transforming customs procedures to align with modern business. By having the CEEs focus on industry-specific issues, CBP is able to provide tailored support to unique trading environments.

CEEs provide one-stop processing to lower the Trade's cost of business, provide greater consistency and predictability, and enhance CBP enforcement efforts. CEEs previously functioned as pilot programs, and continue CBP efforts to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices.

The CEEs serve as a single point of processing for businesses enrolled in CBP's trusted shipper programs: Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA). Required import documents for trusted partners within the electronics and pharmaceutical industries are being routed to their respective CEE.

Revenue collection will continue to be carried out at the ports of entry, but the CEEs will perform all validation activities, protest review, post entry amendment/post summary correction reviews, and prior disclosure validations for the participants within their industries. The scope and functions will expand incrementally until all revenue related functions reside in the CEEs.

While the CEEs are industry focused, they are also account based. Importers whose imports cut across multiple industries, or who may import products that fall outside of their industry, will be assigned to the CEE that best represents their business. The assigned CEE will be the primary point of processing for the participating importer for all entries, regardless of the commodity that is entered. CEEs will collaborate to resolve issues for importers that



Acting CBP Commissioner David V. Aguilar opens the 2012 West Coast Trade Symposium.

Photographer: Jaime Ruiz

cross industry assignments. In this way, importers can truly be managed by account.

CEEs also serve as resources to the broader trade community and to CBP's U.S. government partners. CEE personnel answer questions, provide information and develop comprehensive trade facilitation strategies to address uniformity and compliance concerns.

The approach to trade processing represented by the CEEs will reduce transaction costs for the trade community, facilitate legitimate trade through more effective risk segmentation, increase agency expertise, and deliver greater transparency and uniformity of action within a given industry.

Nine CEEs in all are currently contemplated:

1. Electronics*;
2. Pharmaceuticals, Health & Chemicals*;
3. Automotive & Aerospace;
4. Petroleum, Natural Gas & Minerals;
5. Agriculture & Prepared Products;
6. Base Metals & Machinery;
7. Consumer Products & Mass Merchandising;
8. Industrial & Manufacturing Materials; and
9. Textiles, Wearing Apparel & Footwear.

* Denotes an established CEE

To prepare for the future CEEs, CBP has created industry working groups made up of key industry stakeholders in the trade community. The industry working groups will collaborate with CBP on identifying facilitation opportunities, and developing strategies to address risk for each industry, and will provide recommendations for the placement of the future CEEs.



CBP AND HOMELAND SECURITY INVESTIGATIONS PARTNER TO COMBAT COMMERCIAL FRAUD



John Morton
Director, Immigration and
Customs Enforcement

CBP is the first line of defense against an importer who tries to smuggle goods or commercially defraud the Federal Government of revenue. The second line is Homeland Security Investigations (HSI), Immigration and Customs Enforcement's (ICE) investigative component, which focuses on disruption and dismantlement of transnational criminal organizations. HSI initiates investigations based on leads it develops independently, leads from private industry, and leads and intelligence it obtains from the interdiction activities of CBP, other law enforcement entities, and industry. When CBP discovers an importer's deception, HSI must prove that it was willful and knowing. Thus, putting smugglers and importers attempting to evade duties behind bars requires the close and strategic partnership between CBP and HSI.

Collaboration ideally begins before a shipment ever reaches a U.S. port of entry, when a particular importer's history of fraud or a lead that an impending shipment may be in violation prompts CBP to notify HSI. HSI can then use its investigative tools such as controlled deliveries, search warrants, and surveillances at anticipated delivery locations. CBP has only 30 days to detain goods that officers suspect violate federal laws; therefore, the earlier the evidence-gathering, the greater the opportunity HSI has to build a successful case.

Advanced notification from CBP also enables HSI to gain U.S. Attorneys' commitment to investigations early in the process – crucial, considering that heavy legal case loads often limit prosecution to only those that pose egregious health and safety threats or significant loss to U.S. revenue. CBP's intelligence on shipping routes, on the importer's pattern of

behavior, and on goods themselves is especially valuable in anti-dumping and evasion of duty investigations that U.S. Attorneys might otherwise decline to prosecute, according to Supervisory Special Agent Sarah Baerwald, Unit Chief of HSI's Commercial Fraud Unit. This unit is housed at the National Intellectual Property Rights (IPR) Coordination Center, located in Arlington, Virginia, which serves as a task force of 20 U.S. and international member agencies.

