UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Peter M. Robinson
President & CEO

The Honorable Dave Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

February 7, 2013

Dear Chairman Camp and Ranking Member Levin:

On behalf of the U.S. Council for International Business (USCIB), I would like to express our support for congressional action on customs modernization and reform, and submit to you our comments and recommendations on the *Customs Trade Facilitation and Enforcement Act of 2012* (H.R. 6642) and the *Customs Enhanced Enforcement and Trade Facilitation Act of 2012* (H.R. 6656).

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. USCIB's vision and strength are provided by an active membership of over 300 leading corporations and organizations, while our unique global network helps turn the vision into reality. We are the U.S. affiliate of the International Chamber of Commerce, through which we represent the world business community at the World Customs Organization. USCIB also provides a range of business services, including the ATA Carnet in partnership with U.S. Customs and Border Protection (CBP), for temporary imports and exports, to facilitate overseas trade and investment.

USCIB regards trade facilitation and security as highly important elements in America's drive to strengthen its borders while promoting the free flow of goods. We support a legislative debate that places a great emphasis on achieving a balance of these elements through the improvement of the mission and functions of CBP.

Through ongoing engagement with the Subcommittee on Trade, we offered our priority recommendations for a robust customs bill (enclosed) to the 112th Congress, and we were very pleased to see many of our priorities addressed by H.R. 6642 and H.R. 6656. Having discussed additional areas of improvement with our members, I submit to you a list of USCIB's priority recommendations on H.R. 6642 and H.R. 6656. These recommendations promote a robust partnership between CBP and the private sector, which is essential to meeting the goal of balancing trade facilitation and security.

USCIB appreciates the opportunity to submit these recommendations and we look forward to working with you to achieve them. Please do not hesitate to call on us in the days ahead.

Sincerely,

Peter M. Robinson

Cc: Hon. Devin Nunes, Chairman, Subcommittee on Trade
Hon. Charles P. Rangel, Ranking Member, Subcommittee on Trade

Enclosure

1212 Avenue of the Americas
New York, NY 10036-1689
212.354.4480 tel
212.575.0327 fax
www.uscib.org

Global Business Leadership as the U.S. Affiliate of:
International Chamber of Commerce (ICC)
International Organization of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the OECD
ATA Carnet System

UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Priority Recommendations to Congress
Trade Facilitation and Enforcement Act of 2012 (H.R. 6642)
And
Customs Enhanced Enforcement and Trade Facilitation Act of 2012 (H.R. 6656)

Title I – Customs Facilitation

Section 102(b) Trade Advocate

USCIB is pleased that the legislation calls for the appointment of a Trade Advocate that will report directly to the Commissioner of U.S. Customs and Border Protection (CBP), as this position will provide the crucial link between CBP leadership and the trade community. However, we believe that in order to be most effective, this position should have the appropriate level of seniority and accountability. We therefore recommend that it be elevated to the level of Assistant Commissioner and require Senate confirmation to ensure that the trade community is well-represented.

Title II – Customs Facilitation, Trade Enforcement, and Transparency

Section 201 Consultations with Respect to Mutual Recognition Agreements

Section 201 currently calls for the Secretary of Homeland Security to consult with Congress on any proposed Mutual Recognition Arrangement or similar agreement between the United States and a foreign government providing for mutual recognition of supply chain security programs, but it does not call for the Department of Homeland Security (DHS) to consult with the trade. USCIB has long advocated for mutual recognition agreements that offer substantive, meaningful benefits to members of trusted trader programs. This must be more than just the recognition of membership in a program by another government; it must be a mutual offering of benefits in return for achieving trusted status. USCIB would like Congress to mandate true mutual recognition benefits. For example, today the U.S. C-TPAT and E.U. AEO programs are said to be mutually recognized. However, operationally, that is not true as you still have to apply to become AEO even if you are C-TPAT. Furthermore, trusted traders offer a great deal of information to their governments in order to achieve trusted status, and should know exactly where else that information goes. The negotiation of mutual recognition agreements should take into account the perspective of the trade community, which can be accomplished by requiring DHS to consult with the trade community during negotiations.

