SUMMARY OF RECOMMENDATIONS:

On February 13, 2008, COAC presented to CBP the following summary of recommendations that the law firm of Braumiller Schulz LLP hereby adopts as our own recommendations, followed by a detailed discussion of each of these areas. Please note that our comments are presented in support of those summary recommendations as well as the detailed recommendations that COAC subsequently prepared which we believe successfully and thoroughly address many of the concerns impacting the trade community. Since COAC was unable to present its detailed comments prior to the March 18th comment deadline, we have based most of our detailed comments (see below) on the product COAC prepared, although ours may be more streamlined. Nevertheless, the substance of our detailed recommendations mirrors those of COAC.

The Summary of Recommendations is as follows:

1. **We request that CBP provide for a phased implementation of the ISF and not simply a phased compliance and enforcement strategy.**
2. **The proposed imposition of liquidated damages in connection with the ISF is unnecessary and should be deleted.**
3. **There must be no "linking" of the data elements in the ISF. Instead filers should transmit all required information in an established format, allowing CBP to manipulate the data to best achieve effective security screening.**
4. **There must be a timely confirmation message indicating that the security filing has been completed and filed. This would provide required assurance to the filer, the importer of record and the carrier and greatly contribute to the success of the ISF.**
5. **The type, length, and definition of each required data element must be clearly described in the regulations and any accompanying instructions, so that filers may properly program their IT systems to accommodate the ISF.**
6. **The ISF must be harmonized with the SAFE Framework of Standards promulgated by the World Customs Organization and subscribed to by the US. This must occur prior to any implementation.**
7. **The carrier messaging requirements must be more clearly defined so that the carriers may carry out an effective implementation of their portion of the security filing requirement.**
8. **We strongly recommend a more realistic and collaborative cost, benefit and feasibility study as we believe that the costs used are understated in the NPRM.**

DETAILED RECOMMENDATIONS:

We will now discuss each key recommendation in more detail:

1. **We request that CBP provide for a phased implementation of the ISF and not simply a phased compliance and enforcement strategy.**

NPRM Section: V. General Public Comments, C. Test of Concept and Phase-in Enforcement

We strongly recommend that CBP must pursue a planned, incremental approach to phasing in ISF. The ISF represents the most significant change by CBP to current industry supply chain practices and information systems in recent memory; it is orders of magnitude more complex than was the 24 hour rule which was primarily implemented by a limited set of ocean carriers and focused on traditional manifest data already in the hands of the carriers when the filing time was moved up. With ISF, at one end of the extreme, CBP will potentially affect over 800,000 individual importers. At the other end, CBP will minimally require closer coordination of those importers with their service providers. Some of the data elements required by CBP under ISF have never before been collected by importers or service providers, nor incorporated into existing supply chain information systems, much less been available prior to loading,

especially 24 hours prior to loading.

In addition, the volume of data under ISF could present a significant challenge and risk to CBP's legacy systems. The preliminary projections of the huge increase in data volumes based on ATDI are substantial and warrant incremental system development, utilizing a representative group of importers and their agents. This test phase would include stress testing and a technical correction process. The trade as well as CBP is totally reliant on the efficient performance of ACS, ABI, and AMS; it could be harmful to both industry and CBP to risk the performance and reliability of those legacy systems which already are recognized to be operating beyond planned capacities. In addition, this phased implementation strategy would facilitate a structured, logical development approach for the programming needed to embed ISF into the eventual incorporation into ACE.

The phased implementation model we recommend is similar to ACE truck e-manifest. CBP publicly stated that e-manifest program was to be the system-of-record and would ultimately be mandatory for all trucks crossing the border. CBP ensured that ACE e-manifest was initially implemented by port groupings with voluntary participation, and that the normal initial system problems and operational transition did not negatively affect truck processing. In fact, of course, there were huge disruptions despite the best of intentions. Neither CBP nor the trade can afford similar disruptions when 10+ 2 is implemented. While we do not recommend implementation on a port-by-port basis, we urge that an incremental model similar to that used to introduce other significant CBP programs be used to implement the ISF.

The trade is prepared to assist CBP in identifying an initial set of willing importer participants representing a cross-section of industry sectors to aid the agency in the first round of implementation. A formal process could be established to ensure progressive participation that would ultimately lead to full mandatory trade participation on a global basis. This could be similar to CBP's approach with ATDI, but the intent would be to gradually introduce a limited set of importers and ISF filers to facilitate testing and refinement of the ISF technical and operational requirements. As ISF matures, additional participants could be brought into the ISF using a planned, staged methodology that would ensure CBP's existing legacy systems are not adversely impacted.

It is recommended that CBP establish a regular and recurring collaborative process with COAC and the TSN to review and correct operational and technical issues, analyze metrics of data gaps and inaccuracies, and identify solutions to problems. Specifically, CBP should establish a schedule for both operational and technical reviews, no more than every three months and should work with COAC and the TSN supply chain committee to address the operational and policy issues regarding ISF during both the phased implementation process and phased enforcement period. A regular agenda can and should be established to review performance metrics of data transmissions by the initial groups of trade participants which would assist problem resolution of missing data, inaccurate data, timeliness of data, etc.

The ultimate objectives of this collaborative process would be to assist CBP in achieving the optimal design and smooth, seamless implementation of ISF and to produce a best practice document for industry and CBP officers. This best practice document may be instrumental in ensuring that all trade participants understand how to comply with ISF which should facilitate full implementation of ISF, and further aid CBP with its internal training.

The NPRM stated there will be a phased-in approach to enforcement of the SF, similar to that used for the 24-Hour Rule and Trade Act Regulations. (See Section V.C. of the NPRM). We are separately recommending the phased-in approach take the form of a measured, incremental implementation, allowing for periodic review, correction and enhancement of the SF filings.

We believe it would be inappropriate to impose fines, "no-load messages," or any other punitive measures during any phased-in implementation period. Rather, during the phase-in period, the ISF may undergo changes and improvements, according to lessons learned, adjustments, corrections and new technology. An "informed compliance" approach to enforcement of the SF requirement would be appropriate during this period. If fines are to be assessed, this should be well after the SF requirements are fully tested, refined and implemented and best practices are clearly established.

Finally, we strongly urge that the Automated Commercial Environment (ACE) be used for the final production version of the ISF. AMS and ABI may be practical for incremental testing and initial implementation, but they have limitations. The ISF must be designed with ACE as the ultimate tool.

