



Statement of the U.S. Chamber of Commerce

ON: THE IMPACT OF IMPLEMENTATION: A REVIEW OF THE
REAL ID ACT AND WESTERN HEMISPHERE TRAVEL
INITIATIVE

TO: SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE, AND THE
DISTRICT OF COLUMBIA OF THE SENATE COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

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The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business— manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 96 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Testimony before
Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the
District of Columbia
U.S. Senate Committee on Homeland Security and Governmental Affairs

Hearing on
The Impact of Implementation:
A Review of the REAL ID Act and Western Hemisphere Travel Initiative

Tuesday, April 29, 2008

Statement of
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Executive Director of the Americans for Better Borders Coalition

Introduction

Thank you Mr. Chairman, and members of the Committee, for the opportunity to present today on the impact of implementation of the Western Hemisphere Travel Initiative (“WHTI”). In addition, I would also like to thank all of you who voted in favor of key amendments in 2006 and 2007 to help guarantee that WHTI is implemented properly and efficiently. The Chamber urges you to continue your excellent oversight and support of this important program.

I am here today in two capacities, as Director of Immigration Policy for the United States Chamber of Commerce (“Chamber”), and as Executive Director of the Americans for Better Borders Coalition (“ABB”). The Chamber is the world’s largest business federation, representing more than three million businesses and organizations from every size, sector, and region. ABB is a coalition that unites regional business organizations and a wide array of companies and national trade associations working to ensure the efficient flow of tourism and goods across our borders while addressing national security concerns.

Also, the Chamber serves jointly with the Council of the Americas as the Secretariat of the U.S. Section of the North American Competitiveness Council (“NACC”), a trilateral advisory group of business leaders from Canada, Mexico, and the United States. The NACC was formed in 2006 to provide a voice for the private sector and engage them as partners in enhancing North America’s competitive position in global markets, promoting increased employment, and fostering a higher standard of living.¹ In addition, the Chamber’s President and CEO, Tom Donohue was appointed to the Secure Borders Open Doors Advisory Committee

¹ The NACC has offered recommendations to the three governments, both within and building upon the Security and Prosperity Partnership of North America (“SPP”), to enhance the secure flow of people, goods and services in North America, please see “Meeting the Global Challenge: 2008 Report to Leaders from the North American Competitiveness Council” http://www.uschamber.com/publications/reports/0804_global_challenge.htm.

to the Departments of State and Homeland Security, which was created as part of the Rice-Chertoff Initiative.

These comments reflect the information and concerns expressed to date by our members on the implementation of WHTI. To be clear, the Chamber is committed to continue working with Congress and the Departments of Homeland Security and State to successfully and efficiently implement WHTI. The efficient movement of people, goods and services and a secure border are not mutually exclusive or competing objectives. In fact, “the primary mission” of the Department of Homeland Security (“DHS”) includes “ensur[ing] that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.”

It is important to note that WHTI is not being implemented in a vacuum. A number of inefficiencies at the borders are threatening our competitiveness and WHTI places further pressure on our eroding infrastructure, which could harm legitimate commerce, trade and tourism.² Increased delays at the border due to poor WHTI implementation would not only affect border communities and last minute travelers, but would also impact the entire North American economy by slowing down commerce. In U.S.-Canada traffic alone, there are about \$1.5 billion in goods and services crossing the land borders every day.

Congress and the Administration deserve credit for many positive changes to WHTI, since it was first announced, and I will discuss those in my statement together with the Chamber’s recommendations for improvement in the context of the final rule published on April 3, 2008. Also, the Chamber has never taken a position on the REAL ID Act and I will refrain from discussing it here, other than to point out how REAL ID compliant documents could statutorily be made to be WHTI compliant. However, before discussing WHTI, I would like to take this opportunity to address certain border issues and make several recommendations to facilitate trade and travel across our land borders. Focusing solely on implementing WHTI efficiently without a holistic approach to other border issues would not lead to an efficient and secure border.

Existing Delays at the Borders

The Chamber is concerned that the U.S.-Mexico and the U.S.-Canada border crossings are increasingly becoming a competitive disadvantage when compared to the rest of the world. The Chamber is troubled that security concerns are not being balanced with economic interests in the border management decision making process. Thanks to both the North American Free Trade Agreement (“NAFTA”) and the closely connected economies of the U.S., Canada, and Mexico, the North American supply chains for many companies is tightly integrated.³ For companies with an integrated supply chain, the impact of border delays, fees, and stringent

² For a detailed discussion of other border issues, please see “Finding the Balance: Reducing Border Costs While Strengthening Security.” U.S. Chamber of Commerce and Canadian Chamber of Commerce, February 2008, http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

³ For a full discussion of the substantial economic gains to the three countries from NAFTA, please see “The Economic Benefits of NAFTA” from the Canadian-American Business Council, April 2008.

security procedures are magnified because their products are required to clear customs multiple times in the manufacturing process—creating a competitive disadvantage.