Section 202 Commercial Customs Operations Advisory Committee

USCIB recommends that the Commercial Customs Operation Advisory Committee (COAC) be co-chaired by the Assistant Secretary for Tax Policy of the Department of Treasury, Assistant Secretary of Policy and Planning of the Department of Homeland Security, and the Commissioner of U.S. Customs and Border Protection.

Section 203 Automated Commercial Environment Computer System

USCIB welcomes the funding for ACE that is provided by this legislation, as we have advocated for continued funding and the establishment of a deadline for the completion of the ACE program. We would like to see CBP provided with the tools needed to complete this initiative that has made good progress over the last few years, but has yet to achieve completion and operational functionality due to resource impediments. Accordingly, USCIB recommends that Congress mandate that CBP provide a finite calendar within 90 days of implementation of this legislation that details the prioritized plan and timeline for completing and operating ACE. This calendar should be updated and made available to the private sector no less than twice a year.

Section 204 International Trade Data System (ITDS)

USCIB welcomes the development of ITDS as the single window for the submission of trade data. However, in lieu of a deadline (March 31, 2013) by which other government agencies must enter into a memorandum of understanding (MOU) to provide for information sharing with CBP, USCIB recommends that Congress require each agency to submit a risk management plan of cooperation with CBP within 90 days of enactment of the legislation as the other government agencies have already executed MOU's with CBP.

Section 212 Centers of Excellence and Expertise

USCIB welcomes the codification of Centers for Excellence and Expertise (CEE) as a positive step in the customs modernization process. In an effort to ensure development of CEE's as a meaningful trade facilitation tool, USCIB recommends that the legislation require an independent annual review of CEE's by the U.S. International Trade Commission (USITC). USCIB also requests that Congress urge CBP to broaden the application to CEE's to make them as expansive and inclusive as possible.

Section 217 Educational Seminars to Improve Efforts to Classify and Appraise Imported Articles and to Improve Trade Enforcement Activities

USCIB welcomes the provisions in Section 217 that allow for the participation of the private sector in the education and training of CBP personnel in classifying and appraising imported articles.

Sections 222-225 Importer Requirements

In addition to the specific comments below on Sections 222 – 225, USCIB recommends that as a matter of general application, the ability of small and medium enterprises (SME's) to comply with the arduous requirements in these sections be taken into account. Many of the requirements in sections 222 – 224 are burdensome even for the multinational corporations with the necessary resources. Sections 222 – 224 should be structured in a manner that would not be prohibitive to SME's that do not have the capacity to ensure compliance.

Section 222 Customs Broker Identification of Importers

USCIB finds the minimum requirements and penalties set forth in Section 222 to be overly onerous and to be against the concept of the account. We do not see the value in requiring brokers to collect information on the identity of importers and would recommend eliminating this provision.

Section 223 Establishment of "New Importer" Program

USCIB further believes that the existing provisions controlling "new importers" are sufficient, and is concerned by the introduction of new bonds. Section 223 requires increased scrutiny and bond amounts (see Section 224) for new importers without specifically addressing whether a new importer is incorporated in a highly compliant existing importer's compliance program.

Section 224 Requirements Applicable to Non-Resident Importers

USCIB believes that the requirements in Section 224 to have a "non-resident importer" would be onerous on business, going well beyond the traditional functions and responsibilities of a customs broker and would require both a broker and a U.S. resident agent. USCIB recommends editing Section 224 in a manner that would provide some recognition that a non-resident importer who is managed by a U.S. importer of record will not undergo the same level of scrutiny as a truly non-resident importer who has no other legal presence in the United States.

Section 225 Certified Importer Program

USCIB supports the creation in Section 225 of a Certified Importer Program, a new partnership program to authorize the release of cargo imported by a certified importer on an expedited basis that is subject to documentation for clearing or licensing the importation or exportation of such cargo by one or more covered Federal agencies. We firmly support the idea that all government agencies must work together to enhance trade facilitation and believe that this program will be a positive step toward that end. Like other trusted trader programs, USCIB would like the Certified Importer Program to be a voluntary program, and would like to see the program structured in a manner that would not be prohibitive to SME's that do not have the resources to participate in programs that, but for the cost, would be greatly beneficial to them.