2. **The proposed imposition of liquidated damages in connection with the ISF is unnecessary and should be deleted.**

NPRM Section: VI. Amendments to Bond Conditions, A. Bond Conditions Related to the Proposed Importer Security Filing, Vessel Stow Plan, and Container Status Message Requirements; and B. Bond Conditions Related to the Trade Act Regulations

a. The proposed liquidated damages provisions are inappropriate and unnecessary to ensure compliance with the ISF

The proposed imposition of liquidated damages in connection with the ISF is not reasonably related to the national security goal of the ISF and is also unnecessary. It should be replaced by realistic and targeted enforcement measures more clearly tied to the purpose and aim of the ISF.

We understand CBP has made this proposal with the idea of having the flexibility to rely on enforcement beyond just do not load messages. While the trade appreciates CBP's attempt to fashion another remedy, the proposed assessment amounts are inappropriately rigid and would, in many instances, prove far too severe for something that could be as minor as a clerical error. Any enforcement scheme associated with ISF requirements needs to provide for assessments commensurate with the degree/seriousness of the infraction. Deficiencies with respect to ISFs can range from minor/inconsequential misstatement of details to complete failure to make the filing. Distinctions in severity of violation should be clearly set forth in advance and assessments should comport with the actual infractions.

We understand CBP has publicly stated it anticipates an environment of reduced or eliminated ability to mitigate assessments for violation of ISF requirements. If this is to be the case, the need for variation of assessments in accordance with the degree of severity of the violations is even more urgently needed. Rigid assessments or restricting/eliminating mitigation would result in unusually severe punishment for importers in general, and it will not likely serve as a deterrent because the vast majority of these potential errors will be inadvertent. The LD language as proposed fails to draw a distinction (for example) between a case where the importer and CBP have a difference of opinion about classification versus a case where the importer intentionally states the wrong country of shipment. When a harsh punishment does not serve a deterring objective, it should be used with caution or not used at all. Severe punishment for inadvertent mistakes made by others serving importers with a good record and history of compliance will not serve a deterring function simply because *these mistakes are not the result of unconscious indifference or intentional acts*. Perhaps more importantly, security will not increase by CBP's adoption of any "zero tolerance" approach.

We submit that one component of a more appropriate and meaningful approach to dealing with filing deficiencies would be for CBP to follow its current policy of preventing loading of cargo

("no-load message") that fails to meet the requirements of the 24-hour rule, in combination with other effective deterrents discussed below. In instances where the ISF is not filed at all or is, on its face, deficient, a no-load message would meet CBP's objectives to strengthen security, while serving as a deterrent to those companies who fail to meet the new security filing requirements. In an environment of "just-in-time" inventory management and routine shipping/distribution deadlines, a delay in shipment of goods is in and of itself a severe "punishment" for non- or partial compliance.

We understand there could be ISF deficiencies which cannot be addressed via a "no-load message." For example, an ISF may appear upon receipt by CBP to be complete and accurate, but may later be determined to contain material misstatements. Such infractions could be dealt with via a rational, *proportionate* system of ***fines*** (not LDs) assessed against the importer or the carrier.

If LDs are to be assessed under the proposed regulations, there must be a tempering of such LDs dependent on an importer's voluntary participation in supply chain security or compliance programs. It must be noted that C-TPAT importers, who have embarked upon participation in this program at their own (and sometimes, considerable) expense have already demonstrated both a willingness and an ability to institute measures with substantial positive impact on security. An acceptable approach to ISF enforcement must recognize and appropriately reward such accomplishments. Therefore, we propose that C-TPAT Tier 3 importers and Importer Self-Assessment (ISA) importers receive a warning only for the first offense in each calendar year and receive a reduced fine of $100 (similar to option 1) for any second offense in the same calendar year and $1,000 for any third offense. This would provide a benefit for those importers who have established supply chain security programs and adopted best practices, and who have also established the requisite internal controls to manage Customs compliance. Despite these practices and controls, it is still possible that importers or their agents could inadvertently make errors in performing the ISF. The importer's investment in these programs should not be jeopardized by inadvertent errors in the security filing. On the contrary, that investment should be encouraged and rewarded by practical benefits such as those proposed here. Additionally, any importers who are also part of the ISA program and who remain certified members of C-TPAT should receive similar, additional relief from any fines assessed.

We object to the fact that CBP issued this section on bonds and liquidated damages without ever consulting COAC or the trade. Had CBP consulted COAC, as is required under the SAFE Port Act, COAC could have provided meaningful feedback and ensured that the proposal for this section was both practical and reasonable. Instead, the trade was completely surprised by the inclusion of bonds and liquidated damages with respect to the SF requirements. Further, CBP has offered no rational basis for the use of LDs in lieu of other effective deterrents to ensure that ISF filings are made timely and completely. For example, CBP has a number of other options (in addition to "no-load messages" and fines as mentioned above) available in its arsenal. These include:

- Rejection of the ISF
- Examination of the cargo at the port of export by CBP or host country customs officers.
- Detention of the cargo at the port of entry for examination

The remedies enumerated here, in combination with "no-load messages," are far more effective in dealing with incomplete/erroneous or non-filed ISFs. The ability to stop a shipment is a powerful tool and will have far greater impact on parties not complying with the ISF requirement than after the facts attempts to extract fines. Imposition of fines of any sort is administratively burdensome and actually less effective than these means and should only be used in certain circumstances – if at all.

If fines or LDs are to be imposed, there is an urgent need for regulations that specify the conditions under which they may be assessed – such as repeated violations and/or mitigation guidelines providing for settlement in appropriate amounts. As discussed above, we would request that such conditions be fully discussed with COAC and the trade prior to any issuance of any further regulations.

As to LDs and mitigation guidelines in general, we would seriously question any reluctance or refusal by CBP to issue these in connection ISFs. It is our understanding that, under the Omnibus Trade and Competitiveness Act of 1988, the publication of guidelines for cancellation of bond charges is required.