Acting CBP Commissioner David Aguilar and ICE Director John Morton recognize that the U.S. recession, lax collection of revenue and enforcement of U.S. trade laws have posed a serious threat to the American economy and business competitiveness. And although ICE-HSI and CBP have been collaborating on commercial fraud enforcement for years, it has become a priority for both agencies. In the fall of 2011, HSI and CBP convened a working group to analyze joint commercial trade fraud priority strategies, which resulted in a renewed and very focused joint fraud enforcement program.

To that end, HSI's commercial fraud agents meet monthly with CBP personnel as part of the field Commercial Enforcement Analysis Response information and data-sharing process. In addition, officials from both agencies confer routinely on a more informal basis. HSI's Headquarters Commercial Fraud Unit consults CBP's Offices of International Trade and Field Operations for information on prior seizures, which enables HSI to establish criminal knowledge and intent as early as possible. CBP's National Targeting Centers and its National Targeting and Analysis Groups are additional sources of critical information.

"The CBP/ HSI joint collaboration program takes our previous efforts to a whole new level, making international criminal cases more effective and meaningful," Baerwald said. "From targeting, to investigating, then prosecuting through the judicial process, HSI cannot conduct a successful criminal trade fraud investigation without CBP."



David V. Aguilar
Acting CBP Commissioner

On June 4, Acting Commissioner Aguilar provided the luncheon keynote speech to an audience of more than 500 trade professionals at the American Association of Exporters and Importers (AAEI) Conference in Arlington, VA. The Conference theme was "Back to Basics and Beyond."

On June 19, Acting Commissioner Aguilar spoke before the Express Association of America (EAA), a trade association of four large express delivery companies (DHL, FedEx, TNT, and UPS) at the Army and Navy Club in Washington, D.C. The Acting Commissioner has addressed issues associated with the Air Cargo Advance Screening (ACAS) pilot in a roundtable setting.

On June 20, as part of the Beyond the Border Action Plan, CBP and CBSA (Canada Border Services Agency) jointly presented to the American Conference Institute's 7th Annual Import Compliance & Enforcement Conference in Washington, D.C.

On July 25, CBP will meet with Businesses for a Better Border and Canada Border Services Agency in Washington, D.C., to discuss harmonization of trusted trader programs.



CBP BEGINS PUBLIC OUTREACH TO UPDATE BROKER REGULATIONS

CBP is planning several public Webinars during the summer of 2012 to solicit comment and input on all facets of the broker regulations (19 CFR Part 111). This is part of CBP’s Role of the Broker Initiative, which intends to meaningfully transform the relationship between the customs broker and CBP. One key element of this initiative is to modernize the broker’s role by overhauling regulations. The goal is to update the broker regulations to better reflect modern and efficient trade practices and encourage brokers to be force multipliers for CBP’s trade facilitation efforts.

CBP’s Webinars are intended to reach the widest possible audience, particularly small and medium-sized businesses. A schedule of these Webinars follows below:

Broker Regulation Webinars	
Date	Topic
June 7	Overview of the Part 111 rewrite and the Role of the Broker Trade Transformation Initiative
June 21	Establishing “ <i>bona fides</i> ”
June 28	Broker Permitting
July 12	Continuing education (Part 1)
July 26	Understanding impacts to business processes
August 9	Developing regulatory alternatives and evaluating economic impacts
August 23	Continuing education (Part 2)
September 6	Broker penalties
September 20	Wrap-up and summary of major topics

CBP has started several public Webinars to discuss all facets of CBP’s broker regulations. The first Broker Regulation Webinar had 500 participants.



Title 19 Code of Federal Regulations

In addition to presenting these Webinars, CBP will meet with local and regional broker associations throughout the summer to glean meaningful insights that are unique to certain ports and border regions. Primary topics of interest are:

- Continuing education for licensed brokers;
- Due process proceedings for brokers, including penalties and suspension and revocation of licenses;
- Establishing *bona fides* and broker relationships with unlicensed parties; and
- “Business model alignment” between the trade and CBP, which includes conducting customs business within the geographic bounds of the United States and rethinking the district permitting requirements in the modern business environment.

For questions or comments regarding the broker regulations or CBP’s Webinar schedule to contact the Role of the Broker mailbox at: Roleofthebroker@cbp.dhs.gov

(continued from page 4)

On June 23-30, Acting Commissioner Aguilar and Acting Assistant Commissioner Stallworth participated in the World Customs Organization’s Policy Commission/Council Session in Brussels, Belgium. This meeting addressed important budgetary and policy issues of the WCO, and was attended by C1-equivalent officials from many other Customs administrations.

CBP’s next Commercial Operators Advisory Committee (COAC) meeting, the third of the year, is set for August 15 in Seattle, Washington.