In the automotive industry, parts cross from Canada and Mexico heading to plants throughout the United States, whether it is to a long-existing assembly plant in Detroit, or a newer one in San Antonio. In the food industry, a vegetable grown in the United States may find its way into a product that is processed just across the border in Canada or Mexico and then shipped back to the United States. Thus, delays at U.S. ports of entry not only harm Canadian and Mexican processors—it backs up the entire supply chain, affecting our own farmers. In addition, delays at U.S. ports have also resulted in trucking companies significantly raising prices to ship products and/or companies in the U.S. opening storage facilities to keep inventory. The increased costs are many times passed down to the American consumer in higher prices for goods crossing our land borders.

a. Measuring Border Wait Times

Even before WHTI has been fully implemented, wait times at the border seem to be increasing. To address this issue, DHS should start by dealing with their counterparts in Canada and Mexico, as well as industry representatives, to reach agreement on proper measurements for border wait times. Data from the private sector on border wait time varies widely when compared to the data kept by U.S. Customs and Border Protection (“CBP”). The private sector data shows much longer wait times than CBP data—particularly for the most extensive delays. The difference is associated with the fact that CBP calculations customarily only includes time spent in the primary inspection lane, while ignoring time spent on backed-up roads approaching the primary inspection lane or time spent on secondary inspections. These measuring discrepancies need to be addressed, so the severity of delays and their causes can properly be addressed.⁴

b. Transparency

There is a great deal of anxiety in the business community due to the level of uncertainty created by border policies announced and implemented before the infrastructure is in place. The private sector needs to know what to expect in order to properly adjust. This is difficult to do when there is a lack of transparency concerning implementation plans and almost no concerted outreach to the traveling public regarding upcoming changes in requirements for border crossings. The “Travel Promotion Act” (S.1661 / H.R. 3232), would address several of these issues by establishing a well-funded public-private outreach campaign to improve the efficient dissemination of new U.S. entry and exit policies. The Chamber asks that you consider cosponsoring this legislation.

⁴ The Secure Borders Open Doors Advisory Committee (“SBODAC”) to the Departments of Homeland Security and State issued a report which recommended that metrics should take a more prominent role in both departments’ operations. “Report of the Secure Borders Open Doors Advisory Committee,” January 2008 (Pages 35, 38-42) http://www.dhs.gov/xlibrary/assets/hsac_SBODACreport508-compliant_version2.pdf. Perhaps this Committee will consider proposing the creation of a private sector advisory board to oversee the implementation of the recommendations made in the SBODAC report and new recommendations as we move forward.

c. Fully Staffing CBP and Upgrading the Infrastructure

Currently, inadequate staffing, reduced or changing hours of service, mandates for secondary inspection of some products, new fees, and outdated infrastructure at our land ports of entry are leading to long delays with a significant economic impact on businesses, without apparently increasing security. We should reconsider some of the new fees and inspections that have been imposed, increase funding for CBP to guarantee adequate staffing and extended hours of service, and upgrade our technology and infrastructure, so CBP officers can more efficiently monitor the flow of people and commerce. In the House of Representatives, the “Putting Our Resources Towards Security” Act (“PORTS Act” H.R. 5662) was introduced by Representative Silvestre Reyes, and is a step in the right direction. The Chamber encourages members of this Subcommittee to consider introducing it in the Senate.

The PORTS Act would:

- provide for 5,000 additional CBP officers, allowing for an increase in total officers by approximately 30 percent over five years;
- provide for 350 additional support personnel and 1,200 agriculture specialists at CBP, which will help ensure officers will not be pulled away from inspection duties to perform specialized or administrative work;
- authorize \$5 billion over five years for the General Services Administration (GSA) to address infrastructure deficiencies at our land ports of entry. GSA and CBP will be required to work together to prioritize repair work.