Furthermore, it is our firm belief that the ISF enforcement mechanism should not include LDs or bond penalties in any form. It should be noted that Basic Importation and Entry Bonds (Activity Code 1, 19 C.F.R. § 113.62) do not presently address penalties of any kind and this status quo should be maintained. Addressing ISF issues via LDs would constitute a major disruption to the customs bond distribution system as it now exists. Importers are very concerned that inclusion of LDs provisions will result in a significant increase in customs bond costs, and with good reason. The creation and assessment of a whole new class of LDs would in and of itself result in higher bond costs. However, the impact goes far beyond that. Many importers are currently uncertain as to how to go about achieving compliance with the ISF requirements as currently proposed. As a practical matter, sureties have no way at this time (and probably for some time to come) of distinguishing between importers and agents who have the ability and inclination to comply and those who do not. Creating a new, intensive, and uncharted underwriting process impacting all customs sureties and upwards of 200,000 respondents (as identified in the NPRM), even if all the underwriting decisions were perfectly correct, would presumably generate significant additional costs of administration for sureties (as well as for importers and customs brokers). This impact has, apparently, not been anticipated by CBP and is as yet unquantified. In reality, the ability of sureties to effectively evaluate this exposure is to be seriously questioned. (See further comments below.) Hence, including sureties in this exercise increases the cost to those sureties and the importers and agents they service without producing a material positive impact upon cargo security. For these reasons, LDs and or any other approach involving sureties in the ISF enforcement effort should be avoided.

b. <u>The proposed entry bond conditions should be deleted</u>

The foregoing discussion of surety issues presumes that customs bonds will continue to be obtainable on a relatively free and unrestricted basis. However, CBP should also understand that the current proposal could greatly impact the ability of bond principals to obtain or maintain their current customs bonds. Some sureties have indicated to the trade that they view ISF defaults as a risk which simply cannot be underwritten. As the risk cannot be evaluated for either existing or prospective bond principals, rates quite possibly could not be set high enough to make the undetermined risk tolerable. Consequently, we are concerned that reputable companies could permanently exit the customs surety business, while many compliant bond principals may have a difficult time finding a willing surety to provide them a customs bond. More importantly, CBP's interests will not be served if CBP cannot be adequately protected. To avoid such a radical and negative impact on all parties concerned, we reiterate our position that CBP must avoid LDs as a means of enforcing the ISF requirements, especially when other more effective means are currently available. Finally, there is no indication that CBP performed an economic impact study relative to bond underwriting and the related, additional costs to principals and sureties.

The proposed regulations would amend the basic importer entry bond conditions to include filing of the ISF. This is contrary to the purpose of an entry bond. In the NPRM and many other statements and publications on the ISF, CBP has stressed that the filing is a security and not an entry requirement. Entry bonds are used for just that –to secure formal entries. The

transactions subject to the ISF encompass all types of shipments eligible for many types of entries or, in some instances, no entry at all. Requiring modification to an entry bond to secure potential non-entry situations is not logical and contrary to the purpose of a bond.

We absolutely support increasing the security of imports in the United States through a sensible and effective approach that targets those imports that pose the highest risk of security threats to the nation. However, imposing punishment for inadvertent mistakes while reducing mitigation opportunities is neither cost nor time efficient and is not an efficient use of CBP's limited resources. Instead, CBP should focus and target those imports that threaten the security and safety of the United States. As such, we recommend a more flexible approach that will allow U.S. commerce to flourish, while at the same time increasing security. As prudent alternatives exist, CBP should abandon the provisions amending the basic entry bond conditions and the provisions imposing new LDs related to the ISF.

3. **There must be no "linking" of the data elements in the ISF. Instead filers should transmit all required information in an established format, allowing CBP to manipulate the data to best achieve effective security screening.**

NPRM Section IV. Proposed Importer Requirements for Vessel Cargo Destined to the United States, B. Public Comments; CBP-approved Electronic Interchange System

The requirement for the trade to "link" data elements in the ISF should be eliminated. Instead filers should be required to simply transmit all the required information in an established format, allowing CBP to manipulate the data to best achieve effective security screening.

In the public comments in this section of the NPRM, it is stated there should be no mandatory linking of data elements. A major concern among the trade is the proposed required linking of the manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number at the line item level. CBP states in the NPRM that it has considered the economic impact of this requirement in its cost, benefit, and feasibility study. The trade cannot understand how CBP assigned a cost to this effort as the trade is still trying to 1) understand the required hierarchical structure to meet this requirement; 2) estimate what the man/hours would be to make the changes; and 3) estimate the cost to trade for system changes.

In the NPRM public comments on page 96, CBP disagreed with the recommendation not to require mandatory linking on the basis that this data is already provided to CBP at the line item level for entry and entry summary purposes. While it is true that similar linking is required for entry and entry summary purposes, the trade may still incur significant additional costs for implementing the security filing at this level. Substantial costs are anticipated not only for programming of this new structure, but also on a recurring basis at an operational level.

The proposed complexity of the security filing linking these data elements represents essentially an entry with the exception of reporting the value. Currently, importers often use up to 10 days after the release to file entry summaries because that time is needed to obtain and validate line level information. For those importers who may not be able to combine the security filing with the filing of an actual entry / entry summary, the proposed complexity will essentially require data input and the filing of two entries and potentially double the costs to the trade in terms of service provider fees.

The SAFE Port Act recognizes that technology should be used to best advantage, but that is not apparent in the information provided by CBP to date. Specifically, the act [sec.203(a)(2)(e)] calls out that DHS will "(2)consider future iterations of the Automated Targeting System, which would incorporate smart features, such as more complex algorithms and real-time intelligence, instead of relying solely on rule sets that are periodically updated." We submit that although this is written for a "future iteration" it does not eliminate development of "smart" features from

the original implementation, but instead should highlight the need for those features as recognized by the authors of the original Act.

As an alterative to the mandatory linking, we reiterate our proposal that all the information regarding the shipment such as HTSUS, country of origin, and manufacturer (or supplier) be made available to CBP, but not be linked. CBP could update its current algorithm so as to cause its targeting system to make all the possible matches and determine whether any combination created a risk. This approach would potentially give CBP greater flexibility in how the submitted data could be combined or interpreted to perform effective security screenings. It is also in general how the targeting is currently performed. CBP takes data from many sources, screens shipments against that data and creates a targeting score. Tweaking that algorithm to also incorporate HTS, origin and manufacturer/supplier name and address seem imminently more sensible and cost effective than mandating the filing of one entry type filing as the ISF stage and a second one at time of entry filing.

4. **There must be a timely confirmation message indicating that the security filing has been completed and filed. This would provide required assurance to the filer, the importer of record and the carrier and greatly contribute to the success of the ISF.**

NPRM Section IV. Proposed Importer Requirements for Vessel Cargo Destined to the United Sates, F. Public Comments; CBP-approved Electronic Interchange System.

There must be a timely confirmation message with a unique identification number issued indicating the security filing has been completed and filed, meaning each data element has been provided. This confirmation message is not expected to validate the data, only acknowledge an apparently complete ISF has been received. Such a confirmation message would provide required assurance to the filer, the importer of record and the carrier, and greatly contribute to the success of the ISF.