Section 231 Exchange of Information Related to Trade Enforcement

USCIB welcomes and has long advocated for legislation that would reaffirm CBP's role in protecting intellectual property rights (IPR) at our borders and ports by ensuring that CBP has explicit authority to provide un-redacted samples and product identifying information of suspect counterfeit goods to rights holders, and we offer the following recommendations to improve Section 231:

- Proposed Section 628A(a)(1) provides that un-redacted information may be provided to the registered mark or copyright owner "to assist the Secretary in determining whether the merchandise, packaging, or packing material infringes the copyright or bears or consists of a counterfeit mark of the registered mark." This seems too restrictive, as CBP is also authorized to seize "merchandise that is stolen, smuggled, or clandestinely imported or introduced." 19 CFR § 162.23(a); *see also* 19 U.S.C. § 1952a(c)(1) (mandating seizure and forfeiture of stolen goods). The proposed language should be broader to allow the registered mark or copyright owner to use the un-redacted information to also assist in connection with this additional seizure authority.
- Proposed Section 628A(a)(2)(A) and (B) provide that the un-redacted information provided to a registered mark or copyright owner may only be used by the

registered mark or copyright owner for the purposes set forth in paragraph (a)(1), or in a civil copyright or trademark infringement action. Per the comments in the first bullet point, the registered mark or copyright owner should also be allowed to use the information in a civil action for theft or conversion, or related causes of action. There should also be a provision allowing the registered mark or copyright owner to provide the un-redacted information in connection with any referral to law enforcement. Lastly, there should be a provision allowing the registered mark or copyright owner to provide the un-redacted information in connection with any proceeding involving a challenge by the importer to a seizure by CBP.

- Proposed Section 628A(a)(3) provides that a bond may be imposed "as a condition of disclosure of information and the provision of samples . . . ." If this means that a bond may be imposed only when an actual physical sample is provided along with other information, then that is consistent with current law. If, however, this would allow for the imposition of a bond in situations in which only information is being shared (and not a physical sample), that would seem to broaden the bonding authority and it is hard to understand why a bond would be required in these circumstances.

- Proposed Section 628A(a)(4)(B)(i) authorizes the Secretary to establish a "clearance process" for importers. Importers who participate in the clearance process would have their imported merchandise released by CBP, and CBP would be prohibited from releasing information or samples to the registered mark or copyright owner for any purpose. It would not seem to be good policy to immunize any importer from CBP authenticity inquiries. For example, if merchandise was being imported from a known counterfeit trafficker, this clearance process would prohibit CBP from providing information or samples to the registered mark or copyright owner for assistance in making an authenticity determination, significantly increasing the risk that counterfeit products will flow into the United States. If the goal of the clearance process is to minimize the delay in the release of imported merchandise, then a better approach would be to require the registered mark or copyright owner to respond with its analysis to any CBP inquiry within 48 hours for merchandise being imported by any importer that qualifies for this process.

Lastly, USCIB is aware that others are requesting that Congress impose a statutory requirement for CBP to publish lists of products denied entry or seized because of IPR violations, as well as shippers who sought to import them. We do not believe that it would be in the interest of rights holders to publish such a list because of the potential adverse public relations impact. For example, if a list shows many counterfeit *company x* seizures, the public might conclude that only *company x* has a counterfeit problem and steer them away from purchasing *company x* products. Although we are aware that such a list may also help to identify *company x* counterfeit traffickers who were the importers identified in seizures of products of other brand owners, we believe that the potential harm that would be incurred by the list outweighs the value.

Title III – Prevention of Evasion of Antidumping and Countervailing Duty Orders

Comment of General Application to H.R. 6642 and H.R. 6656

USCIB believes that efforts to raise the level of enforcement of antidumping and countervailing duty orders should be thoroughly debated. While both bills contain language to increase private sector involvement in enforcement, their approaches are materially different. USCIB members are concerned that government resources committed to enforcement of all Customs laws not be misallocated; to that end, we are interested in exploring a balanced approach to all areas of Customs enforcement.

