

May 9, 2019

The Honorable Shelley Moore Capito
Chairwoman
Senate Committee on Appropriations
Subcommittee on Homeland Security
SD-131 Dirksen Senate Office Building
Washington, DC 20510
c/o Peter Babb

The Honorable Jon Tester
Ranking Member
Senate Committee on Appropriations
Subcommittee on Homeland Security
D-128 Dirksen Senate Office Building
Washington, DC 20510
c/o Scott Nance & Chip Walgren

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
SD-340 Dirksen Senate Office Building
Washington, DC, 20510
c/o Brian Kennedy

The Honorable Gary Peters
Ranking Member
Senate Committee on Homeland
Security and Governmental Affairs
SH-442 Hart Senate Office Building
Washington, DC, 20510
c/o Alexa Noruk

The Honorable Lucille Roybal-Allard
Chairwoman
House Committee on Appropriations
Subcommittee on Homeland Security
2006 Rayburn House Office Building
Washington, DC 20515
c/o Derek Newby

The Honorable Chuck Fleischmann
Ranking Member
House Committee on Appropriations
Subcommittee on Homeland Security
1016 Longworth House Office Building
Washington, DC 20515
c/o Dena Barron

The Honorable Bennie Thompson
Chairman
House Committee on Homeland Security
H2-117 Ford House Office Building
Washington, DC 20515
c/o Alex Carnes

The Honorable Mike Rogers
Ranking Member
House Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515
c/o Emily Trapani

Dear Chairwomen Capito and Roybal-Allard, Chairmen Johnson and Thompson, and
Ranking Members Tester, Fleischmann, Peters and Rogers,

I am writing to request your assistance to address a disturbing and continuing trend of
Customs and Border Protection (CBP) facility and reimbursable requests on public
seaports throughout the nation. Recently, CBP has made facility requests to no less than six
public port authorities within different regions totaling at \$52.5 million. These requests

include building staff facilities and adding on to previously agreed upon cruise facilities. These requests are placing a burden on the budgets of these port authorities, and this CBP practice threatens to disrupt the business operations of our nation's seaports and supply chain. Often, these requests come across as demands.

Unfortunately, the trend continues with no end in sight. One port asked CBP what authority or what statute they had to request that the CBP facility be built and was told "the authority was inherent." AAPA would like a separate interpretation. Our public seaports need Congressional oversight to address these increasing CBP facility demands. Specifically, we ask for your help to answer the following questions:

- 1) What legal authority is CBP utilizing when they request that facilities be built on public port authorities' grounds? Is there a specific statute, or is this a condition of public ports receiving CBP services?
- 2) Are private ports also asked to build CBP facilities, and if so, can you share examples?
- 3) How much of the CBP annual budget is dependent on the CBP "free space" initiative?

Often, CBP uses a one-size-fits-all approach for facility design, especially for cruise terminals. AAPA has recommended that CBP be required to develop a framework in which different marine port operations, or business models, are considered when establishing the federal needs. This includes ensuring that ports have input on rightsizing inspection facilities that meet their needs and have greater input on the final design and building or retrofitting a cruise facility. More input from the local CBP office could help the design center achieve this goal.

Ports and terminals complain that CBP typically requires far more space and furnishings than are needed, resulting in significant increases in costs to build facilities. Often, change orders are requested by CBP at the last minute, driving up building costs unnecessarily. There continues to be little concern by CBP for seaport budget overruns or timely planning in CBP requests.

Looking forward, AAPA requests that the House and Senate Homeland Security Appropriations and Authorization Committees provide more oversight of CBP facility and operational requests. We recommend that the Congress requests a report in the final FY 2020 Homeland Security Appropriations bill, or before, requiring that within 30 days of enactment, the CBP commissioner documents current and anticipated requests from CBP to public port authorities for:

- 1) CBP staff facilities,
- 2) Cruise terminals, and
- 3) Services and equipment.

The report should also include projected costs and timelines for each request.

Finally, given the lack of clarity on CBP policy as it pertains to facility and reimbursable programs, we ask that CBP discretionary requests stop or pause until the proper oversight can be conducted. We request that the Appropriations and Authorization Committees conduct oversight hearings on the authority of CBP to make discretionary requests to public ports, and what statute guides these requests. AAPA believes that hearings before both the House and Senate Appropriations and Authorization Committees would go a long way to providing clarity and certainty to the CBP services and facilities process.

Thank you again for your work and continued support. Your commitment ensures our seaports and partners have the needed resources to keep the nation's ports, communities and supply chain safe and efficient. Please do not hesitate to contact me if you have questions.

Sincerely,



Kurt J. Nagle
President & CEO

cc: The Honorable Nancy Pelosi, Speaker, U.S. House of Representatives
The Honorable Kevin McCarthy, Minority Leader, U.S. House of Representatives
The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Charles Schumer, Senate Minority Leader