In the NPRM public comments on page 98, CBP stated that they will provide to the filer electronic acknowledgement that the filer's submission has been received according to ABI and AMS standards. In reviewing how this acknowledgement message will likely be used in technical and practical terms, we strongly suggest that this acknowledgement message 1) should confirm that the ISF was received and passed the edits required by ABI / AMS, and 2) should provide a unique identifier number assigned for that ISF transmission, 3) at a minimum, the ISF should allow for expanded functionality that will allow the filer to identify an additional party to be notified of the acknowledgment message through either a SCAC code or DUNS number.

Assigning a unique identifier number as a confirmation notice would follow the current model used for AES declarations, which provides an Internal Transaction Number (ITN) upon successful transmission of an AES declaration for U.S. exports, and for FDA Prior Notice that provides a Prior Notice Confirmation Number upon successful filing. This unique identifier number is needed by the importer and their agents in order to communicate to other parties in the supply chain that the filing has been completed. Given the liability and risk that will accrue for lack of filing, it will be insufficient for a party in the chain to simply state that they have completed the required transmission, and providing a CBP authorized unique identifier confirmation number will allow parties to document that the ISF has been received by CBP and has at least passed the initial edits required. If possible, we recommend that the unique identifier include a filer code designating the actual filing party, in combination with the bill of lading number at the lowest level. This will also help provide visibility to an importer, or other parties in the supply chain as necessary, as to what party filed the ISF on the importer's behalf. The unique identifier number will also be required to allow accurate matching of amendments or revisions to the original security filing, particularly in the case of possible duplicate filings on the same bill of lading.

For those parties handling less than container load cargo - the consolidator, the NVOCC, or a co-loader will need to know the ISF has been completed and successfully filed with CBP prior to stuffing the container and accepting the box for loading. From the commercial side, the consolidator or NVOCC, an integral part of the supply chain, has an equal responsibility to all parties in a consolidated container and cannot jeopardize a container being held up if a confirmation has not received that all parties have properly filed the ISF. In order to manage the consolidation process, the consolidator or NVOCC needs to have the ability to query the status of the ISF by submitting a query on the unique ISF identifier confirmation number to confirm the master bill of lading / house bill of lading it covers, or by submitting a query on the master bill of lading / house bill of lading to determine the unique ISF identifier confirmation number applicable for that shipment. Similar to a compliance program, the importer must be able to manage its security program, its supply chain and its filer. The liable party should be provided similar enhanced account management functions in the ISF as have been designed in ACE. This functionality should provide the importer with visibility as to the ISFs filed under that importer's IRS or EIN number, the unique ISF identifier confirmation number, the party that filed the ISF, the date filed, the master / house bill of lading it covered, and the underlying data elements within the ISF.

The NPRM states that 'CBP believes that communication between importers, as defined in these regulations and their designated agents will be sufficient to inform the importer regarding the completeness and contents of a filing'. The trade disagrees with CBP on this point and recommends that since the importer, as defined in these regulations, will be held responsible to pay LDs for violations of the new proposed regulations, they must have access to review this data to exercise reasonable care.

The trade firmly believes the security interests of the country are as important as its commercial interests (which in some ways are part of the nation's economic security) and the data pertaining to the two should be managed in the same way. CBP, in conjunction with the trade, has designed ACE "To Modernize the Commercial Trade System" to "Better manage their Trade Information" and "Allow Access to transaction, financial and Compliance Data" (taken from Power Point Presentation entitled, "U.S. Customs and Border Protection Automated Commercial Environment Overview," dated December 2007). The security data should be made available to the importer to better manage his security data as well, especially since the named party is liable for the correctness of this data. If the design of functionality in ACE to allow an importer visibility to the ISFs that have been filed on his/her behalf will not be available at the time of implementation, CBP needs to provide an alternative method for the importer to monitor this activity. While the trade will certainly implement new business practices to monitor the activity of authorized agents, CBP must provide a way to assist importers in identify any security filings submitted on their behalf by parties other than authorized agents. One alternative could be to implement programming in ABI similar to the National Importer Liquidation System to allow an importer to designate an authorized filer to query all activity done under the importer's Employer Identification Number. In order to avoid delays in the movement of containers and associated costs, transportation providers in the supply chain may have a strong incentive to file a security filing based on their knowledge of the transaction and/or on the face of the shipping documents provided without approval and/or confirmation by the actual importer. Since all liability is retained by the importer and there will be no direct outlays associated with the ISF, such as otherwise occurs for duty and fees associated with transmission of an actual entry, the current controls in place for ABI filing of entries are not sufficient.

5. **The type, length, and definition of each required data element must be clearly described in the regulations and any accompanying instructions, so that filers may properly program their IT systems to accommodate the ISF.**

NPRM Section IV. Proposed Importer Requirements for Vessel Cargo Destined to the United States, A. Overview; Required Elements

As stated previously, what is most complex and unknown is the technical specifications that have not been released to the trade and, therefore, raise the most questions. The NPRM outlines the data elements that will be required for various filing scenarios. While definitions are given for each element, the technical detail of the construct of the filing is not provided. In order to successfully implement the ISF, the trade will need to understand certain technical details related to that filing.

The record formats required for the security filing as implemented in ABI / AMS should be compatible with those that will be required in ACE without further changes in order to avoid additional programming requirements for the trade.

a. Comments and questions applicable to all data elements

There is some basic information needed for all data elements in order to properly format an ABI or AMS message to be submitted to CBP, including:

- Data type for each element (i.e., is the field alphanumeric, numeric, date structure, etc.)
- Length for each element. Since ABI and AMS are fixed width file format protocols, it is imperative that the length of each field be known.
- Address information. Is there an established format for name and address for the various elements using this? In what way should street addresses be formatted? Should the fields for city, state / province, country, and postal code be reported in separate fields? How will non-US addresses be handled or formatted? If there is insufficient space to insert the full non-U.S. address, what abbreviations should be employed?
- Element definitions. At the current time, the definitions for the data elements in the security filing proposed rule do not match the proposed definitions for the same data elements in various initiatives included in the ACE program. At what time will these definitions be synchronized? The trade would like a detailed plan of how CBP proposes to coordinate the 10+2 development effort and the ACE development effort so that the trade will not have to reprogram between the time the ACS interim solution is implemented and the final ACE solution is in place.
- Hierarchy of the message. What is the relationship hierarchy of the data elements to one another? Assuming CBP continues to reject risk assessment and linking through an algorithm, the NPRM specifies three fields that should be linked together at the line item level (manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number). What other elements, if any, are to be reported at a line item level and what elements are to be reported at the header level? How should items not linked to the three previously specified fields be reported at a line item level? What is the process of nesting data elements in order to reflect the proper relationship between them?
- What validations for existing data will be performed for these filings? Against what validation tables will the data submission be compared to ensure the data is accurate?