Title IV – Miscellaneous Provisions

Section 402 De Minimis Value and Entry under Regulations

USCIB has long advocated for an increase in the *de minimis* value and the informal entry value, and we are pleased to see both of these addressed in the draft bills as these changes will promote faster border clearance for low-value shipments, allow customs officers to focus enforcement efforts on urgent priorities like ensuring product safety and protecting intellectual property, and benefit small businesses by reducing the burden associated with importing low-value goods as well as international retail returns. We would propose, however, to increase the *de minimis* value to $1,000 like H.R. 1653, the *de minimis* bill introduced in the House of Representatives in 2011 with the support of 144 co-sponsors. USCIB also recommends including a provision that would allow for an annual increase in the *de minimis* value to account for inflation, based on the Consumer Price Index. While we are very grateful to see an increase addressed in the draft bill and welcome the increase to $800, we believe that a $1,000 *de minimis* value would have the most beneficial trade facilitation and security impact, allowing CBP officers to further focus their risk-based approach. If Congress determines that the *de minimis* value shall be $800, we recommend the inclusion of language in Section 402 that, notwithstanding changes based on the Consumer Price Index, the *de minimis* value never be permitted to fall below the personal exemption amount of $800.

Section 404 Drawback and Refunds

USCIB welcomes the language in Section 404 that will streamline the duty drawback process to allow for more claims, promote growth in U.S. exports and export-related manufacturing jobs, reduce the regulatory burden for CBP and the trade, and make it easier for U.S. manufacturers to compete in foreign markets. We welcome the language allowing the use of eight-digit Harmonized Tariff System (HTS) classifications for determining eligibility for certain types of drawback claims and the move to make most time-frames for filing drawback claims consistent.

Section 405 Amendments to Chapter 98 of the Harmonized Tariff Schedule of the United States

USCIB welcomes the language in Section 405 to amend Chapter 98 of the Harmonized Tariff Schedule (HTS) by reducing the record keeping burden on goods returned to the United States without improvement abroad so that duties are not assessed twice (HTS 9801) and by modernizing the existing inventory management by subtracting the value of U.S. components assembled into the final product that will be entered into U.S. commerce for articles exported

and returned after being improved abroad (HTS 9802). These changes will greatly reduce the burden on U.S. manufacturers, retailers and e-commerce companies and allow for more efficient and expedient business transactions and returns.

USCIB notes the provision as drafted to amend (f)(ii) intends to require that a use who selects a specific inventory method to retain using that method throughout the fiscal year. We propose, however, that the language be amended to reflect currently preferred language as used in the free trade agreements, which states: "A person selecting an inventory management method under this paragraph for particular fungible goods must continue to use that method for those fungible goods or materials throughout the fiscal year of that person."

USCIB offers the following additional language, previously shared with the Subcommittee on Trade, to Section 405(a):

Section 405(a) Add subparagraph (g):

> "(g) For purposes of subheadings 9802.00.40 and 9802.00.50, if an article is exported from the United States for the purpose of repairing or altering the article and the article is subsequently imported into the United States—
>
> "(i) the article shall be considered to be the same article that was exported without regard to whether the article contains 1 or more components recovered from an identical or similar article that was also exported from the United States; and
>
> "(ii) the cost or value of any such components shall not be included in the value of the article when the article enters the United States.

Section 405(a) Add New Paragraph 2

(2) By inserting a new provision as set forth below:

(a) REGULATORY AUTHORITY- The Secretary of the Treasury shall prescribe rules implementing the principles contained in subsection (b) for determining the duty exemption of textiles and apparel products. Such rules shall be promulgated in final form not later than __________.

(b) PRINCIPLES-
(1) IN GENERAL: For the for purposes of the customs laws governing imported goods qualifying for a partial duty exemption under Subchapter II of Chapter 98, 19 U.S.C. 1202, (HTSUS subheading 9802.00) for articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means as provided herein. The duty shall be assessed on the full value of the imported article, less the cost or value of materials the product of the United States described below.

(a) Apparel of chapters 61 or textile products of heading 6302 of the HTSUS containing thread, yarn, fabric or components the product of the United States:

i. Provided for in headings 5106 through 5113, 5204 through 5212, 5306 through 5311, 5508 through 5516, 5901 through 5903, or chapter 54 or 60; or
ii. A knit-to-shape component.

(b) Apparel of chapter 62 of the HTSUS containing thread, fabric or components the product of the United States:
i. Provided for in headings 5111 through 5113, 5204, 5208 through 5212, 5309 through 5311, 5401 through 5402, 5407 through 5408, 5508, 5512 through 5516, 5901 through 5903, or chapter 60; or
ii. A knit-to-shape component.