Interested in being the first to know about our Trade Transformation updates? CBP’s Trade Transformation website can be found at <http://1.usa.gov/LTs28h>. Sign up to follow the website at <http://bit.ly/LcpoOk>.

This newsletter is intended to raise awareness and compliance with trade laws and regulations. It reflects CBP’s position on or interpretation of the applicable laws or regulations as of the date of publication. It does not in any way replace or supersede any laws or regulations.

For questions or comments regarding this Trade Newsletter please contact: HQ.quota@dhs.gov

TESTIMONY ON TRADE MODERNIZATION



(Left to right) David V. Aguilar, Acting Commissioner CBP, Kumar Kibble, former Deputy Director ICE, Timothy Skud, Deputy Assistant Secretary, Tax, Trade and Tariff Policy, Dept of the Treasury.

Photographer: Josh Denmark

On May 17, 2012, U.S. Customs and Border Protection (CBP) Acting Commissioner David V. Aguilar testified at the House Committee on Ways & Means, Trade Subcommittee hearing on “Customs Trade Modernization, Facilitation, and Enforcement.” As the Committee proceeds to draft Customs Reauthorization legislation, this hearing provided an opportunity to discuss CBP’s efforts to modernize trade via the Automated Commercial Environment (ACE), Simplified Entry, and the Centers of Excellence

and Expertise (CEE). Acting Commissioner Aguilar focused on six key themes to carry out CBP’s trade transformation: (1) Consistency and Harmonization; (2) Modernization; (3) Ensuring a Comprehensive Trusted Trader Program; (4) Continuing Co-Creation of Trade Initiatives with our Partners; (5) Education of CBP on Trade Operations; and (6) Trade Enforcement and Revenue Collection. Congressional Members were interested in learning about the progress of ACE, the effectiveness of the CEES, CBP’s work with other government agencies to streamline the importation process, CBP’s position on increasing the *de minimus* amount, and the progress CBP is making through the Beyond the Border Initiative with Canada.

Additional hearing witnesses included: Kumar Kibble, former Deputy Director, U.S. Immigration and Customs Enforcement; Timothy Skud, Deputy Assistant Secretary, Tax, Trade, and Tariff Policy, U.S. Department of the Treasury; Honorable George Weise, Executive Vice President, Sandler & Travis Trade Advisory Services, (former Commissioner of Customs); Darrell Sekin, Jr., President and CEO, DJS International Services, and President, National Customs Brokers and Forwarders Association of Americas, Inc.; Michael Mullen, Executive Director, Express Association of America; John Williams, Executive Director, Southern Shrimp Alliance; and Karl Glassman, COO, Leggett & Platt, Inc.

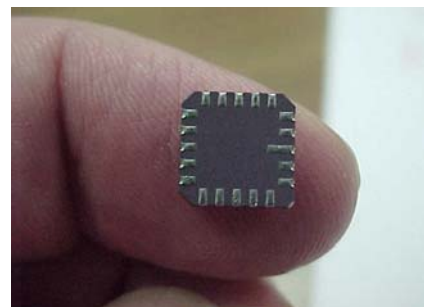
CBP CAN NOW SHARE INFORMATION WITH TRADEMARK

Counterfeiters are becoming increasingly clever at passing off their counterfeit goods as the real thing. Many counterfeit products even contain indicators of authenticity such as holographs, universal product codes, stock keeping unit numbers, and serial numbers, all of which are evidence that counterfeiters are sophisticated at copying genuine products. As a result, counterfeits and authentic products are sometimes indistinguishable to the naked eye. However, CBP has new legal authority to help officers identify and seize these counterfeits.

An Interim Final Rule (IFR), implementing Section 818(g) of the National Defense Authorization Act of 2012 (NDAA) was published in the Federal Register on April 24, 2012. The IFR, which went into effect on the date of publication, amends CBP regulations pertaining to importations of merchandise bearing recorded trademarks. It authorizes CBP personnel, subject to certain conditions, to disclose to trademark holders information that appears on suspect counterfeit merchandise or its retail packaging, including information protected by the Trade Secrets Act, in order to get information from the trademark holder to assist CBP in determining whether the merchandise bears a counterfeit mark. Ports now have authority to share unredacted samples and photographs of suspected counterfeit merchandise with trademark holders prior to seizure for the purpose of obtaining assistance in determining whether the merchandise is authentic.

Importantly, disclosure of unredacted information to the trademark holder is permitted only after the importer is given notice and an opportunity to provide evidence showing that the goods are in fact authentic. The notice is intended to give legitimate importers an opportunity to protect confidential information from disclosure.