b. Specific questions and recommendations for individual data elements

In addition to the general information outlined above for all data elements, there are some questions about the specific individual data elements that need to be answered for shipments other than FROB, IE Shipments, and T&E shipments, as well as the following recommendations:

- Manufacturer (or Supplier). Please provide a clear definition of the level of detail expected for the address elements. Will there be a specific ISF form that will be used to transmit all of the data which will specify the format in which to report the complete name and address? If the intent is to use the names and addresses to isolate the activity of each entity individually (i.e. all activity from one seller or all activity from one manufacturer) then clear definitions of the individual address elements that create an acceptable address is needed. The challenge is that each importer may have slight variations of an entity's address and the collection of consistent data will not be possible unless CBP defines what is needed. Further, addresses outside the U.S. often are provided in rather unique character strings of word and numbers. How are these to be reported? If there is a space limitation, how is this information to be abbreviated? The NPRM states in the alternative the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (i.e. entry procedures) may be provided. Please clarify to which law, rule or regulation does CBP refer?

- Ship to Name and Address. The NPRM provides the definition as "Name and Address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody." The first delivery-to party to physically receive the goods may NOT be known by the time the ISF needs to be filed. To accommodate for the potential missing data, the definition should be changed to state: Ship to Name and Address: "Name and Address of the Consignee on the Bill of Lading." Does the "ship to name" need to be the name of a legal business entity? Please clarify if the importer may transmit the name of its distribution center, even though the distribution center is not a separate legal entity in its own right?

- Container stuffing location. The NPRM states that this field should include the "name and address(es) of the physical location(s) where the goods were stuffed into the container." In cases where multiple containers are included on one bill of lading, and thus one security filing contains multiple containers stuffed in multiple locations, which location should be reported? If all, how is that to be done? Will it be necessary to distinguish which containers are stuffed at which location?

- Consolidator (stuffer) name and address. The NPRM states this field should include the "name and address of the party who stuffed the container or arranged for the stuffing of the container". In cases where multiple containers are included on one bill of lading, and thus one security filing contains multiple containers that were stuffed or whose stuffing was arranged by multiple entities, which name and address should be reported? If all, how is that to be done? Will it be necessary to distinguish which containers are stuffed by which consolidator? Does the Container Stuffing location name need to be the name of a legal business entity? Please clarify if the importer may transmit the name of a distribution center even though the distribution center is not a separate legal entity in its own right? What is meant by the term "arranged for the stuffing of the container?" If the container is loaded entirely at the manufacturing site by the manufacturer, but a consolidator arranged for the delivery of a container to the manufacturing site and the consolidator made the booking with the carrier, please clarify which location is listed as the Consolidator (stuffer) name and address in the security filing. Is it the manufacturing site or the consolidator? If a consolidator uses a third party for its consolidation operations, please clarify what party name and address is to be reported, the consolidator name or name of the third party?

- Consignee Numbers. Due to confidentiality concerns, it is recommended that CBP accept the name and address in lieu of the Internal Revenue Service (IRS) number, Employee Identification Number (EIN), Social Security Number (SSN) or CBP assigned number. A limited response, in regards to confidentiality, was provided for in the NRPM in section V.B. Confidentiality concerns remain as U.S. companies purchasing from domestic suppliers who import, resell and drop ship the product to U.S. companies poses a greater threat to confidentiality than CBP is willing to recognize. Large and medium size U.S. companies serving as consignee, when purchasing imported product from a domestic supplier, will require that company to provide their IRS number to every domestic supplier and their respective agent. This could be hundreds of parties having access to a critical piece of information outside the control of the large or medium size U.S. Company. CBP acceptance of the name and address is recommended.

For FROB, IE Shipments, and T&E shipments, the following questions exist related to specific data element:

- Booking party name and address. Should this be clearly defined by reference to commercial reality in which the booking party is the party who is paying for the transportation of the goods? We recommend that CBP accept the name and address or DUNS number of the booking party. Use of the DUNS number will reduce the amount of repetitive information needed as well as mismatches due to keying errors, added spaces, etc. Further, a DUNS number will facilitate CBP review of entities when desired.

- Foreign port of unlading. The NPRM requests a port code for the foreign port of unlading at the intended final destination. Where is this city code to be found? A standard list of foreign ports, such as the Bureau of Census Schedule K should be used for this purpose.

- Ship to name and address. It is recommended that CBP accept the name and address or DUNS number of the Ship to party. Again, the use of the DUNS number will reduce the amount of repetitive information needed as well as mismatches due to keying errors, added spaces, etc. Further, a DUNS number will facilitate CBP review of entities when desired.

- Place of delivery. The NPRM requests a "city code for the place of delivery." Where is this city code to be found? What is the format to be used?

What format will be required for the BOL? CBP has been discussing enlarging this data field, and since the trade does not know the timing of the security filing relative to the other ACE related updates, it is unclear how this will be handled in the security filing.

- How will the reporting of master, house and sub-house bills be handled? Will there be a hierarchical relationship in the filing such that multiple sub-house bills may be reported for each house and multiple house bills may be reported for each master in a single security filing?

- How will multiple security filings per BOL be handled (i.e., the case where one bill of lading covers multiple shipments)? How will security filings be properly identified if no unique identifier for each security filing is provided to the filer in response to the submission? How will CBP ensure that a modification is applied to the correct security filing, particularly in the case where there are multiple filings for a single bill of lading?

The above questions address elements included in the NPRM as being needed for a submission of a new security filing. Unknown at this time are the data elements to be provided

for an amendment to a security filing. Even in the case of a "full replace" amendment, it is presumed that additional data will be needed in order to properly identify the correct security filing to be amended. How will this be handled since the bill of lading is not sufficient to match a security filing amendment to the correct initial security filing?