Western Hemisphere Travel Initiative

Implementing WHTI without addressing the existing border delays and the additional pressures that WHTI imposes may generate a new security problem with long lines of trucks idling at the busiest ports of entry. If improperly implemented, WHTI could make a bad situation even worse. Many improvements have already been accomplished, but more needs to be done.

a. Implementation Timeline

The Chamber continues to reiterate the need for rational and measured implementation of new border crossing requirements. The President and Congress agreed that securing our nation’s borders is something that needs to be done correctly—rather than expeditiously—to avoid unnecessarily harming our economy. On January 4, 2008, President George W. Bush signed the Consolidated Appropriations Act of 2008 (H.R. 2764) into law, which provided the Administration at least until June 1, 2009, to develop alternatives to a passport for use in land and sea ports of entry.

Great progress has already been made in developing enhanced driver’s licenses (EDLs) to be acceptable at land and sea ports of entry. Furthermore, this spring, DHS and the Department of State (“DOS”) plan to unveil a federally issued, wallet-sized, lower-cost alternative to a U.S. passport, the U.S. passport card. Congress and the Administration acknowledged when granting

the eighteen-month extension that for WHTI to be successful, with minimum economic disruption, it required an aggressive campaign to educate the general public.

The Chamber objects to the creation of interim standards, as was done in January of this year, that would change in 18 months and only serve to further confuse the traveling public and complicate implementation of the final proof of citizenship standards.

b. Cost Analysis

The analysis done by DHS concentrates on travel and tourism and does not address the larger concerns of the business community, which include the impact on commerce in general. DHS has said that it will not conduct a more robust economic analysis. However, there is a study underway at the Government Accountability Office (“GAO”).

Given that the primary mission of DHS includes ensuring that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland, we recommend for DHS to wait for the GAO report, or conduct a new more comprehensive economic impact analysis of its own, before moving ahead with full implementation.

c. Pilot Programs

Before pushing for full implementation, pilot programs need to be performed to assess the potential impact of WHTI on cross-border commerce, thus, making sure final implementation of WHTI does not negatively affect our economy and security. A minor pilot test of WHTI at a 65% review rate in the port of entry of El Paso caused major delays.

We must avoid the chaos, long lines, and 12-week paperwork backlogs that were created in 2006 with the hurried implementation of the WHTI air rules. Again, the problem then was exacerbated by an infrastructure that was not in place and by the lack of an efficient public-awareness campaign. Despite the business community’s warnings, the government was not prepared for the changes it made in policy. Pilot programs help identify concerns before the damage is done. Specifically, for land ports of entry, the pilot programs need to address infrastructure and staffing requirements with an emphasis on future plans for full implementation and technological requirements. The test results must be transparent and consistent with recommendations to ensure operational success in the future.

d. U.S. Citizen Cruise Ship Passengers

The Chamber is pleased that DHS and DOS in the final rule took notice of the difference in demographics between the international airline traveler and those traveling in an uninterrupted-loop cruise originating in the U.S. While international airline travelers generally have a high level of passport ownership, the ratio of passport ownership for sea cruise travelers is closer to the U.S. population at large, which is significantly lower, especially for those travelers taking short (two to five days) Caribbean cruises. This industry would have suffered economic harm—without any apparent improvement in security—had the change not been made between

the proposed rule and the final rule. The Chamber supports the alternative document requirements in the final rule for U.S. citizens departing and reentering U.S. territory on board the same cruise ship.

e. Travel by Children Under Age 16

Since 2005, when WHTI was first announced, the Chamber has been calling for flexibility in the document requirements for children. Children in both the United States and Canada have the lowest passport ownership rate of any demographic group. The implications of improper implementation in this area are broad, covering, for example, legitimate travel by families with children, children on school day trips, and children participating in cross-border sport activities. The Chamber strongly supports the alternative document requirements created for U.S. and Canadian citizen children under the age of 16. **However, the Chamber continues to recommend that the alternative be applied to children “Age 16 and Under,” and not as currently stated in the final rule as children “Under Age 16.”**

As DHS and DOS recognize, “it is difficult for the majority of children under 16 to obtain a form of government-issued photo identification” and also “age 16 is the age that DOS begins to issue adult passports, valid for 10 years, instead of 5 years for children.” However, given that neither government-issued photo identifications nor adult passports arrive automatically in the mail on a child’s 16th birthday, allowing children age 16 to travel under the alternative procedure would give them the time needed to apply for the appropriate documentation.