The NDAA and IFR strengthen CBP’s ability to protect America’s economic competitiveness and prevent harm to consumers and national security by ensuring that officers have access to needed assistance in making increasingly difficult determinations as to whether suspect merchandise is counterfeit.



Information such as the numbers included on this chip may now be shared with rights holders.

TRADE TRANSFORMATION



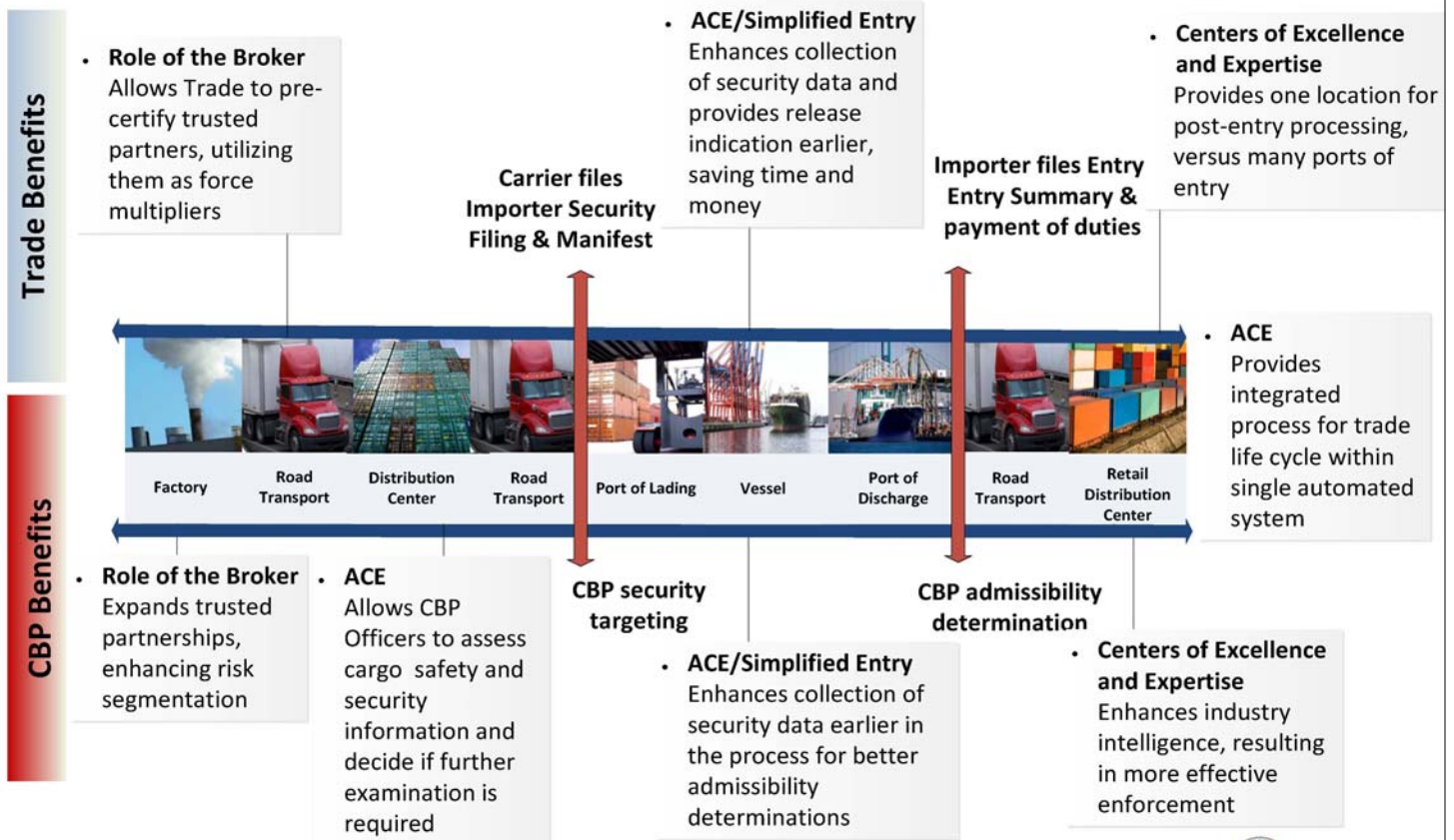
Allen Gina
Assistant Commissioner
Office of International Trade

CBP expects to achieve these goals with several trade objectives, which hone in on key efficiency areas, including:

- Driving down transaction costs to the Trade;
- Creating efficiencies that result in expedited clearance and review processes; and
- Aligning security and trade targeting and enforcement efforts around an “all-threats” agenda.