Under "IV. Proposed Importer Requirements for Vessel Cargo Destined to the United States, A. Overview; Required Elements," the data elements are discussed. For each piece of data requiring name, address, etc. it is recommended that DUNS numbers or name and address be allowed. Use of DUNS number will reduce the amount of repetitive information needed as well as mismatches due to keying errors, added spaces, etc. Further, a DUNS number will facilitate CBP review of entities when desired**.**

c. Practical Obstacles Associated With Acquiring and Verifying Data

Under C-TPAT, importers are responsible for Tier 1 direct suppliers in their supply chains. Where Tier 2 and 3 supply chain partners or suppliers are utilized, C-TPAT companies are responsible for ensuring that their Tier 1 supply chain partners or suppliers follow the requirements of the security program. Larger C-TPAT companies often include in their contracts with their Tier 1 partners or suppliers that those business partners follow the specific requirements of the program and allow for the right to audit to insure compliance. However, the C-TPAT program recognizes that the supply chain has many levels and many partners, many not within the control of the C-TPAT company. This is the case where the Tier 1 partner or supplier subcontracts functions such as local drayage, warehousing, container stuffing, etc. to third party contractors. In those circumstances, C-TPAT does not require the C-TPAT company to have actual knowledge at the time of shipment of the third party supplier. Tracking and validating this Tier 2 and 3 supply chain information before loading when it is not visible to the importer at the time of export imposes requirements beyond those agreed to under the C-TPAT Program.

d. ATDI Testing and Data Elements

NPRM Section: "V. General Public Comments C. Test of Concept and Phase-In Enforcement, the First Comment.

We understand CBP's objectives in testing the ISF data, with a variety of testing partners, and support its desire to do so. However, the trade would like access to CBP's analysis of that test in order to make appropriate comments and provide relevant input. The ability to compile data, transmit, and amend are key, fundamental issues for the trade to comply with, as systems and business processes will need to be developed. As neither data formats nor data specifications have been provided to date to the trade, or any results provided to the participants, CBP's analysis of the data testing would provide insight as to ways to maximize the feasibility of the ISF and its success and impact on the trade. As suggested to CBP by various groups, flow charts of this process are critical. It is both suggested and critical that charts be developed showing how the data will be reported for the different types of shipments (Example: multiple country of origin and HTS in one shipment versus a shipment with one country of origin and one HTS). This would include the availability of the required data, the required formats of the data, and any significant results from running the data through the Automated Targeting System to show the impact that the new data will have on targeting. The data currently being received by CBP is just a verification of where the data is and what data can be consistently gathered by the trade.

We recommend that CBP immediately release the proposed data formats to the trade. CBP needs to allow those companies that are participating in current testing to make required changes to their respective software systems to allow quantifiable measurements pursuant to accepted testing protocols as to what is needed to make the desired goal attainable. The cost

to the trade as a whole, to go through live beta testing will not only be astronomical but could not possibly have been accurately estimated in the cost, benefit, and feasibility study conducted by CBP. At this point, not even the trade can answer the cost question. How can CBP?

In the NPRM public comments on page 101, CBP stated that it does not believe a new or separate test is required for the ISF due to the understanding gained through the current testing under the Advance Trade Data Initiative (ATDI). While an interesting conclusion, we would question it because the ATDI test did not use either of the platforms required under the proposed regulations, (ABI or AMS), nor did it include technical specifications, hierarchy, or formats associated with either of these platforms. As such, we strongly believe that additional testing using the actual ABI and AMS platforms, required formats, hierarchy, and specifications must be established prior to implementation.

6. **The ISF must be harmonized with the SAFE Framework of Standards promulgated by the World Customs Organization and subscribed to by the US. This must occur prior to any implementation.**

NPRM Section IV. "Proposed Importer Requirements for Vessel Cargo Destined to the United States"

At the behest and urging of the U.S., the World Customs Organization (WCO) promulgated the SAFE Framework of Standards as the first step in implementing a worldwide supply chain security system. The US was the leading advocate in recommending and developing this system. The ISF presents a unique opportunity for the US to take a significant first step in implementation of the SAFE Framework. Accordingly, the ISF must conform to WCO standards and definitions.

The SAFE Framework requires that "Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate international commerce. There should be one set of international Customs standards developed by the WCO that do not duplicate or contradict other recognized intergovernmental security requirements".

The SAFE Framework, under Pillar I, Section 1.3, Submission of data, sets forth the list of accepted data elements for security filing purposes. CBP proposes to add to the list of data elements without first seeking amendment by the WCO Customs administrations.

Data elements proposed to be added without amendment to the SAFE Framework include:

- Manufacturer's Name and Address
- Seller's Name and Address
- Buyer's Name and Address
- Consolidator's Name and Address
- Country of Origin

In addition, CBP has sought to rename existing WCO Data Elements without first seeking amendment to the WCO Data Model. For example, with regard to the "Ship to Name and Address" in the ISF, the SAFE Framework provides only for the address under data element "Delivery Destination".

It is also strongly recommended that CBP use the agreed upon WCO Data Model definitions to avoid confusion in a global trade environment. As a further example, "Consolidator", under the WCO Data Model is the "[n]ame [and address] of the freight forwarders combining individual smaller consignments into a single larger shipment (so called consolidated shipment) that is to

be sent to a counterpart who mirrors the consolidator's activity by dividing the consolidated consignment into its original components".

In addition, "Container Stuffing Location" is not included as a data element in the WCO Data Model. However, "Place of Vanning" has been included which is defined by the WCO as "[n]ame [and address] of the location where the goods are loaded into the transport equipment".

We recommend that the WCO definitions (1) be amended to include any ISF data elements not found in the WCO model and (2) that the ISF utilize existing WCO definitions and standards. These would be significant steps toward implementation of the SAFE Framework and mutual recognition of supply chain security programs.

7. **The carrier messaging requirements must be more clearly defined so that the carriers may carry out an effective implementation of their portion of the security filing requirement.**

NPRM Section III. "Proposed Carrier Requirements Relating To Vessel Cargo Destined to the United States."

a. Carrier Visibility into Importer Security Filings (ISFs)

Under the NPRM, carriers will not have visibility from CBP into whether the importer has made an ISF (unless they are making the filing as agent of the importer). The ocean carrier will need timely receipt from CBP of any Do Not Load or other hold message that CBP issues based on the filing or the non-filing of an ISF (whether the ISF filing was made via AMS or ABI).

b. Bill of Lading Requirement in Importer Security Filing

The NPRM's Background Information (p.96) discusses that an ISF must include a bill of lading number, but the proposed regulations do not list the bill of lading number as a required data field. CBP should clarify whether the bill of lading number is required and also whether both the master and house bill number are required in an NVOCC controlled shipment. This is the position CBP took in earlier discussions with the trade when 10 plus 2 was being formulated, but it is not clearly reflected in the NPRM. This will be needed to ensure there is effective messaging between CBP and carriers.