f. Travel by Groups of Children Under Age 19

The Chamber successfully called for language now found in Section 546 of the Department of Homeland Security Appropriations Act of 2007, requiring the certification by DHS and DOS that an alternative procedure for groups of children be created. The Chamber supports the alternative procedure found in the final rule for “Children Under Age 19” traveling as part of school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations. **However, this alternative procedure should be applicable to groups traveling by air, not just those arriving at U.S. sea or land ports of entry.**

The language found in Section 546 clearly calls for an alternative procedure to be developed for groups of children traveling across “an international border.” Section 546 makes clear distinctions when the requirements are to apply only to land and sea ports of entry. While the statute clearly calls for availability of the passport card only for use at land and sea ports of entry before final WHTI implementation, it also clearly calls for an alternative procedure “for groups of children traveling across an international border” with no restriction based on the ports of entry type.

g. Outer Continental Shelf Employees

Chamber member companies received differing and conflicting information with regard to document requirements for workers aboard Mobile Offshore Drilling Units (“MODUs”)

attached to the United States Outer Continental Shelf (“OCS”) traveling from the U.S. to and from MODUs. The Chamber sought the clarification and standardization of the procedures that now appear in the final rule. Thus, the Chamber supports the more official clarification contained in the final rule, which plainly states that the WHTI requirements do not apply when traveling from the U.S. to and from MODUs in the OCS. Once again, had WHTI been applied to these group of workers, it would have impacted this industry without any security benefit.

h. Individual Cases of Passport Waivers

The Chamber has been calling for passport waivers to be provided in cases of emergencies, such as “volunteers responding to fires and emergencies across the border (an everyday occurrence).” The Chamber strongly supports the description in the final rule of the possible waivers to be granted in a case-by-case basis. Also, the explicit acknowledgement that Customs and Border Protection (“CBP”) has the authority to temporarily admit non-immigrant aliens into the United States on a temporary basis in case of a medical or other emergency is welcomed. The Chamber believes that CBP should proactively confer with local emergency responders in border areas to help facilitate entry procedures into the United States when emergencies occur. Of particular importance would be groups such as fire fighters that respond to cross-border calls, emergency workers that would respond in a natural disaster, Medivac personnel, and others that deal with emergencies where even a few minutes could make the difference between life and death.

i. Passport Cards

The new passport cards, also known as the PASS card, will be a wallet-sized alternative to a U.S. passport designed to facilitate efficient and secure cross-border travel at land and sea ports of entry under WHTI. The Chamber has long advocated for the development of this alternative prior to full implementation of WHTI and continues to urge the U.S. government to make it truly economical to obtain and acceptable at all ports of entry, including air. For it to be a true substitute to a U.S. passport under WHTI, **the passport card should be accepted at air ports of entry as well as the proposed land and sea ports of entry.**

Also, although the application fee at first blush seems reasonable, \$20 for adults and \$10 for minors (under age 16), applicants applying in person will have to pay an additional “execution fee” of \$25. Many applicants will be required to apply in person and will, therefore, be subject to this fee. For example, first time adult passport applicants, all minors, adults holding expired passports issued more than 15 years previously or when the bearer was a minor, and those applying for replacement passports that have been lost, stolen, or mutilated will have to pay the additional execution fee. In addition, there is currently about a \$15 fee for pictures taken at the government application center. Thus, what starts as a \$20 alternative to the \$115 passport (\$75 application fee, \$25 execution fee, and \$15 picture fee) becomes a \$60 alternative (\$20 application fee, \$25 USD-execution fee, and \$15 picture fee). These costs do not take into consideration possible expediting fees, given there is no indication the time frame for production of a passport card will be any shorter than for a passport.⁵

⁵ Also see “Finding the Balance: Reducing Border Costs While Strengthening Security,” February 2008 (page 18), http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

The cost of the passport card should be \$20 for adults and \$10 for minors, regardless of whether it is a renewal or original application, if it is truly to be an economical substitute to a passport. It should also not be burdened with the same additional “fees” and “charges” already imposed on passport applications, e.g., there should be no execution or picture fee. Furthermore, special discounts should be made available to families applying for several cards at a time. The Chamber understands that the \$25 execution fee is paid to the Post Office or county clerk who acts as the acceptance agent for the U.S. passport or passport card paperwork. One approach to avoid the execution fee would be to have CBP deploy staff to high demand areas to accept and verify identity documents in passport card applications. This would be particularly helpful in border communities. CBP occasionally deploys officers to businesses to accept and process applications for trusted traveler cards, such as NEXUS, via what they call mobile enrollment teams, and this proposal could expand upon those efforts. Finally, the time frame for production of a passport card should be significantly shorter than for a passport, increasing its appeal and eliminating the need to increase its cost even further with expediting fees.

