



NCBFAA Position Papers

ACE/ITDS: An Unfinished System

The Automated Commercial Environment (ACE) is the new computerized operating system designed to automate and consolidate Customs and Border Protection's (CBP) role in facilitating trade, enhancing enforcement, and bolstering homeland security. It incorporates the International Trade Data System (ITDS), which communicates import information with 47 other regulatory agencies. The promise of ACE and ITDS has always been a single, streamlined window for trade - a reliable, efficient and predictable process to support a robust trade environment at the point of entry.

Since ACE's initiation in 2001, Congress has provided funding in excess of \$3.5B to build ACE/ITDS. On July 23, U.S. customs brokers were required to file "entry" documentation exclusively in ACE when its predecessor – the Automated Commercial System (ACS) – was turned off and no longer available for filing entries and clearing cargo into the United States. Now, the remaining features of ACE/ITDS face a deadline of December 31, 2016.

Even then, however, work on ACE/ITDS will not be complete at the end of the year. In its short time as the single automated means for processing entries, ACE/ITDS has been plagued with system outages, failures to perform its necessary functions, and significant added and unacceptable costs to customs brokers. "Down time" in ACE equates to bringing our work to a standstill, creating a significant business disruption. While it has performed well for periods of time, it has proven unreliable overall. Its greatest impact has occurred at our land borders with Canada and Mexico.

While poor performance must be remedied as the system matures, ACE cannot represent an improvement over ACS unless significant and necessary functions are added, most of which have been set aside during the development process in order for CBP to meet the federal government's arbitrary December deadline. In other words, the work is not finished; ACE/ITDS does not yet represent a promised improvement over ACS.

Following are some examples of where it misses the mark:

- In its Customs Enforcement bill, Congress extended duty free treatment for low value entries – raising the cap from \$200 to \$800. A special, duty free entry needs to be available to process these goods and provide the path for data to reach the agencies charged with such responsibilities as food and product safety or trade enforcement.
- Some entries require a substantial amount of data. The system however cannot accommodate large files for goods imported as a single shipment in the ordinary course of business. An arbitrary limit has been imposed which requires multiple entries and increased cost. The size limits need to be realistic, based on the realities of commerce and, at a minimum, provide no less performance than existed in the ACS system.
- Ocean shipments in containers must be described in detail – through a “house” bill of lading. Yet, ACE can only accommodate “master” bills of lading – a 10,000 foot description of the contents of the container. This was a major oversight.
- In development of ACE, missing is the Automated Invoice Interface (All), which had been available in ACS. This had allowed electronic invoice data to be transmitted to CBP, but now has been replaced with a *manual* document filing. This has limited data availability for targeting and review purposes at CBP. It is a serious omission and reduces capability for the U.S. custom broker community which files approximately 95% of customs entries.

These and other features necessary for improving the trade functions at CBP and the regulatory agencies are unfinished. Plans to address these omissions refer to “next year” or are unspecified - and clearly dependent on funding that permits more than merely maintaining an incomplete system.

NCBFAA has supported the transition to ACE from the beginning. We see great value in completion of an updated and more facilitative automated system. Nonetheless, CBP must be pressed to address the instability of ACE/ITDS operations and a long list of missing functionality. For its part, Congress must view this big investment as still a “work in progress”, nearing completion – but with some distance to go.

Port Congestion: A Follow-up Report

Port congestion is a national problem. It is not just a phenomenon of a West Coast labor dispute, but is in fact the result of a combination of several factors. Last year, attendees at the National Customs Broker and Forwarders Association of America (NCBFAA) Government Affairs Meeting brought you a summary of problems of immediate concern. We are now back and reporting on where these issues stand.

Port Metrics: A critical element in developing solutions to the issues of port congestion and inadequate infrastructure is taking an analytic approach to the problems we face today. A port metrics provision was added to the Highway and Transportation Funding Act (PL 114-21) last year which was designed to develop hard data to provide transparency on port congestion and efficiency. For the first time, the provision would

allow the private sector and government to track performance measures uniformly over time at the various U.S. ports.

A port metrics work group was established at the U.S. Department of Transportation and met for the first time in mid-July. The meeting was contentious as individual agendas overshadowed the goal of diagnosing the causes of port congestion. It is critical that the work group develop a solid, objective work product without fear of its consequences or competition among the ports or labor-management relations. DOT must ensure that the work group develops meaningful results. Good data will provide us with the tools to develop a successful strategy to a problem hamstringing the efficient flow of products to and from our ports.

Labor Negotiations: A repeat of recent work disruptions linked to failed contract negotiations cannot be permitted. It would come at the economic cost of tens of millions of dollars to the public.

Recently, a group of 128 associations that depend on international trade – importers and exporters – wrote the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) urging them to begin early negotiations on either a contract extension or a new contract. The letter urged a new model for future negotiations, which stresses early and continuous dialogue. Now, the ILWU has announced that it will indeed meet with the PMA. The West Coast contract expires July 2019.

Unfortunately, on the East Coast, the International Longshoremen's Association (ILA) recently put on hold its discussions with the U.S. Maritime Alliance (USMX). The East Coast contract ends September 2018.

All parties need to be encouraged to talk now, in good faith. Congress needs to take a strong role in promoting this dialogue.