Based upon these trade priorities, CBP’s work on Trade Transformation has created game changing initiatives, which transform the agency’s facilitation and enforcement efforts. The flow chart below highlights how several of these initiatives, the Centers of Excellence and Expertise, the Role of the Broker, and Simplified Entry, are working to create efficiencies for the cargo process. ACE is the foundation for CBP’s Trade Transformation efforts, which provides the technological platform to truly modernize the cargo process. It also provides a key piece in transforming CBP’s business processes to better align them with a modern trading environment. CBP anticipates continued work on these and other Trade Transformation initiatives throughout FY 2013.

By mission definition, CBP must both facilitate and secure trade flows. With \$2.3 trillion in imports and \$1.3 trillion in exports in FY 2011, it is clear that with such a large and growing volume of goods to process, CBP must perform its responsibilities efficiently in order to avoid delaying shipments, increasing costs and creating inefficiencies for U.S. business.



INTERAGENCY PARTNERSHIPS



CBP Officer and CPSC Investigator screen toys for phthalates, a substance in toys that can be harmful to children.

Today's businesses recognize that instilling strong quality control management throughout the supply chain can lead to increased competitiveness and reduce legal and financial risks. Federal agencies working under resource and time constraints understand that securing the supply chain during the entire import lifecycle is critical to protecting our nation's public health and economy.

To capitalize on this public-private mutual interest, CBP is actively engaging

importers and federal agencies to create interagency partnerships, building on the premise that importers with strong internal controls achieve the highest level of regulatory compliance, thereby reducing both federal government and importer resources used during entry and post entry. These new partnerships leverage CBP's existing trade facilitation programs to incorporate the compliance requirements of other federal agency regulations.

In the spirit of collaboration, CBP and the Consumer Product Safety Commission (CPSC) developed a voluntary importer certification program, the Importer Self-Assessment Product Safety Pilot (ISA-PS), which extends CBP's Importer Self-Assessment program to require compliance of regulations administered by CPSC. The ISA-PS pilot is open to ISA participants that have already demonstrated compliance with trade laws, are interested in developing a partnership with CPSC, and are committed to ensuring adequate quality controls are in place to meet CPSC's requirements. In exchange, ISA-PS members receive benefits such as "front of the line testing" and a reduction in the number of product safety tests, among others. Recently, CPSC indicated it will consider an importer's participation in the ISA-PS program as a mitigating factor in the event civil penalties or liquidated damages are assessed.

CBP is reaching out to other federal agencies and the Trade to analyze agency operations, policy, and regulatory authorities to identify areas for potential trade and government partnerships. Interagency partnerships provide enhanced facilitation for importers while allowing government resources to focus on high-risk shipments.

CBP is interested in hearing from the Trade to help expand interagency partnerships. Members of the Trade who would like to send comments or learn more about the ISA-PS program, may email ISA@dhs.gov or visit <http://1.usa.gov/KEcsf3>

THE "FORMULA" FOR SUCCESS IN POST IMPORTATION ADJUSTMENTS

On May 30, 2012, CBP published a notice of a ruling that revoked a prior valuation ruling concerning the treatment of post-import adjustments made pursuant to a methodology specified in the importer's formal transfer pricing policies. *See Customs Bulletin and Decisions, Vol. 46, No. 23* (May 30, 2012). This ruling is effective on July 30, 2012.

Related party transactions may involve adjustments to initial transfer prices after importation, in accordance with the company's formal transfer pricing policy or Advance Pricing Agreements (APA). The transfer pricing policies are used to examine whether a price between the related parties is at arm's length for tax purposes and to evaluate tax consequences among the parties. In the past, CBP had allowed the adjustments, but not under the transaction value basis of appraisement. Sometimes, these adjustments were allowed under the "fallback" method of appraisement. In other instances, CBP disallowed the adjustments completely because they were considered to be a post-importation rebate or decrease under 19 U.S.C. §1401a(b)(4)(B).

CBP reviewed this matter and proposed a broader interpretation of what is permitted under transaction value to allow a transfer pricing policy/APA to be considered a "formula" in the transfer pricing context provided certain criteria are met. The transfer pricing policy would still need to be adjusted for Customs purposes since the arm's length test is different [(1) circumstances of the sale, or (2) test values] from the IRS analysis. In order to claim upward and downward post-importation adjustments under the transaction value basis of appraisement, CBP strongly encourages importers to use the reconciliation program to make the final declaration of value.

Notice of CBP's revised ruling (W548314, dated May 16, 2012) reflecting its new position, is available at http://www.cbp.gov/xp/cgov/trade/legal/bulletins_decisions/bulletins_2012/vol46_05302012_no23

