

Subject: NCBFAA Open Letter to Importers and Exporters

Date: October 27, 2015

For over a decade, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) has been intricately involved with Customs and Border Protection (CBP) efforts to bring the Automated Commercial Environment (ACE) to completion. Licensed customs brokers file over 95 percent of all customs entries on behalf of their importing clients. ACE will be the only automated system by which CBP will accept manifest, cargo release and entry summary data for imported goods, and it will also be the single window by which 47 other government agencies involved in the importing and exporting process will receive data about cargo. A number of these partner government agencies have authority to place holds on cargo, and they will exercise that authority in the cargo release process.

ACE will replace the current Customs operating system that has been in place since the mid-1980s. This has been a long and arduous project costing taxpayers in excess of \$3.8 billion over the past 15 years. While we commend CBP on the progress it has made to get the system to where it is today, it must be noted that ACE development has also required continuous, intensive involvement of customs brokers and their software developers. The Association membership has dedicated human and financial resources costing millions of dollars in programming, research, testing and training in preparation for full ACE functionality.

After several failed technology approaches, CBP launched its more successful “agile” method, which has resulted in the ACE system being put into operation piece by piece. As with any major software program, individual deployments were implemented successfully while others caused very substantial and costly difficulties. Those instances resulted in significant delays in the release of cargo, requiring additional and duplicate work in costs borne by both customs brokers and the importing community. This was compounded by the issuance of demurrage and storage charges due to the inability to get the cargo released in the ACE system.

Earlier this year, CBP set a hard deadline of November 1, 2015, for all companies to transition to ACE and transmit customs data, as well as data required for release by ten or so partner government agencies. November 1, 2015 was issued with the intent to shut down the Automated Commercial System (ACS), the legacy 30 year old system. Several challenges along with other factors highlighted that the deadline was not reasonable, and CBP revised the mandatory dates to February 28th, 2016 for the bulk of the system. This includes three partner government agencies, with eleven partner government agency data requirements and other system enhancements due in July of 2016.

Any plan to release functionality across all modes of transportation, in all ports of entry, without using a phased-in approach with adequate testing and training, creates the potential for significant disruptions in the supply chain. Recently CBP released functionality allowing air carriers to file their import manifests with CBP in ACE. It did not work properly and created



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havoc with air shipments, resulting in an inability to move shipments, lost business for importers, and significant additional costs for everyone in the supply chain.

NCBFAA is fully engaged: working with CBP; the Partner Government Agencies (PGAs); CBP's parent, the Department of Homeland Security (DHS); the Border Inter-Agency Executive Council (BIEC); and, the White House. At the same time, we are engaged at the operating level: within our industry, with our client importers and exporters, with the software community, with the CBP ACE Business Office (which has developmental responsibility), with policymakers at CBP's Office of International Trade, and field personnel at CBP's Office of Field Operations.

While we applaud the revised dates, NCBFAA remains very concerned about the continued reliance on a new date to shut off the older system. We are reminded of the catastrophe to trade occasioned by Australia's launch of its own new system in 2005 that was driven by a similar approach.

We believe that the measure of a successful date of implementation for the system must be the same for the government and the international trade community. For a successful implementation date to be set, we must have – at a minimum – the following as criteria:

- The average time of release in ACE, from the time of data transmission to full cargo release by CBP, must be equal to or better than the average time of release in ACS today. It must not take ACE longer to perform these functions.
- At minimum, the communications with all trade partners should not be affected when the transition to ACE occurs. Optimally it will be further facilitated in ACE.
- Government exam reasons and results must clearly communicate who is requiring additional action, what actions are required to adjudicate the finding, what the results of the adjudication are, and what actions are required from the trade.
- All data elements must be established, published, successfully tested and finalized a minimum of 90 days before any piece of functionality is required to be put in production. Functionality has already changed multiple times and as it continues to change, it is making software programming difficult and more expensive to finalize.
- Any information collected at the time of cargo release (admissibility) must be for the purpose of establishing the risk of allowing the good to proceed into the U.S. commerce for health, safety, or other risks to the U.S. consumer.
- Data requirements must not add costs to the supply chain in a way that places an artificial trade barrier to the effective flow of the import and export of goods.
- A stable and available CBP and PGA testing and live operating environment is established for all automated interactions without the need for weekly "fixes" to address critical problems.
- CBP and PGA software must be thoroughly tested for all issues including software coding problems, process flaws, and capacity, and pass at an industry-accepted level.
- CBP and PGA personnel in the field that are required to interact with ACE must be thoroughly trained.



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There are concerns that CBP, the PGAs and the trade community are not fully prepared for the complete implementation of ACE. CBP is challenged in having too few trade technical resources that are available to support the transition into the new system, restricting the ability of brokers to successfully implement the ACE system. It is also apparent that the deadlines are not under the exclusive control of CBP, or even DHS. They are being heavily influenced by the White House and are not driven by the completion of the software functionality, but seemingly by arbitrary deadlines.

There may be additional data that is required from you – the importing and exporting community – to move your products in and out of the country for these additional PGA data sets. These agency requirements mean that the system is not more efficient for the broker or the importing or exporting community, nor does it make the process easier for CBP. This process means more data to input, more data to process by the government, more decisions to be made by all parties, more exams to be adjudicated, and in doing so adds more costs to the supply chain. These new data elements and data submission requirements effectively achieve cost transference from the Partner Government Agencies to brokers and importers.

NCBFAA has been at the forefront in the need for the ACE system, supporting funding and a single window across all of the government for both import and export needs. We continue to do so, with the intent to continue to work with CBP, DHS and the White House to ensure its completion *on a reasonable timeline* that will not affect critical trade. While we move into an environment where global trade is increasing, a reliable, efficient and predictable process at the point of importation is critical. We believe that ACE will answer those needs, and a reasonable adoption of the system will accomplish this.

NCBFAA encourages the importing and exporting trade community to stay informed on this issue of critical importance to us all.