Demurrage: Demurrage is a charge imposed on the shipper for the use of space, with fees applied after a specified period of "free time". Demurrage was originally intended to encourage faster cargo movement so that terminals are not used for storage by shippers. Yet, this concept has been turned on its head. Typically, in a congested port, the situation arises where a shipper is ready and willing to pick up their cargo. Yet, the trucker is turned away from the terminal because, for example, the container is buried in a stack too deep to be retrieved, because of a chassis shortage at the terminal or because the truck lines are too long to get in due to lack of adequate port infrastructure. Nevertheless, the terminal operator still charges a per diem penalty for demurrage or each day the container remains at the terminal – even though the shipper is prevented from removing it. Once demurrage is assessed, the shipper has no choice but to pay, since the charges are due upfront on the day of pick-up. Costs to a shipper can reach from tens to hundreds of thousands of dollars, regardless of the circumstance that is responsible for the cause of the delay. This is even the situation when port operations are essentially suspended due to extreme weather or other disruptive events.

One importer reported having paid over \$100,000 in demurrage charges, compared to \$10,000 in the previous year. Another importer paid \$2.0 to \$2.5 million in three events in the New York port (Hurricane Sandy, the Maher system meltdown and the winter vortex of 2014), while having virtually no demurrage at any other time.

A group of trade organizations (including NCBFAA) with a strong interest in addressing demurrage have joined to file a petition at the Federal Maritime Commission urging the agency to acknowledge its jurisdiction over the inappropriate application of demurrage charges and to issue a policy statement concerning the proper application of demurrage. We expect that petition to be filed this month. Again, Congress can play an essential role in ensuring that the FMC moves quickly to strike a better and fairer balance in this area.

Infrastructure and Dredging: Since Congress is expected to pass very few appropriations bills by the end of the fiscal year – September 30, 2016, as a temporary measure a continuing resolution is likely to be needed to continue government operations for most programs and agencies.

NCBFAA strongly supports the TIGER competitive grant program, which includes funding for access and expansion as well as intermodal projects. The Administration asked for \$1.25B for FY17; the House and Senate committees have provided \$450M and \$525M respectively; a CR extending last year's appropriation would fund TIGER at the rate of \$500M. In the longer term for a year-long FY17 appropriation, NCBFAA asks Congress to fund TIGER in excess of \$500M.

Dredging funds are designed to flow from Harbor Maintenance Tax (HMT) collections paid for this purpose by the private sector; however, in recent years, these funds have been diverted to general revenue. Changes in the HMT authorization now specify increased dredging funds to approximate HMT collections by 2025. NCBFAA asks Congress to continue navigation program funds at last year's level in the CR and, at a minimum, match or exceed the Senate level of \$1.3B for HMT work in a year-end continuing resolution.

Congressional Action Needed on *Water Resources and Development Act of 2016*

Background: For years, needed dredging and maintenance of our nation's ports has been neglected, despite the fact that importers pay a Harbor Maintenance Tax (HMT) on each shipment. Until recently, only about 50 percent of the HMT was being returned to the ports, resulting in a \$10 billion surplus in the Harbor Maintenance Trust Fund (HMTF) that was consistently diverted to fund other federal projects.

This changed in 2014 upon the passage of the Water Resources and Reform Development Act, legislation that included a provision to incrementally increase the percentage of HMTF collections spent on port maintenance and dredging annually, culminating in full use of HMT revenues by 2025.

Status: Both chambers in Congress are working aggressively to pass bipartisan WRDA legislation before the current bill expires at the end of this year. In April 2016, the Senate Environment and Public Works (EPW) Committee voted overwhelmingly to approve WRDA reauthorization legislation (S. 2848), followed by the House Transportation and Infrastructure Committee, which approved its own reauthorization bill in May (H.R. 5303).

The House's WRDA bill is considered the "cleaner bill" and thus easier to pass as it does not contain controversial provisions on drinking water and wastewater systems or

financial assistance to Flint, Michigan, unlike its Senate counterpart. Regarding the HMTF, the House bill proposes taking the Fund out of the annual appropriations process, moving HMTF spending from discretionary to mandatory starting in 2027 and permits the use of all collected funds for HMTF to be used for their authorized purposes. This provision is likely to be controversial among leaders of the Budget and Appropriations Committees.

The Senate's WRDA bill continues to ensure that HMT funds are increasingly appropriated to dredging activities at ports by requiring the annual authorized target funding level to be greater than the previous fiscal year's funding level.

Congress faces a limited legislative calendar to approve a final WRDA bill due to the upcoming elections in November. The Senate is in session until Oct. 7 and the House until Sept. 30. Lawmakers will return to a lame-duck session following the elections with chambers planning to close out the legislative session on Dec. 16. Floor debate has commenced on the Senate's WRDA bill, however, and EPW members are confident it has enough bipartisan support to overcome any obstacles in the upper chamber. Despite likely passage in the Senate, the bill's fate in the House is in limbo as the measure is expected to face headwinds from fiscally conservative Republicans over the lead and Flint funding provisions.

Talking Points:

- The American Society of Civil Engineers assigned U.S. ports and harbors a "C" grade in its most recent Infrastructure Report Card, underscoring that the need for investment compounds with every passing day.
- Waterborne commerce plays a major role in the U.S. economy, with roughly \$1.4 trillion worth of goods moving through U.S. ports each year, generating \$41 billion of federal, state, and local revenue annually.
- Many U.S. harbors have not been sufficiently dredged to accommodate the larger ships commonly used in international trade, including the mega-ships that will pass through the newly expanded Panama Canal. If the U.S. does not invest sufficiently to deepen these harbors – especially in the Atlantic and Gulf coasts, which do not possess the naturally occurring deep harbors found on the Pacific Coast – the U.S. economy will fail to reap the benefits offered by such large-scale improvements. For these reasons, it is critical that Congress act in this session to pass WRDA reauthorization legislation that expands and modernizes our ports and waterways to compete with the rest of world.