Carriers will need to provide their customers with bill of lading numbers in sufficient time for the importer or its agent to include the number in the ISF. This is a necessary operational change that some ocean carriers will need to address, although how they do it may vary from carrier to carrier. As such, this is not an issue that is, or should be, addressed in the regulations.

c. Split Shipments and Rolled Cargo

If a container is rolled from one scheduled vessel to a different vessel, does the importer need to amend its ISF? Does a new 24 hour clock start? During previous discussions with CBP on this issue, CBP responded that it was not necessary for the importer to amend its filing if the container (or shipment) is rolled from one vessel to another and the bill of lading remains the same.

While the bill of lading number should generally remain the same, there are two situations we can quickly identify where this would not be true:

- For a bill of lading covering multiple containers, the carrier (due to operational reasons or due to customer instructions) may load some of the containers on one vessel and the rest

on another, resulting in a "split" or two bills of lading. Would this require the importer to amend its ISF or file a new ISF?

- Another exception would arise where a carrier bill of lading number consists of its SCAC, voyage number, and bill number. (E.g., XYZU7324S1234567). When a container is rolled, the voyage number changes. (e.g., XYZU7325S1234567). In this case the container information would not change, and an audit trails remains in place. Would an ISF amendment be needed?

d. FROB, IE and T&E cargo

For FROB, IE and T&E cargo where the carrier is the party filing the IE and T&E documentation, the carrier is required to provide an abbreviated 5 data element ISF "for each good listed at the 6 digit HTSUS number at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable)". The five data elements are: 1) booking party, 2) foreign port of unlading, 3) place of delivery, 4) ship to name and address, and 5) 6 digit HTSUS cargo classification number.

1. House Bill Level Information: The NPRM states that for FROB cargo "the importer is construed as the international carrier of the vessel arriving in the United States" (p.94), yet this section of the proposed regulations (section 149.1(a)) simply says for FROB cargo "the importer is construed as the carrier" without distinguishing between ocean carriers and NVOCCs. The ocean carrier will not have access to house bill of lading information.

If CBP is going to require, for FROB and these in-bond shipments, house bill of lading level information for 1) the "booking party", 2) place of delivery, 3) ship to name and address, and 4) six digit HTSUS cargo classification number at house bill level, the regulations will need to make it clear that this is an NVOCC responsibility, as ocean carriers do not have such information and cannot reasonably be expected to obtain it.

2. "Booking Party": The NPRM proposes to define the "booking party" as the "*the name and address of the party who is paying for the transportation of the goods*". This proposed definition is inconsistent with commercial practice and does not appear workable. A forwarder or agent who makes the booking with the carrier would not appear to satisfy this proposed definition.

Further, "transportation" costs can include ocean base freight, surcharges, fuel charges, THCs, and even local currency charges. Transportation costs may also be split among the shipper, forwarder, and customer. At the time the ISF needs to be submitted, it may not be known which party is paying for each transportation cost . For example:

- In some instances, the party paying for the transportation costs may not be known until actual payment is received by the carrier. This scenario exists because such costs can still be negotiated between the importer and shipper during the shipment process.

- When the pre-payment term on the bill of lading is 'collect', the consignee is responsible for the transportation costs. However, the consignee may not be actually known at the time the ISF is submitted to CBP.

The term booking party should be defined as it is normally understood and used in the trade, that is, "the party who initiates the reservation of the cargo space for the shipment."

3. Ship to Name and Address: "Ship To Name and Address" is defined as the "name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody." According to its literal terms, this seems to be an odd and improbable definition. The first party to physically receive the goods might

be a trucker or other service provider. It would seem more appropriate for the definition of the "ship to" party for these FROB and in-bond shipments to be "the party to whom the carrier is to deliver the goods under the carrier's contract of carriage".

4. Six Digit HTSUS Code: Such codes are not required for manifest filings, which only require a "precise description" of the cargo which *may* be a 6 digit code "if that information is received by the shipper". The same approach should be taken for FROB cargo. Shippers in non-US trades do not typically provide six digit HTSUS cargo descriptions, and carriers do not have expertise in the classification of goods under the Harmonized Tariff.

8. We strongly recommend a more realistic and collaborative cost, benefit and feasibility study as we believe that the costs used are understated in the NPRM.

a. Costs and Delays in Shipping

On Page 95, Column 3 of the NPRM, the comment states, in part: "While CBP understands that some business practices may need to be altered in order to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome." Within the context of CBP's response, there is no effort to formulate a cost to any tier of importers, regardless of volume. Not only will these requirements be burdensome for the 832,000 importers/shippers into the USA, (CBP's estimate of the total number of importers) they are also exceptionally costly, much more than the cost/benefits analysis indicates. Below are some specific instances of either faulty cost analysis, or items not included in the overall cost/benefits study on the impact of this rule:

b. A real view of the costs:

On Page 107, Column 1, CBP outlines the concern that small entities may be more impacted by this rulemaking than those larger, more mature importers. CBP states that this rulemaking will impact a substantial number of small entities conducting these activities. However, CBP states that they cannot certify that the proposed rulemaking will or will not have a significant impact on small entities. While CBP requests comments on this matter, they offer a detailed Initial Regulatory Flexibility Act analysis in a docket link.

Lacking a clear impact and cost analysis for the small entity is clearly an oversight. An analysis of the top 100 importers, as listed in the annual Journal of Commerce report suggests that these importers contribute 12.94% to the total of all imported containers counted, leaving the majority of the containers to those who would be considered small entities. Therefore, 831,900 importers (those that import below 13,900 TEUs annually) represent 87.06% of the total U.S. importer base. This huge "importer base" requires further analysis and comment from those small importers who will not only be impacted by the cost of complying with the rulemaking, but may also be most directly effected by the extension of supply chains and the outcome of increased costs.

In the analysis, there are no one-time implementation costs of individual importers who self-file or of brokers considered. It appears the assumption is that only carriers will have such system implementation costs. Even without planning to self-file, one would expect their company to have implementation costs apart from filing fees charged by either a broker or a carrier. It is probably optimistic to assume all costs for such implementation will be covered by additional transactional fees, particularly in the case of brokers or forwarders who make this investment in order to continue business with existing customers.