j. Enhanced Drivers’ Licenses

The Chamber supports the decision by DHS and DOS to announce officially that documentation such as the Border Crossing Card (“BCC”), the Secure Electronic Network for Travelers Rapid Inspection (“SENTRI”) card, NEXUS card, and the Free and Secure Trade (“FAST”) card will become acceptable substitutes for a passport. However, as the Chamber has stated since 2005, these documents still require a special discretionary form of identification solely for border crossing purposes and, in the case of NEXUS, SENTRI and FAST, are significantly more difficult to obtain than a passport. **Thus, the Chamber continues to call for the acceptance of a “document that is as close to being non-discretionary as possible,” in particular, enhanced driver licenses.** EDLs denote identity and citizenship, while containing vicinity radio frequency identification (RFID) technology and other security features. They hold significant potential to serve as a less expensive and more practical form of documentation than a passport.

The Chamber applauds the departments’ continued commitment “to considering travel documents developed by the various U.S. States and the Governments of Canada and Mexico,” particularly since they can be issued by a “State, tribe, band, province, territory, or foreign government if developed in accordance with pilot program agreements.” The Chamber looks forward to states, provinces, and territories joining in. Following in the footsteps of the state of Washington, the states of Vermont and New York signed such an agreement with DHS to create enhanced drivers’ licenses (EDLs) that will be WHTI compliant. Arizona has also expressed its intention to do the same. DHS and DOS should continue to work on expanding these WHTI compliant driver licenses and state identifications for land and sea border crossings before moving into full implementation. The Chamber is concerned that there will not be a critical mass of WHTI-compliant EDLs in circulation before its target June 2009 implementation.

Without this critical mass, WHTI implementation will lead to further congestion at the border with travelers arriving without proper documentation. The resulting lengthy wait times will have many tourists and business people avoiding cross-border travel, worsening an already

critical situation. EDLs are vital to ensuring WHTI is smoothly implemented and the security needs of North America are met without impeding the movement of people, goods, and services across the border. However, as with the passport card one of the limitations of the EDLs is its acceptance only for land and sea border crossings and not air crossings. Hence, an EDL would be useless for a person who might, cross the border by automobile, but needs to return by air. **A broader, more universal acceptance of the EDLs is needed to facilitate travel in all modes of transportation within the WHTI area.**⁶

k. REAL ID

There is a real disconnect between the REAL ID Act and WHTI. To the extent that states will be mandated to become REAL ID compliant for their residents to be able to board a plane using their drivers' license, there should be some consideration given to amending the underlying WHTI law to make REAL ID compliant licenses also WHTI compliant. The underlying WHTI law could be amended to allow identifications that prove legal residency in the United States, which REAL ID compliant documents do, acceptable under WHTI.

Conclusion

In the final rule published this month, DHS stated that it intends to fully implement WHTI on June 1, 2009, the earliest possible date, which DHS believes is in the best interest of national security—with no mention of economic security. **The Chamber believes that more emphasis needs to be placed on doing it right versus doing it fast.** In addition, economic security and national security are interlinked. We should remember that the twin towers in New York were attacked because they were the symbol of U.S. economic power. The Chamber continues to ask DHS to recognize the need to advance the dual objectives of enhancing security and improving economic prosperity, which are mutually reinforcing.

Border management policy has a tremendous economic impact not just on border communities or the travel and tourism sector, but on our economy at large. North America has the largest trading relationship in the world and it all relies on the efficient movement of goods, services and people across our borders.⁷ If we want to grow and remain competitive in the global market, we need to address the deteriorating problems at our borders and make sure that programs like WHTI do not exacerbate the problems we are trying to fix.

The Chamber greatly appreciates the excellent relationship we have developed with this Committee and hopes to continue and expand that relationship in the future. I wish to thank you for this opportunity to share the views of the U.S. Chamber of Commerce and our broad membership concerned with WHTI and efficient border management. I look forward to your questions.

⁶ The U.S. Chamber of Commerce with the Canadian Chamber of Commerce released a report which emphasized the importance of EDLs and recommended that there is a need for rapid deployment, a broad communications plan, as well as that EDLs should be accessible for air travel. "Finding the Balance: Reducing Border Costs While Strengthening Security," February 2008 (page 17), http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

⁷ Canadian-American Business Council, "The Economic Benefits of NAFTA," April 2008.