(c) Provided that:
i. Woven fabric provided for in headings 5208 through 5212, 5407 through 5408 or 5512 through 5516 is dyed, printed or finished in the United States and is formed from yarns the product of the United States;
ii. The component that determines classification of textile products of heading 6302 is fabric of HTSUS subheading 5208.39.20.

To further ease the financial burden on companies doing international returns, we propose the addition of the following language to Section 405(b) to add retroactivity for the entries made prior to the effective application in the draft bill:

Section 405(b) Add Paragraph 3

(3) Application. – notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with US Customs and Border Protection before the latter of the 180th day after the date of the enactment of this Act or the date of liquidation of the entry, any entry, or withdrawal from warehouse for consumption, of any good –

A) that was liquidated, scheduled for liquidation, or made on or after June 1, 2008, and before the date of the enactment of this Act, and

B) that was made under HTSUS 9801.00.26 prior to January 1, 2013, or under any other HTSUS provision after January 1, 2013, and

C) with respect to which there would have been no duty if the amendment made by [Section 405(b) or this subsection] applied to such entry or withdrawal, shall be liquidated or re-liquidated as if such amendment applied to such entry or withdrawal.

Additional Chapter 98 Special Classification Provisions

USCIB has previously offered additional language to amend the Chapter 98 provisions to facilitate the flow of goods that may cross borders for certain operations and return to the U.S. without being assessed duties a second time, and allowing for goods that may be imported under such provisions to use generally accepted accounting principles (GAAP) for inventory management. We once again offer this proposed language:

(a) Articles Exported and Returned, Not Advanced or Improved in Condition.—Subchapter I of chapter 98 of the Harmonized Tariff Schedule of the United States is amended—

(1) in the article description for the item relating to subheading 9801.00.20, by inserting "Articles, previously imported, with respect to which the duty was paid upon such previous importation or which were imported previously free of duty, if (1) re-imported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, after having been exported under lease or similar use agreements, bailment agreements, or for warehousing, repackaging, or both and (2) re-imported by or for the account of the person who imported it into, and exported it from, the United States;" and

(2) by adding at the end of the U.S. Notes the following:

"3.(a) For purposes of subheading 9801.00.20, fungible goods exported from the United States—

"(i) may be commingled; and

"(ii) the origin, value, and classification of such goods may be accounted for using an inventory management method.

"(b) If a person chooses to use an inventory management method under paragraph (a) with respect to fungible goods, the person shall use the same inventory management method for any goods with respect to which the person claims fungibility.

"(c) For purposes of this note—

"(i) the term 'fungible good' means any good that is commercially interchangeable with another good and that has properties that are essentially identical to the properties of another good; and

"(ii) the term 'inventory management method' means any method for managing inventory that is based on generally accepted accounting principles.

(3) ***EFFECTIVE DATE.*** – *In General, N*otwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the latter of the 180th day after the date of the enactment of this Act or the date of liquidation of the entry, any entry, or withdrawal from warehouse for consumption, of any good –

A) that was liquidated, scheduled for liquidation, or made on or after January 9, 2008, and before the date of the enactment of this Act, and

(B) with respect to which there would have been no duty or reduced duty treatment if the amendment made by [provisions above for 9801] applied to such entry or withdrawal, shall be liquidated or re-liquidated as if such amendment applied to such entry or withdrawal.

New Provision to Chapter 98:
The Secretary of the Treasury prescribe rules clarifying that for textile and apparel products classified in Subchapters I or II of Chapter 98 of the Harmonized Tariff Schedule of the United States, the manufacturer's identification code (MID) of the facility that repairs, alters, assembles, processes, stores or otherwise handles the products, may be used on any customs entry documentation or electronic data transmissions that requires identification of the manufacturer.

Comment of General Application to H.R. 6656 – References to the Private Sector

USCIB welcomes the many references to partnership and communication with the private sector throughout H.R. 6656. However, the references to the private sector are inconsistent, sometimes referring to "interested parties in the private sector, including domestic producers and other private commercial interests" (*see* Section 102(b)(3)(B)), "interested parties in the private sector, including domestic producers" (*see* Section 102(b)(3)(C)), and "interested parties in the private sector" (*see* Section 217(c)(1)). USCIB recommends that all references to the private sector be to only "the private sector" in order to ensure uniformity and be inclusive of the trade community.