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CONFIDENTIAL

July ____, 2023

Forward Letter by email to
Gary_Haglund@cassidy.senate.gov

The Honorable Marsha Blackburn
357 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Cassidy
455 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maggie Hassan
324 Hart Senate Office Building
Washington, DC 20510

The Honorable Catherine Cortez Masto
520 Hart Senate Office Building
Washington, DC 20510

RE: June 13, 2023, Letter

Dear Honorable Blackburn, Honorable Cassidy, Honorable Hassan, Honorable Masto:

We appreciate the opportunity to respond to your June 13, 2023, letter to the International Trade community in the United States. Miller & Company was established 43 years ago as a firm solely focused on import, export, and foreign-trade zone law. We have represented a wide range of small, medium, and large firms in all 50 states and Puerto Rico. Thank you for this unique opportunity to provide our prospective on necessary updates and changes to the U.S. Customs law to promote trade facilitation.

Congress funded the Automated Commercial Environment (ACE) that was implemented on October 17, 2003. Since that time, an enormous amount of effort has been expended with respect to the ACE system, which facilitates the CBP electronic

transfer of information. However, ACE 1.0 has never been fully funded, the intended programming has never been completed, and more CBP staff training is necessary to complete the vision of ACE 1.0. Before Congress begins significant funding and work on ACE 2.0, we believe that ACE 1.0 should be completed. The following are some representative examples of necessary enhancements to ACE 1.0:

I. CBP In-Bond System.

The CBP In-Bond system has been only partially transferred from a paper system to a completely automated system. The lack of adequate funding and programming for the Customs In-Bond system creates an enormous amount of manual activity for CBP Officers and the Trade, which are already seriously strained. All bonded transfers within a CBP Port must use a Permit to Transfer paper CBP Form 6043, which was supposed to be shelved years ago, as automation has not occurred. Paper documents are used for most transactions involving merchandise at the Mexican and Canadian borders requiring in-bond transfers.

II. Partner Government Agencies.

The “Single Window” for all Partner Government Agencies (PGA) has been a primary focus of the ACE system since 2003. While an enormous amount of effort was initially undertaken, it has stalled for several years and has not been completed. No “Single Window” exists, and the current methodologies to manage the interfaces with all government agencies have never been completed as planned. This results in an enormous amount of time spent unnecessarily by the Trade, U.S. Customs and Border Protection, and PGA.

III. U.S. Foreign-Trade Zones.

The U.S. Foreign-Trade Zone (FTZ) program has been neglected by the ACE system. While FTZs represent over 10 percent of all U.S. trade, a significant amount of the activity has never been fully automated.

1. The FTZ Weekly Entry program was initiated in 1983 in order to provide a simplified process to support large scale FTZ operations. A key “promise” of the ACE system was to expand the 999-entry line limit to 9,999 entry lines in order to accommodate large scale FTZ weekly entry activity. The concept is to allow one Customs entry data transmission to CBP, and one transfer of Customs duties owed per week. Because ACE 1.0 has never been fully funded, a significant

number of FTZs transmit 2 – 10 weekly entries, causing an enormous amount of extra work for the Trade and CBP.

2. Admissions to FTZs utilize an e-214 that was originally designed using COBOL programming which had been “lifted and shifted” from an old design to the ACE system. As a result, the e-214 does not contain the normal compliance controls that should be required for e-214 submissions, including AD/CVD merchandise, Trade Remedy merchandise, Forced Labor merchandise, etc. While normal Customs entries can be corrected when errors are identified, the e-214 has a very limited window of time for correction opportunities.
3. All U.S. importers filing normal Customs entries have access through ACE to the automated records and filings filed on behalf of the company for internal compliance purposes. U.S. Customs entries and Export AES/EEIs are all visible to the company responsible for the legal adequacy of the documentation filed. There is no such access for FTZ Operators to the e-214, the primary document for properly receiving merchandise into an FTZ. As a result, the lack of access to information is a significant detriment to U.S. Foreign-Trade Zone Operators.

IV. Adequate CBP Officers Staffing and Compensation.

1. A serious problem with respect to the necessary promotion of trade facilitation is the significant lack of Customs officers at individual Customs Ports nationwide, not at U.S. Borders. Over the last decade or more there has been an effort to increase Customs Officers at U.S. Borders. The level of Customs staffing nationwide at Ports, over the last 20 years, has not materially changed even though the volume of trade has increased enormously. Congress must adequately staff Customs Ports to ensure trade facilitation and trade compliance.
2. The U.S. FTZ program has never had dedicated Customs Officer funding. FTZs now represent over 10 percent of all U.S. trade, and Customs Ports should receive Congressional funding to facilitate adequate FTZ trained staffing at all U.S. Customs Ports and Regulatory Audit, as required by the 1986 CBP Audit Inspection regulations to support the U.S. FTZ program.
3. In 1980 when the dollar value of FTZ receipt activity was \$2.6 billion there was one Customs Officer assigned at Customs Headquarters to oversee the U.S. FTZ program. In 2023, 43 years later, there is one

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Customs Headquarters Officer assigned to the FTZ program and the dollar value of FTZ receipt activity is \$835.6 billion. CBP Headquarters should have a minimum of four additional staff members plus adequate funding for training, supervision, and audits.

We appreciate this opportunity to provide our views on these matters based upon our specialized practice and experience of the last 43 years. While we believe there is a need for ACE 2.0, we believe that, prior to initiation of any significant changes to ACE and more complete changes to the Customs laws, the current law should be supported with adequate funding for necessary technology and staffing to complete ACE 1.0, support the U.S. FTZ program, and significantly increase Customs staffing at all Customs Ports nationwide and CBP Headquarters.

We look forward to the opportunity of discussing these matters at your convenience.

Very truly yours,

Marshall V. Miller