Small importers will be required to create programming to link all purchase order detail to item master and individual part level information in order to access the HTUS code required for the ISF. Large importers (but not in the top 100) who are more mature and frequent importers may

already have this data integration; however, it is not clear that CBP has analyzed the cost of this programming on the small and lower-frequency importer. Two different software providers gave the COAC's subcommittee an estimate of costs, ranging from $50,000 to modify existing IT systems, up to $100,000 of programming services for completely starting up an IT backbone system to manage the data needed to supply 10+2 information PRIOR to 24 hours before shipping. Assuming that each importer must pay this cost is not an accurate assumption, as all importers will not modify their existing software systems; accordingly, they will use a "service provider" who has taken that capital cost step. In either case (self providing the data or using a service provider) there is some level of internal programming required by the importer. However in order to analyze and quantify this, the COAC Advance Data undertook a brief survey of companies that were actually using a service vs. those that were making the changes in-house to supply the information. The results were astonishing, given that this analysis was not performed by CBP and added to their cost/benefit analysis.

Using even a crude attempt at quantifying this cost burden, the subcommittee used the following assumptions:

- 832,000 importers will have to add software modifications to provide the data.
- Assuming either a fee-for-ISF or no software costs is not realistic.
- The subcommittee cut in half the lowest software fee estimate to get to a number that is both conservative and realistic if a percentage of companies are already more than ready to provide this information in advance (a concept that the trade has heard from CBP on many occasions). Therefore the subcommittee used $25,000 of software upgrades to implement 10+2, whether this fee is payable over time (on a $/ISF filing fee or up front in software services)
- If we discount the top 1,000 importers as being so mature and forward thinking in their internal IT departments that they are indeed already prepared for this, and only use the bottom 831,000 importers, the math is as follows:

  831,000 x $25,000 = $20,800,000,000 spent on just 1-time software expenses. **$20.8 Billion.**

The committee realizes that this estimate is not scientifically derived, but it has most certainly not been included in CBP's cost estimates. No importer will escape having to provide data, supported by IT improvements, whether or not they pay the CBP estimated $20-$38/Bill of Lading/ISF or not.

Next we will examine the "costs" in supply-chain delays.

c. Supply Chain costs

The subcommittee received several comments on the cost benefit analysis that CBP and OMB have performed to ascertain that there will be a negative impact on the trade to the tune of $390 Million to $620 Million per year. This number however is not at all inclusive of the following key cost components, many of which will add serious additional costs to all importers possibly leading to inflation and shortages of products.

Page 106, Column 3 outlines the CBP assumption for median value of shipment of goods imported into the US - stating the average is $37,000/shipment - and that the increase in costs based on additional delays caused by the ISF would range from $20.00-$38.00 per shipment, or .05%-.10%. This assumption is based on the expected delay factor of 1 day (24 hours) for the first year of implementation and a delay of 12 hours for years 2-10 of the program.

The assumptions used above do not reflect the realities of ocean shipping. Once again, CBP has misjudged the issue of a delay at the port for cargo sailing on a vessel. Once a vessel

schedule is made, for example, between Hong Kong and Los Angeles, and a container slot is booked, it is not simply getting onto the next ship, the next day, should there be a delay in the ISF or "do not load" message. The reality is that the container waits for the next ship from Hong Kong to LA, which is 5-7 days later.

This is a serious problem with 90% of the importers utilizing just-in-time delivery procedures. Therefore, the primary "missing" cost that CBP did not consider is the real factor of missing by 5-7 days containers making the sailing schedule. To be ultra conservative to attempt to quantify this reality: If only 5% of the NVOCC cargo misses the sailing schedule, (NVOCC cargo is estimated to be approximately 35% of all ocean cargo) this will result in a potential problem of 1.43% of the 12 Million inbound containers, totaling 171,600 containers. If we believe the valuation per container that CBP uses ($37,000), the potential "cost" to the trade is an additional $6.349 Billion.

Several importers on the sub-committee had this reaction to the potential loss of a sailing date: "As far as the way our business actually deals with shipping delays, the impact is considered to be either the cost difference in changing a shipment from ocean to air (which we do quite often) or the cost of lost sales. To be conservative, we used core items that could be sent at a later date as opposed to seasonal items that may be obsolete altogether if they are not received timely. Where a shipment missed a sailing and the origin is a weekly sailing point, the cost to us is lost sales; i.e., the value of the merchandise."

CBP has not included this kind of analysis or some valuation calculation on lost sales, missed sales, air freight vs. ocean to make up for missing the 24 hour calculation. A conservative estimate such as the purely assumptive yet very conservative estimate above indicates that the cost could be as high as $6.35 Billion!

d. CBP Costs that affect industry (indirect) as a result of the new ISF

The "cost" to the CBP systems in order to take on the additional data has not been mentioned in the cost benefits analysis. Even though this is apparently not a "trade cost" issue, it most certainly is when considering that the trade has to use these very same systems in order to file entries, clear merchandise (which gets back to the delay/delivery costs issues) when the system is down, or slow, or delayed which occurs several times each year. The additional data that CBP is expecting to process will be a huge burden on the antiquated ACS system.

For example, the ISFs will be created per line-per bill of lading unit, the smallest bill of lading unit available. There were over 30 Million entries submitted in 2007, of which 83% were 01 entries (based on ACE information) which represents approximately 24,900,000 entries at approximately 1.5 bills of lading per entry. This totals more than 37,500,000 ISFs that will need to be filed annually, as a baseline number.

If there are only 12 data elements needed (with 5 of them multiple lines, i.e. manufacturer name and address is 3 lines), and 2 elements being container status messages (CSM) and stowage plans (exceeding 45 million messages in recent ATDI testing), that adds the following:

> {37,500,000 x 5 elements x 3 lines} + {45,000,000 CSMs} + {5 other elements x 37,500,000 at one line each} = The grand total of "new line item data elements" needed to add into the ACS – ABI systems will be in excess of 795,000,000 lines of data.

The cost of this new data, in terms of efficiency for the trade has not been calculated. Moreover, there has not even been a discussion in the NPRM as to what the data coding requirements will be for the trade. There are no instructions, no data sets, no data format requirements, nothing to indicate what "costs" will be incurred by the government when this system is implemented. Also unsettling is whether all this additional data, within the antiquated

and “crumbling” ACS system (which currently houses ABI and AMS) will disrupt the current, existing data input into these systems for Customs clearance processes.

Accordingly, two things are abundantly clear:

1. We strongly support the DHS – CBP desire to fulfill the goals of the SAFE Ports Act in providing the advance data necessary to target shipments better than today; and

2. The costs and in the other comments, the process by which this data is to be created, received and processed by CBP has not been fully vetted, explained, and the costs for the trade are significantly higher than estimated by CBP. They are by orders of magnitude higher (Billions rather than Millions).